Australian Government

Australia Council for the Arts

Australia Council Submission 2013 Review of the Resale Royalty Scheme August 2013

About the Australia Council for the Arts

The Australia Council for the Arts is the Australian Government's arts funding and advisory body. The Australia Council's mission is support the creation, presentation and appreciation of distinct cultural works by providing assistance to Australian artists and making their work accessible to the public.

The Council plays a crucial role in supporting artists and arts organisations to create and present their work, improve and develop their skills, and tour and promote their work to wider audiences. It also develops new audiences for the arts nationally and internationally, and promotes an appreciation of the value of the arts to Australians.

The Council's national focus reflects the culture and creativity of both regional and urban communities and honours its statutory obligation to promote community participation in the arts.

The Council's overarching guiding principle is the support of artistic excellence through the arm's length, peer review of grants to artists and arts organisations. This is enabled by its panels whose members are made up of Australia's leading arts practioners.

The Office of the Chief Executive Officer, which includes Communications, Legal and Compliance, and Research – as well as the Council's five divisions: Arts Funding, Aboriginal and Torres Strait Islander Arts, Arts Organisations, Arts Development and Corporate Resources – is outwardly focused on strategic outcomes to support Australia's artists, strengthen Australia's arts infrastructure and create an environment in which the arts can flourish.

Australia Council Policy statement

Artist Remuneration

The Australia Council affirms the principles that artists should be remunerated for their work and earn income from copyright and royalties, and recognises that underpayment and non-payment affects artists' income and career sustainability. The Australia Council notes that industrial laws, Awards and agreements apply in employment, and industry benchmarks exist to guide rates of remuneration for work and copyright.

The Australia Council expects that artists professionally employed or engaged on Australia Council funded activities will be remunerated for their work. The Australia Council considers the remuneration of artists to be integral to effective budgeting and planning, and requires information on artists' remuneration in appropriate funding applications.

Executive Summary

The Australia Council welcomes the opportunity to make this submission to the 2013 Review of the *Resale Royalty Right for Visual Artists Act 2009* and the associated Scheme that began in June 2010.

The Australia Council endorses the objectives of the *Resale Royalty Right for Visual Artists Act 2009* and the associated Scheme that began in June 2010. The Resale Royalty Scheme, in principle, is important and is generating funds for artists.

Australia Council recognises, however, that it is also important that we maintain a supportive business environment for arts market professionals to operate in. It is not in Australia's interests to unreasonably disadvantage local arts market professionals in their ability to create markets for visual artists.

In balancing the Australia Council's primary aim to support artists, with the aim of developing audiences and markets for their work, we make the following recommendations:

- OFTA and the collecting agency to further develop strategies to ensure that artists are aware of the Scheme and are able to benefit from it.

- The current Scheme favours a consignment model rather than direct payment to artists for work. To offer flexibility in the market place for artists and arts professionals the Australia Council recommends that OFTA, through the Review tests with artists and arts professionals a 'bought as stock' exception, and whether this is an appropriate for the Australian art market. A 'bought as stock' option is where no royalty is payable if the work in question was bought directly from the artist and then resold within a time limited period at a set value. The timeframe and the value would be set by the collecting agency in consultation with artists and arts market professionals.

- The sector is mainly made up of small businesses and there is concern that the administration is disproportionate to the benefits derived and that it may act as a deterrent in dealing with the secondary market. OFTA and the collecting agency to review the current administrative arrangements to ensure maximum efficiency and benefits for artists and arts market professionals.

The Australia Council supports the establishment of International Reciprocal Arrangements to the Scheme. In thinking ahead to harmonisation of administrative arrangements and benefits to artists, and looking at similar schemes in Europe, the Australia Council makes the following additional recommendations:

- The current threshold that attracts a Resale Royalty is $1,000. There have been concerns from arts market professionals that this is too low and places onerous administration on the collecting agencies. Australia Council recommends that the threshold is reviewed, giving primary consideration to maximising benefits to artists, changes in the art market, minimising administration and future international, reciprocal arrangements.
- Consider introducing a cumulative sliding scale for Resale Royalty with an upper limit cap.
- Currently the Resale Royalty is levied on the sale price of a work including GST. GST is not an income to the seller, it is a liability to the tax office. Australia Council recommends that the Resale Royalty should be paid on the value of the artwork, exclusive of GST.

2013 Review of the Resale Royalty Scheme

This submission contributes to the post-implementation review (the Review) of the *Resale Royalty Right for Visual Artists Act 2009* (the Resale Act) and the associated Scheme that commenced in June 2010.

