

EXPLANATORY STATEMENT

Determination under paragraph 35(4)(d) of the *Resale Royalty Right for Visual Artists Act 2009*

(Issued by authority of the Minister for Environment Protection, Heritage and the Arts)

Legislative Context

The *Resale Royalty Right for Visual Artists Act 2009* (the Act) establishes the resale royalty scheme which entitles visual artists with the right to receive a 5 per cent royalty payment each time one of their works is resold on the secondary art market for \$1000 or more. The Act also provides that the Minister may appoint a collecting society to administer the resale royalty scheme.

Under paragraph 35(4)(d) of the Act the Minister must determine provisions to be contained in the collecting society's rules, being provisions necessary to ensure that the interests of holders of resale royalty rights or their agents are protected adequately, including, in particular, provisions about:

- (i) the collection of amounts of resale royalty; and
- (ii) the distribution of amounts collected by the society; and
- (iii) the holding on trust by the society of amounts for holders of resale royalty rights who are not its members; and
- (iv) access to records of the society by holders of resale royalty rights and their agents.

The Minister must not appoint a body to be the collecting society unless its rules contain provisions of the kind determined by the Minister under paragraph 35(4)(d).

The *Determination of provisions to be contained in collecting society rules* (the Determination) is made by the Minister pursuant to paragraph 35(4)(d) of the Act.

Purpose

The purpose of the Determination is to ensure the interests of holders of resale royalty rights or their agents are adequately protected.

Consultation

There was opportunity to comment on the requirements in paragraph 35(4)(d) of the Act during the House of Representatives Standing Committee on Climate Change, Water, Environment and the Arts Inquiry into the Resale Royalty Right for Visual Artists Bill 2008. The Determination imposes one additional requirement to that specified in paragraph 35(4)(d). The requirement in addition to those specified in paragraph 35(4)(d) does not impose a significant burden on the collecting society.

In addition, industry consultation was undertaken in the development of the policy and therefore not considered necessary to consult on this instrument.

Operation of the Determination

The Determination stipulates the provisions to be contained in collecting society rules, namely:

- (a) the collection of amounts of resale royalty;
- (b) the distribution of resale royalty amounts collected by the society and any interest earned on those amounts, to holders of resale royalty rights;

- (c) the holding on trust by the collecting society of resale royalty amounts due to holders of resale royalty rights who are not members of the collecting society or who are otherwise yet to be identified and/or located;
- (d) access to the collecting society's records by holders of resale royalty rights and their agents; and
- (e) a complaint notification and handling procedure for dealing with member complaints.

These provisions ensure that the interests of resale royalty right holders and their agents are adequately protected by the rules of the collecting society.

Under the Act, the collecting society is required to collect royalties on behalf of resale royalty right holders, and to distribute royalties to the holders of those rights. The collecting society must also locate resale royalty right holders in cases where royalties have been paid but right holders have not been identified. This instrument ensures that in undertaking its functions under the Act that the collecting society Determination provisions in the collecting society's rules will ensure that in undertaking its functions under the Act the interests of resale royalty right holders are protected.

These protections apply to resale royalty right holders regardless of whether they elect to become a member of the collecting society.

Access by resale royalty right holders or their agents to the collecting society's records will ensure transparency for right holders. Furthermore, a complaint notification and handling procedure provides members with an avenue of recourse.

The instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The instrument commenced on the day after the date it was registered on the Federal Register of Legislative Instruments.