

**Regulatory Impact Statement**  
**Supporting regulations for Resale**  
**Right for Visual Artists Bill**

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# Regulatory Impact Statement: Supporting regulations for Resale Right for Visual Artists Bill

## Coversheet

Purpose of Document	
Decision sought:	<i>Analysis produced for the purpose of informing the release of a discussion document on settings for supporting regulations for an Artist Resale Royalty scheme in New Zealand.</i>
Advising agencies:	<i>Ministry for Culture and Heritage</i>
Proposing Ministers:	<i>Minister for Arts, Culture and Heritage</i>
Date finalised:	<i>29 March 2023</i>
Problem Definition	
<p>Aotearoa New Zealand is introducing a resale royalty right for visual artists, which will meet a commitment under the recently signed Fair Trade Agreement (FTA) between the UK and New Zealand to introduce such a scheme within two years of the FTA's entry into force. A Bill has been introduced that would establish an artist resale royalty (ARR) scheme.</p> <p>This interim RIS has been developed to support the release of a discussion document for consultation on proposals for supporting regulations to operationalise the ARR scheme. The Bill would empower regulations to cover:</p> <ul style="list-style-type: none"><li>• detail on the operation of the collection agency</li><li>• how an administrative fee will be set</li><li>• the dollar threshold at which a royalty will be payable on a resale</li><li>• how undistributed royalties must be managed.</li></ul> <p>The objectives sought are to produce an ARR scheme that maximises the benefits to artists while minimising costs to art market professionals and participants; supports a well-functioning secondary art market; and is simple and cost-effective to administer, so that it can ultimately become self-sustaining.</p>	
Executive Summary	
<p><i>Background</i></p> <p>An artist resale royalty (ARR) scheme provides a right for visual artists to receive a royalty when their work is sold on the secondary art market. The Resale Right for Visual Artists Bill, which was introduced to Parliament in March 2023, would introduce an ARR scheme for Aotearoa New Zealand which requires a 5% royalty on the “hammer price”<sup>1</sup> of qualifying resales.</p>	

<sup>1</sup> The “hammer price” is the sale price before any additions or deductions, or other charges, such as a buyer’s premium, commission or GST.

Options are analysed for whether and how to regulate the following, which the Bill empowers to be addressed in regulations. Table 1 below summarises what questions are analysed and indicates the preferred options.

**Table 1: Preferred options according to regulatory impact analysis**

Policy setting	Preferred option
<i>Collection agency</i>	
Appointment term of the collection agency	The collection agency is appointed for a fixed term, e.g. five years.
Requiring Māori representation in collection agency governance	Regulations require that during the tender process for the collection agency, applicants will need to demonstrate how they will provide culturally appropriate support to Māori artists and involve Māori artists in governance and decision-making.
Establishing a dispute resolution process	The regulations outline what dispute resolution process is to be used in the case that the collection agency does not already have a suitable process.
<i>Administrative fee</i>	
How the administrative fee is set	The amount is determined by the Minister by notice in writing given to the collection agency.
How the administrative fee is calculated	Administrative fee is deducted from the five percent royalty payment.
<i>Threshold sale price</i>	
Threshold sale price	Threshold of \$1,000 or more.
<i>Undistributed royalties</i>	
Length of time a royalty will be claimable if the rights holder cannot be located	The regulations will require royalty payments, where the rights holder cannot be located, to be claimable indefinitely.
Use of royalties that cannot be distributed	The regulations establish a cultural fund to be used for the benefit of artists.

*Impact of the preferred option*

Compared to the counterfactual of the UK ARR scheme, costs and benefits under the preferred option are likely to include:

- slightly higher administrative costs to art market professionals and the collection agency
- a smaller net royalty paid to artists due to a higher admin fee
- additional costs to the Crown arising from the setup of a cultural fund
- more artists would receive royalties and a higher total value of royalties would be distributed

- additional funds distributed to the wider artistic community through a cultural fund
- marginally more tax revenue to the Crown through the taxation of royalty payments

#### *Stakeholder interests and engagement*

ARR schemes traditionally benefit established artists whose work sells for higher prices. This could disproportionately affect groups whose artwork tends to sell for lower prices, e.g. Māori, female and ethnic artists<sup>2</sup>. Alongside provisions in the Bill, the preferred options identified in this RIS include:

- applicants to be the collection agency would be required to demonstrate how they will involve Māori artists in governance and decision making
- the collection agency would be required to collect data and report on the scheme's impacts on artists
- the threshold sale price above which royalties are payable is set at a level that ensures a large number of artists can benefit from the scheme
- the establishment of a cultural fund that could be used to promote equitability in the scheme.