The objectives of the Resale Act are to provide visual artists with:

Recognition of ongoing rights in their art;

An additional source of income through royalties derived from commercial resales of their art.

Under the *Resale Act*, Australian citizen or resident visual artists and craft practioners are entitled to five percent of the resale price for their artwork when it is sold commercially for $1,000 or more.

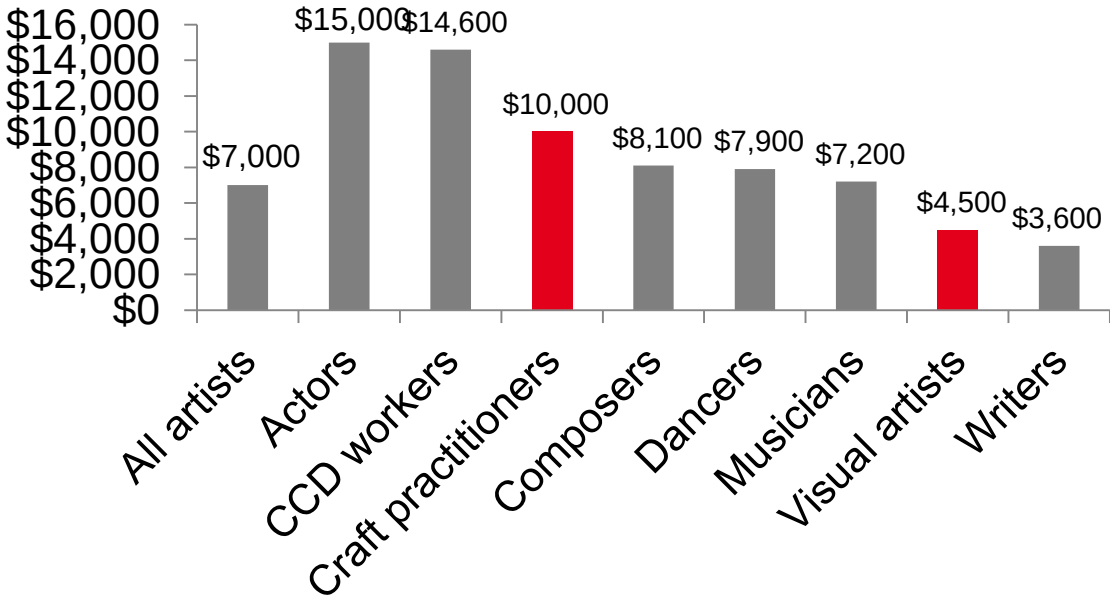
Australia Council has reviewed the discussion paper that provides background on the *Resale Act* and Scheme, including statistics on the Scheme's performance, and the Terms of Reference for the Review including the questions for consideration.

Whilst the Resale Royalty Scheme does not have a direct impact on the operations of the Australia Council, we support the objectives of the Act and the Scheme. Australia Council also supports the review of the Scheme and future improvements to the Scheme.

Benefits to Artists

Implementing a resale royalty scheme was a recommendation of the 2002 Report of the Contemporary Visual Arts and Craft Inquiry (the Myer Report) conducted by Rupert Myer AM. The Myer Report noted that the incomes of contemporary visual arts and craft practioners are lower than that of the general workforce, and of artists in other fields.

The recent Visual Arts Facts research carried out by the Australia Council in 2013, shows that this is still the case.



Visual artists earned an estimated median annual income of $4,500 from their creative work in 2007-08. This is two-thirds of that earned by the all artists ($7,000) and less than half of the median creative income of craft practitioners ($10,000).

It is within this context and the recent Australia Council statement on Artists Remuneration that the Australia Council endorses the objectives of the *Resale Royalty Right for Visual Artists Act 2009* and the associated Scheme that began in June 2010.

In addition to endorsing the scheme, the Australia Council notes that in the first 35 months of operation, there have been 6,801 eligible resales that have generated over $1.5m in royalties to 650 artists, and 51 per cent of the royalties have been paid to Indigenous artists.

Australia Council supports the length of time the resale royalty right remains with artists and their beneficiaries, which is 70 years after death, as this aligns with current copyright provisions for authors, musicians and film-makers.

Australia Council notes that the current Scheme affects arts professionals that make direct payments to artists for art works that are then offered for resale, this is also true of many public museums and gallery shops that sell unique artworks and buy stock direct from artists. This has shifted the market to a consignment model, which can create fluctuations in artists' incomes. Australia Council recognises that artists are in business, often as sole traders, and in managing their business need to factor in variables in the market place and developing efficient business models for their practice. Australia Council supports artists through funding a number of national peak peak bodies, and membership organisations, who provide advocacy and support for artists.