Manatū Taonga worked with a General Advisory Group and a Māori advisory group (Te Rōpū Toi Māori) in the development of these proposals. Manatū Taonga and these advisory groups agreed on the overall scheme direction and most of the proposals to address key policy issues. Significant divergences in views are:

- the General Advisory Group recommended that royalties should be claimable for a fixed period such as six years. Te Rōpū Toi Māori considered this inconsistent with tikanga Māori and instead recommended that royalties could be claimed indefinitely. The analysis in this RIS recommends an indefinite royalty period.
- Art market professional representatives in the General Advisory Group recommended a high threshold of at least \$2,000. The majority of the General Advisory Group agreed the threshold should be as low as possible, ideally \$500. Te Rōpū Toi Māori supported a \$1000 threshold. The analysis in this RIS recommends a \$1000 threshold.
- Te Rōpū Toi Māori considered that an administrative fee should not be deducted from the 5% royalty, while the General Advisory Group supported it being deducted from the royalty. The analysis in this RIS recommends that the fee is deducted, as adding on this charge would amount to a tax on the secondary art market.
- Te Rōpū Toi Māori recommended options to require Māori representation in co-governance. The analysis in this RIS recommends that the collection agency is instead required to demonstrate how it will provide culturally appropriate support to Māori, including how they will include Māori in decision-making at the governance and management levels of the agency.

A full breakdown of the advisory groups' recommendations and how they align with the options presented in this RIS is available as Appendices Two and Three.

<sup>2</sup> Further information on population implications is available as Appendix Two of the Cabinet paper on legislative policy proposals, available at [https://mch.govt.nz/sites/default/files/projects/cab-22-MIN-0316-artist-resale-royalty-scheme-policy-approvals\\_1.pdf](https://mch.govt.nz/sites/default/files/projects/cab-22-MIN-0316-artist-resale-royalty-scheme-policy-approvals_1.pdf)

## Limitations and Constraints on Analysis

### *The Bill empowers supporting regulations to address specific policy areas*

The Resale Right for Visual Artists Bill provides for regulations to set policy in the four areas outlined in the problem definition above. Other key policy settings have been addressed in the Bill and are therefore out of scope.

### *There is uncertainty about future sales figures*

2021 and early 2022 saw a significant spike in the overall value of secondary art sales in Aotearoa New Zealand. It is not yet clear if this indicates lasting growth in the art market or if 2021 is an outlier.

In policy areas that would affect scheme revenue (the threshold sale price and options relating to the administrative fee), we have assumed that these sales figures will not be reflected in out years as we are cautious of overestimating revenue generated, and therefore underestimating how much Crown investment would be required. Complete 2022 data is not available to inform this analysis. If sales numbers from 2022 as a whole are similar to 2021, this is more likely to indicate lasting growth in the art market.

### *Funding limitations affect the viability of some options*

9(2)(f)(iv)

The balance between an administrative fee percentage that is tolerable for artists and the goal of making the scheme self-sustaining also places constraints on what we can expect the collection agency to deliver.

The cultural fund option detailed below would require additional funding to operate. The exact amount would depend on whether the fund is contestable, which would drive much of the additional cost.

9(2)(f)(iv)

The scheme is expected to generate approximately \$702,000 in royalties per annum and between \$131,550 and \$219,250 in admin fees, and compared to this the costs of establishing new governance are likely to be prohibitive.

Options related to the administrative fee have cost recovery implications. An assessment of these is attached as Appendix One.

### *There is limited information about the secondary art market*

The Ministry's analysis is informed by auction house sales data (purchased from the Australian Art Sales Digest) which we estimate comprises approximately 80 percent of the secondary art market in New Zealand. We have little visibility of the remaining 20 percent. This means we have limited information about groups of artists whose work tends to sell through other means. Engagement suggests that this includes Māori and Pacific and ethnic artists, as well as artists from ethnic communities who face barriers to creating and exhibiting work in Aotearoa New Zealand. Information about the scheme's impacts on artists is proposed to be gathered by the collection agency to inform future reviews of the scheme, including addressing distributional impacts.

The overall availability of data about the participation of specific demographics in the secondary art market is limited, so analysis of impacts on these demographics relies on anecdotal insights from engagement.

The analysis of this proposal is informed partly by insights and experiences from the implementation and operation of comparable overseas ARR schemes, including in Australia, the UK and EU nations. The New Zealand market is considerably smaller than many overseas markets and so may be impacted differently; we have not been able to identify an overseas country which has a similar sized art market to New Zealand, and which also has an ARR scheme (Ireland has a comparable population, but a larger art market). This limits what options can be considered; for example, the UK scheme has multiple collection agencies, which would not be sustainable in an art market the size of Aotearoa New Zealand's.

*Broad public consultation on supporting regulations has not yet happened*

Consultation to date on the supporting regulations for ARR has been limited. The options in this RIS were informed by targeted engagement with two advisory groups, a General Advisory Group and a Māori Advisory Group, but not broader consultation beyond these groups. This document is an interim RIS to support a discussion document which will be released to inform broad public consultation on proposals for ARR supporting regulations. Feedback gathered through this process will be used to further refine the proposals and this analysis.

*Overall impact on analysis*

Overall, the Ministry has a reasonable degree of certainty that these limitations and constraints have not significantly impacted the analysis in this RIS.

**Responsible Manager(s) (completed by relevant manager)**

Heather Raeburn  
Policy Manager  
Arts Policy  
Manatū Taonga Ministry for Culture and Heritage  
29 March 2023

**Quality Assurance (completed by QA panel)**

Reviewing Agency: Manatū Taonga Ministry for Culture and Heritage

Panel Assessment & Comment:

A quality assurance panel at Manatū Taonga has reviewed the interim RIS and considers it partially meets the quality assurance criteria.

The panel considers that the interim RIS presents relatively sound analysis and conclusions in respect of the discrete sets of regulatory options it considers. The panel considers further work is required to check the range of assumptions underpinning the analysis, and to more robustly assess the impacts and workability of the full suite of preferred options.

The panel considers the consultation proposed to be undertaken on the preferred options will provide an opportunity to gather a wider range of information and insights, including the views of those communities that may be most affected by the proposed



settings, to inform this work. Overall, the panel considers the RIS provides enough information to inform decisions to consult on proposals for regulations.

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# Background

## What is the context behind the policy problem / opportunity and how is the status quo expected to develop?

### What is an artist resale royalty?

1. An ARR provides a financial return to artists whose work is on-sold. The right to a resale royalty is enshrined in the 1971 Berne Convention, to which Aotearoa New Zealand is a signatory, and enables visual artists to receive a royalty when their work is sold on the secondary art market.
2. While other creative professionals generally derive copyright income from multiple reproductions or repeat performance of their works, in the absence of a resale right visual artists' primary income is largely limited to the one-off initial sale of their individual works on the primary art market. ARR schemes work to address this by providing royalty payments to artists.

### Why is Aotearoa New Zealand introducing an Artist Resale Royalty (ARR) scheme now?

3. The FTA between the UK and New Zealand, signed on 28 February 2022, commits New Zealand to introducing a reciprocal ARR scheme within two years of the FTA's entry into force (article 17.46 of the FTA)<sup>3</sup>. The FTA with the European Union, which is yet to be signed, contains a similar commitment to establish an ARR scheme (article 18.14).
4. On 15 August 2022, Cabinet agreed to establish an ARR scheme in New Zealand and agreed to the drafting of new legislation to give effect to the scheme.
5. The Resale Right for Visual Artists Bill (the Bill) has now been introduced to Parliament. Once it is passed into law, the Bill will establish a new standalone Act. Policy settings in the Bill have been assessed in a separate RIS.