Australia Council recommends that the review looks at the Design and Artists' Copyright Society in the UK, who offer a 'bought as stock' option and tests with artists and arts professionals whether this model is appropriate to the Australian art market. With the 'bought as stock' option, no royalty is payable if the work is bought directly from the artists and then resold within a stated period of time, with a value placed on the work to safe guard against excess profits. At present the Design and Copyright Society has set the timeframe that an art work has to be sold within three years for no more than 10,000 Euros.

Access, Education and Promotion

Copyright Agency has established a database for more than 5,000 artists, or their beneficiaries and just over 400 art market professionals, buyers and sellers.

Recent Australia Council research estimates that there are over 13,000 artists in Australia suggesting that the collecting agency has more work to do in ensuring that artists are signed up to the Scheme. Australia Council notes that the collecting agency has done excellent work in the remote and regional areas with Indigenous artists and would endorse the continuation of this work.

There is also some concern from art professionals, who the Scheme extends to, what constitutes a sale that is eligible for a resale royalty, and whether the buyer, seller or agent is responsible for paying the royalty. This suggests that there should be better education and updates for art market professionals on the Scheme.

Resale Royalties

The setting of the threshold of $1,000 was originally introduced to capture emerging artists' work, and lower value work on the secondary market such as craft, photographs and prints. There are concerns from art market professionals that the threshold is too low, with considerable administration involved for the collections agencies.

Australia Council noted the highest volume of royalties (49%) that have been paid to date are on art works valued between $2,005 and $10,000. Australia Council also noted that European Schemes have set a threshold of 1,000 Euros.

Australia Council recommends that the threshold is reviewed, giving primary consideration to maximising benefits to artists, changes in the art market, minimising administration and future international, reciprocal arrangements.

Resale Royalties are currently calculated on the sale of the art work and GST, with the auction house buyers' premium being exempt. Similar schemes in Europe such as the Design and Artists' Copyright Society run a model that does not include tax as part of the Resale Royalty. Resale Royalty payments are also capped with a cumulative sliding scale.

Royalties are calculated on the sale price minus VAT (GST equivalent) for galleries and the hammer price, (sale price minus VAT and Buyers Premium) for auction houses. The maximum an artist or their beneficiary can receive is capped at €12,500 for one sale of one work, which is reached by works sold for €2 million or more.

Australia Council recommends that consideration is given in the Review of other successful international Resale Royalty models such as the Design and Artists' Copyright Society in the UK when formulating a new administrative model for Resale Royalty Scheme.

Costs to Establish and Administer the Scheme

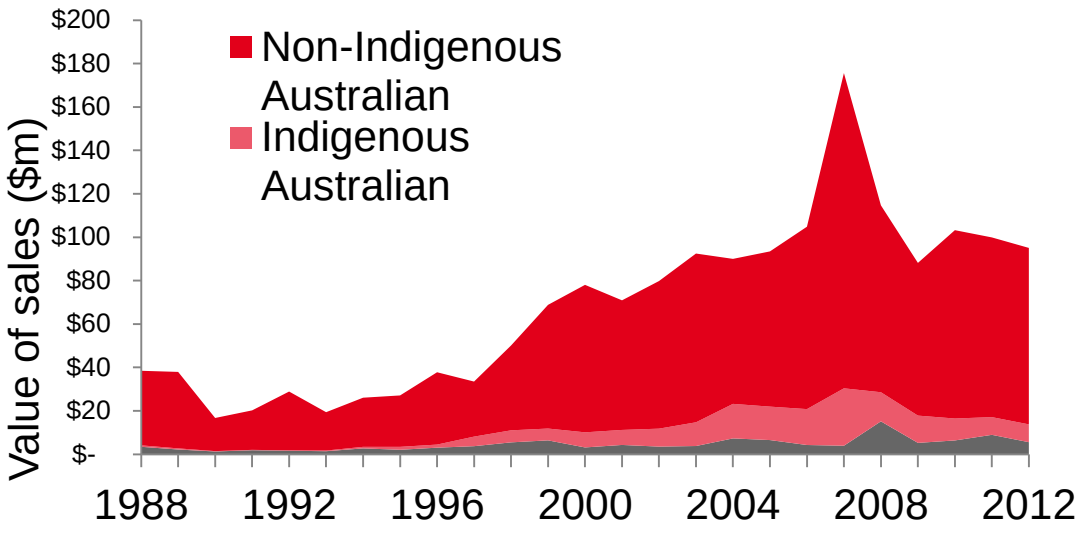
The cost to establish and administer the Scheme has been supported through a combination of Australian Government funding, the 10 per cent administration fee that Copyright Agency is permitted to deduct from each royalty they collect, and an in-kind contribution from the Copyright Agency which has covered services such as office overheads and some education and information technology costs. As at May 2013, Copyright Agency had collected a total of $127,592 in administration fees. To date the Australian Government has allocated $2.2m to the scheme. It is expected that the Scheme will become self-sustaining as the volume of eligible resales increases, with corresponding increases in income from administrative efficiencies.