### What policy problem / opportunity does the ARR scheme as a whole aim to address?

#### The policy problem

6. New Zealand committed to an ARR scheme as part of the FTA because a scheme would provide the opportunity for visual artists to benefit from their work on an ongoing basis, aligns New Zealand with common international practice in relation to the resale right, and contributes to supporting visual artists' career sustainability.
7. Introducing an ARR scheme is a significant opportunity to:
  - a. recognise the social and cultural contribution of artists
  - b. provide benefits to artists through royalty payments

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<sup>3</sup> <https://www.mfat.govt.nz/assets/Trade-agreements/UK-NZ-FTA/Chapters/Chapter-17-Intellectual-Property.pdf>

- c. provide artists with an opportunity to benefit from their work after the first sale, particularly when the work has increased in value.
8. Whereas other creative professionals generally derive copyright income for multiple reproductions or repeat performance of their works, visual artists' primary income is largely limited to the one-off initial sale of their individual works on the primary art market.
9. Some New Zealand visual artists (usually established artists) are negotiating their own voluntary ARR arrangements with auction houses and dealers. There is no uniform or consistent approach, and the terms of the arrangements differ depending on what artists can negotiate. The success of these voluntary arrangements varies, and it is usually established/well-known artists who negotiate arrangements as they have the status and bargaining power to do so.
10. More than 80 countries worldwide currently have a legislated ARR scheme in place. In many overseas schemes, foreign nationals are eligible to receive royalties if their country of origin has a reciprocal scheme in place. The introduction of an ARR scheme will mean New Zealand nationals can receive royalty payments when their work sells in overseas countries that have a scheme in place.
11. Infometrics data from March 2021 indicates there are 3,677 people classified as painters, sculptors and potters, and the Ministry has used this figure as an estimate of the number of artists who could potentially benefit. Of these, 453 (12.3 percent) identified as Māori. Additionally, some photographers operate in the fine arts space (as opposed to commercial photography) and their work could potentially attract a resale royalty.
12. Sales data shows toi Māori is currently underrepresented in traditional auction house sales. Between 2018 and 2020 approximately 10 percent of artworks resold when the artists was living and two percent of artworks when the artist was deceased were created by Māori artists. The Bill uses a broad definition of toi Māori, allows private sales to opt in, and enables the resale right to be held jointly to protect against this inequity being replicated in the scheme. There is an opportunity in the drafting of supporting regulations to further strengthen protections for Māori right holders.

#### **How the Resale Right for Visual Artists Bill proposes to address the policy problem**

13. The Bill introduces a resale right for visual artists in Aotearoa New Zealand with the following policy settings:
  - a. Definitions of "visual art" and "art market professional" for the purposes of the scheme.
  - b. A flat percentage royalty rate of five percent is charged on the "hammer price"<sup>4</sup> of a resale.
  - c. Resales where an art market professional is involved, including sales to or from a publicly funded museum or art gallery, are eligible for a royalty, with the provision for private sales between individuals to opt in voluntarily.

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<sup>4</sup> The "hammer price" is the sale price before any additions or deductions, or other charges, such as a buyer's premium, commission or GST.

- d. Only New Zealand citizens and permanent residents and nationals and residents of reciprocating countries would be able to hold the resale right.
- e. The right can be held jointly and is inalienable.
- f. Duration of the resale right mirrors the duration of copyright in the Copyright Act (currently life plus 50 years after death, changing to 70 years after death in the future as committed to in the UK and the EU FTAs)
- g. Artists can opt-out of receiving the royalty but not collection of the royalty.
- h. There is no cap on the maximum royalty payable on a sale.
- i. Only one organisation can act as the collection agency at any given time, and the agency will be a non-government, not-for-profit organisation.
- j. The collection agency has the power to take civil proceedings to recover any unpaid royalties, or compel information to be provided by liable parties.

## Cross-government work and ARR

### Potential change to the term of copyright

- 14. The Bill states that a qualifying resale creates a resale right during the period beginning when the artwork is created and ending 50 years after the artist dies (or 50 years after the last artist dies if a work is created by multiple artists). This is intended to reflect the term of copyright.
- 15. The NZ-EU FTA (once ratified) would require the term of copyright to be extended to the life of the artist plus 70 years within four years of the FTA's entry into force.
- 16. If the term of copyright is extended, it is intended that the term of the resale right would also be extended and additional works would become eligible for the ARR scheme.

### Te Pae Tawhiti: Wai 262

- 17. The Wai 262 claim to the Waitangi Tribunal examined the Crown's policies and laws as they affect indigenous knowledge (mātauranga Māori) and taonga, including but not limited to products of Māori culture such as toi Māori (Māori art). The Waitangi Tribunal report on the claim, *Ko Aotearoa Tēnei*<sup>5</sup>, recommended reforms that present opportunities for innovation, to leverage Aotearoa New Zealand's unique identity and to strengthen its international position as well as delivering direct benefits to Māori.
- 18. In April 2019, Cabinet agreed to progress a whole of government strategy to address the issues set out in the WAI 262 claim and *Ko Aotearoa Tēnei*. Manatū Taonga is participating in the whole-of-government work programme, Te Pae Tawhiti: Wai 262.
- 19. Work regarding the protection of indigenous intellectual property (IP) and traditional knowledge, and the safeguarding and protection of rangatiratanga over Māori cultural heritage and taonga, is being progressed as part of the Te Pae Tawhiti work programme. That work concerns the wider IP system (including legal protection for Māori (kaitiaki) rights and interests in taonga works), and is in the preliminary stages.

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<sup>5</sup> [Ko Aotearoa Tēnei: Report on the Wai 262 Claim Released | Waitangi Tribunal](#)

20. In its analysis, the Waitangi Tribunal acknowledged the need for policymakers to strike a balance when considering competing interests in taonga and mātauranga Māori. The protection of Treaty rights and interests in 'taonga works' (products of mātauranga Māori, which have whakapapa (and involve the spirits of ancestors in the artworks), mauri, and an enduring kaitiaki relationship<sup>6</sup>; and non-Treaty interests in, for example, 'taonga-derived works' (works that are inspired by mātauranga Māori but do not have a kaitiaki relationship, whakapapa, or mauri).
21. While the distinction between taonga works and taonga-derived works is not always clear, the objective of the ARR scheme is to support visual artists, including Māori visual artists, to benefit financially from the sale of their artworks on the secondary market.
22. Options for how long a royalty can be claimed if the right holder/s cannot be found could have implications for the integrity of Māori artists' relationship with their art. The integrity of the artist's relationship has been included in the multi-criteria analysis under "benefits to artists".
23. In developing regulatory proposals for ARR, officials discussed with Te Rōpu Toi Māori whether the collection agency could act to stop artists who misappropriate Māori cultural imagery in their work from financially benefitting from the scheme. The consensus was that preventing misappropriation was more aligned with other organisations' roles, such as the Indigenous group within the World Intellectual Property Organisation (WIPO) and Toi Iho; and that taking on this role would make the remit of the collection agency too complex.
24. We will seek further feedback through consultation on how to address any issues.
25. Note that the term of copyright discussed above is paralleled in the term of the resale right. It would not be feasible to have a resale right on all works regardless of when they are created as it would be impractical or impossible to identify the artist for many of these older works.

### Stakeholders and the nature of their interests

26. The key stakeholders in this area are:
  - a. visual artists and their estates, and artist advocacy groups e.g. Equity for Artists
  - b. art market professionals such as auction houses, dealer galleries and art consultants who sell artists' work on the secondary market
  - c. public art galleries and museums that are purchasers and exhibitors of artworks and have interests in supporting artists and recognising their contribution
  - d. art collectors and buyers, who sustain the art market and benefit from the purchase of art through cultural enrichment, and sometimes as an investment
  - e. government agencies that have an interest in the establishment of a new regulatory regime in the secondary art market

- f. sector organisations, such as Copyright Licensing New Zealand.