Australia Council notes that with an ongoing decline in secondary market sales that attract a resale royalty, the Scheme will continue to need Government subsidy to continue to operate up to the point that there is market recovery.

Impact of the Scheme on the Art Market

The art market is a rapidly evolving environment and recent research by the Australia Council for Visual Art Facts shows that in the secondary market – where good auction house data exists – we can see that sales spiked in 2007, and have since restabilised around $100 million a year.

The Indigenous art market appears to have been affected by the Global Financial Crisis. Indigenous art centres report falling sales, and auction house data suggests sales have fallen back below 2003 levels.



Visual arts practitioners rely on sales of works and commissions for around two thirds of their income (compared with 22% for all artists) – and are therefore much more reliant on the market than other types of artists.

Australia Council commissioned qualitative research in 2013 that suggests that 'it's the hardest it's ever been' in the commercial gallery sector.

Commercial galleries participating in the research were dissatisfied with recent changes to SMSF legislation, and the Resale Royalty Scheme continues to attract controversy.

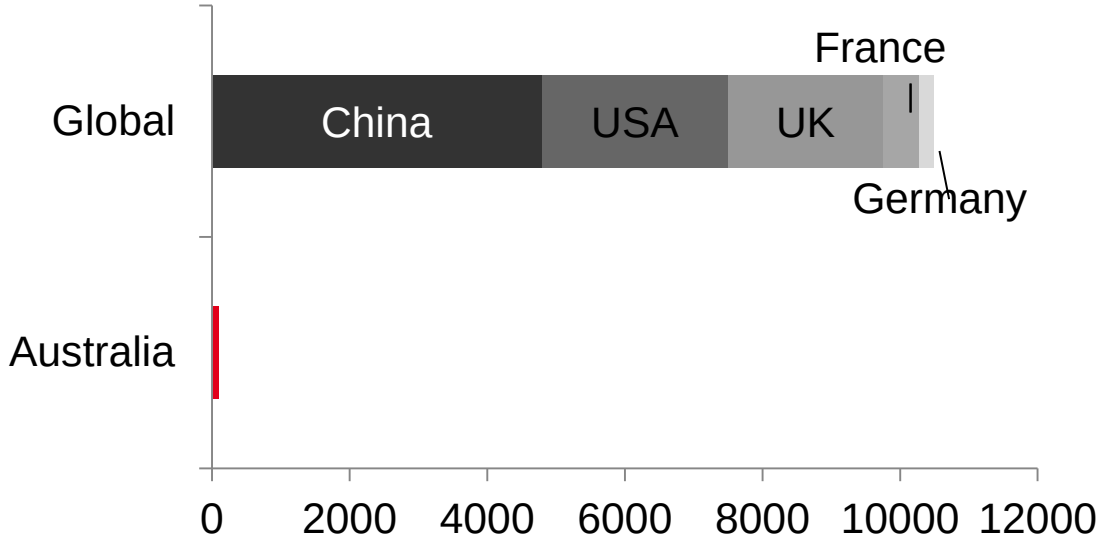
The art market over this period has been affected by the global financial crisis and there is evidence that a number of commercial galleries in Australia have ceased their operations.

Australia Council notes that there is no direct evidence to suggest that the Resale Royalty Scheme has impacted negatively on sales and activity but there is a growing concern amongst art market professionals that it could affect buyers' behaviour and market confidence.

Australia Council recommends that Review of the Resale Royalty Scheme is further extended to include independent qualitative and longitudinal research to determine the current state of the market, buyers' behaviour and purchasing patterns.

Scale of the Scheme in future years

Australia Council is in support of extending the Scheme through International Reciprocal Arrangements. Australia Council research data below suggests that it will be beneficial to extend this to Europe, noting that China and USA do not operate similar schemes.



Collecting Resale Royalties on behalf of Australian artists through International Reciprocal arrangements will be beneficial to artists.