### Stakeholder engagement

27. Stakeholders have been engaged on the concept of an ARR scheme on multiple occasions over the years including a 2007 discussion paper, Select Committee submissions on a 2008 ARR Bill, a 2018 Ministry of Business, Innovation and Employment (MBIE) discussion paper, a 2019 online survey, extensive stakeholder consultation in 2019 and 2020 as well as targeted engagement with key stakeholders in 2022 to support the development of the current legislative proposals.
28. There is strong support for a scheme from artists and advocacy groups, but opposition from some art market professionals. A summary of key consultation themes from previous engagements regarding the establishment of an ARR scheme as a whole is attached as Appendix Three.
29. Engagement specific to these proposals was also conducted with two advisory groups, a General Advisory Group and a Māori advisory group (Te Rōpū Toi Māori). The advisory groups are generally supportive of the proposals, and have had input into the options for supporting regulations analysed in this document. Where we have been unable to progress recommendations made by either group, this is noted in the discussion of each option. A fuller summary of advisory groups' feedback, and how it aligns or does not align with the preferred options identified in this RIS, is available as Appendices Two and Three.
30. This document is an interim RIS and is being released along with a discussion document to support public consultation on the draft proposals for ARR supporting regulations. Feedback gathered through this process will be used to further refine the proposals and this analysis, and inform Cabinet decisions.

### This document considers proposals for supporting regulations for four operational areas

31. The four operational areas described below are specific and distinct. Regulating these will contribute to the overarching objectives of the ARR scheme in different ways.
32. For the legislation to operate effectively, regulations are required that will:
- a. prescribe detail on the operation of the **collection agency**, including the collection and distribution of the royalty and reporting and monitoring requirements
  - b. prescribe how the **administrative fee** (to be deducted from each royalty by the collection agency to meet its operating costs) will be set
  - c. set the dollar threshold at which a royalty will be payable on a resale (the **threshold sale price**)
  - d. provide detail on the management of **undistributed royalties**.
33. In analysing options for the above operational areas, this RIS considers the wider context of the Aotearoa New Zealand art market, as well as funding limitations for the establishment of the scheme.
34. For the purposes of this analysis, the UK ARR scheme is used as the counterfactual. This is the same approach taken for analysis undertaken for the legislation. Where

there is no equivalent regulatory setting in the UK, this is noted. In these cases a different counterfactual is used and the rationale for using that counterfactual is given.

35. The cultural and constitutional context of Aotearoa New Zealand means there is a need to consider how Māori rights and interests will be recognised through the scheme. This means comparisons with outcomes in the UK are of limited value in some areas.

### What objectives are sought in relation to the policy problem?

36. The regulations seek to achieve the following objectives:
- maximise the benefits to visual artists** (and their estates if the artist is deceased), with particular regard to respecting the role of Māori as tangata whenua and enabling the scheme to support toi Māori
  - minimise the costs** to art market professionals, buyers and sellers and the broader market
  - support a well-functioning New Zealand secondary art market**, which avoids negative impacts on art sales and perverse incentives on participants in the scheme.
  - ensure the option is as **simple and cost effective as possible to administer** with the long-term goal of ultimately becoming self-sustaining.

### What criteria will be used to compare options?

37. Options for all policy areas will be assessed using the following criteria:
- benefits to artists** – what benefits are there to artists and how equitable are the benefits to different artist groups (e.g. Māori)?
  - administration costs** – what day-to-day costs does the option create for government, the collection agency, and the sector (including art market professionals, buyers, sellers)?
  - flexibility/sustainability** – how flexible, sustainable, and future-proofed is the option?
38. In addition, where some of the options assessed within a policy area would have a particular benefit or could have an impact on the Crown's ability to meet its Tiriti o Waitangi obligations, a fourth criterion will be assessed:
- Tiriti o Waitangi considerations** – to what extent does the design and implementation of the scheme meet the Crown's Te Tiriti obligations?

### What scope will options be considered within?

39. Options were considered within the following scope:
- FTA commitments.** The establishment of a mandatory ARR scheme is required under the NZ-UK FTA (art 17.46) and would be required under the current draft of the NZ-EU FTA (art 18.14). The FTAs set some requirements on how the scheme must operate, which are included in the proposed legislation.
  - Previous Cabinet decisions.** In 2022, Cabinet agreed to the drafting of legislation to establish an ARR scheme.

c. **The draft Resale Right for Visual Artists Bill** currently being considered by Parliament. The key policy settings included in legislation are noted above.

40. Targeted engagement with advisory groups has informed the development of options. This is an interim RIS developed to support public consultation on the regulations, so feedback gathered through the consultation process will inform the final RIS.

**The experience of international schemes has informed the development of options**

41. There is significant international precedent for an ARR scheme, and international standard practice, experiences and policy reviews have also informed this analysis. Some elements of ARR schemes are common practice across many international schemes; for example, all international ARR schemes we investigated<sup>7</sup> had a percentage-based administrative fee, though the amount of the percentage varied.

**The availability of funding limits what the scheme can do**

42. A key objective of the scheme is to be self-sustaining. Therefore, any options that would require the scheme to be government-funded in perpetuity are out of scope.
43. The balance between an administrative fee percentage that is tolerable for artists and the goal of making the scheme self-sustaining places constraints on what we can expect the collection agency to deliver.

44. g(2)(f)(iv)

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<sup>7</sup> This includes the UK, Australian, Danish, German, French, Icelandic and Finnish ARR schemes; admin fee percentages ranged from 12% (Germany) to 25% (Finland).



# Policy area 1: Collection agency

## Section 1: Diagnosing the policy problem

### What is the policy problem or opportunity?

**An operational framework needs to be established for the scheme's collection agency to enable the collective management of rights**

45. The Bill establishes that a collection agency will be appointed to manage the scheme and provides for regulations to specify how this collection agency is appointed and will operate. It is intended that this agency will be a non-government, not for profit entity, which was strongly supported during engagement on the Bill.
46. Including key details of the collection agency's appointment process and operating framework in regulations is an opportunity to provide assurance to scheme participants that the ARR scheme will be managed fairly and that the collection agency will be accountable for how it operates the scheme.
47. The level of detail given on how the collection agency must operate varies significantly between jurisdictions. The Australian legislation provides the most direction in this area, including criteria for appointment as the collection agency, how appointment can be revoked, and the agency's annual reports, accounts and reporting requirements.

**The collection agency is required by primary legislation to provide appropriate support to Māori artists**

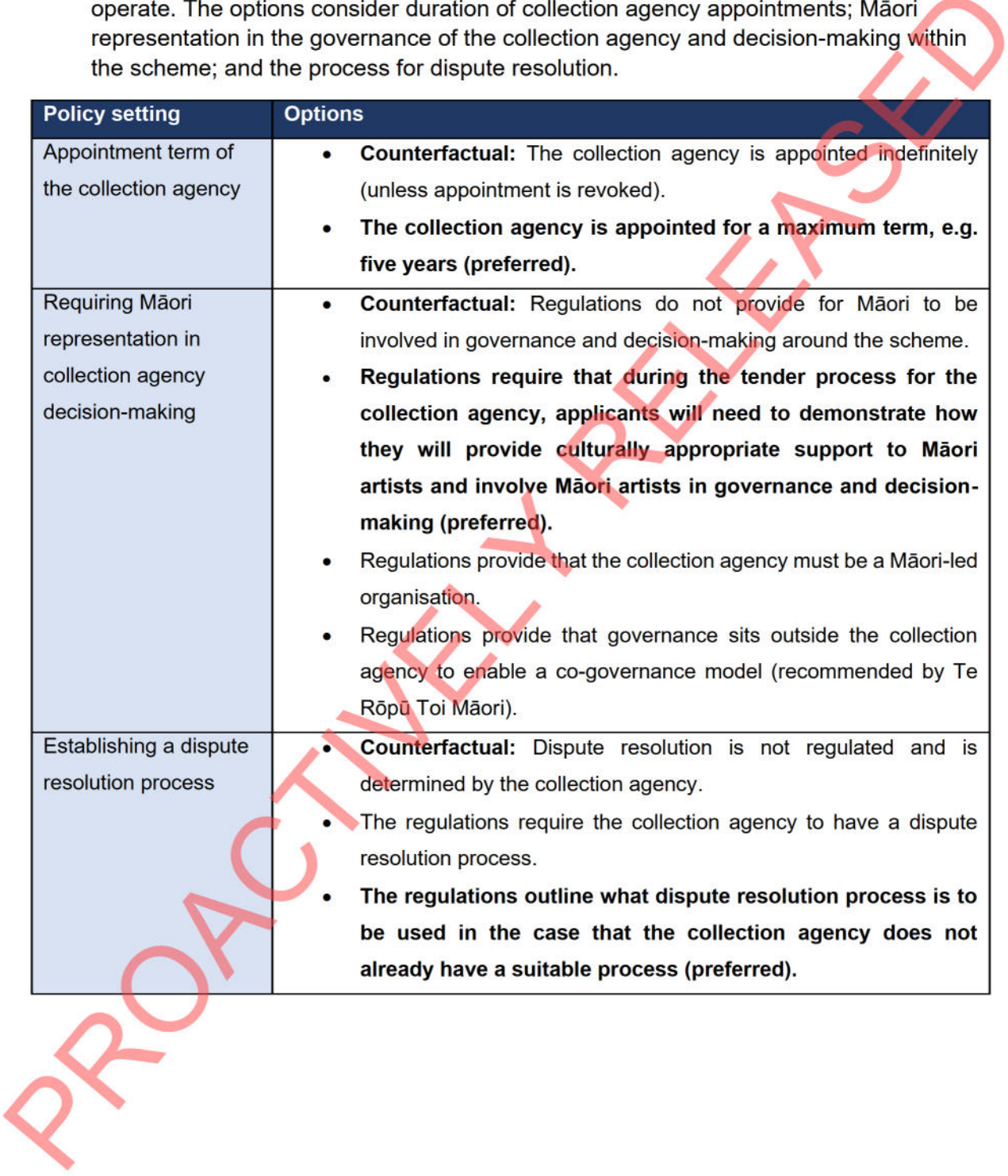
48. The Bill requires the collection agency to acknowledge and respect the role of Māori as tangata whenua and provide culturally appropriate support to Māori artists in its operation of the scheme. There is an opportunity through the regulations to set out how the collection agency will support this outcome.

# Section 2: Deciding upon options to address the policy problem

## What options are being considered?

49. This section analyses options for key elements of how the collection agency will operate. The options consider duration of collection agency appointments; Māori representation in the governance of the collection agency and decision-making within the scheme; and the process for dispute resolution.

Policy setting	Options
Appointment term of the collection agency	<ul style="list-style-type: none"> <li>• <b>Counterfactual:</b> The collection agency is appointed indefinitely (unless appointment is revoked).</li> <li>• <b>The collection agency is appointed for a maximum term, e.g. five years (preferred).</b></li> </ul>
Requiring Māori representation in collection agency decision-making	<ul style="list-style-type: none"> <li>• <b>Counterfactual:</b> Regulations do not provide for Māori to be involved in governance and decision-making around the scheme.</li> <li>• <b>Regulations require that during the tender process for the collection agency, applicants will need to demonstrate how they will provide culturally appropriate support to Māori artists and involve Māori artists in governance and decision-making (preferred).</b></li> <li>• Regulations provide that the collection agency must be a Māori-led organisation.</li> <li>• Regulations provide that governance sits outside the collection agency to enable a co-governance model (recommended by Te Rōpū Toi Māori).</li> </ul>
Establishing a dispute resolution process	<ul style="list-style-type: none"> <li>• <b>Counterfactual:</b> Dispute resolution is not regulated and is determined by the collection agency.</li> <li>• The regulations require the collection agency to have a dispute resolution process.</li> <li>• <b>The regulations outline what dispute resolution process is to be used in the case that the collection agency does not already have a suitable process (preferred).</b></li> </ul>



## Options for appointment term of the collection agency

50. The Bill enables the Minister to appoint the collection agency, who will be responsible for the management of the scheme and will collect and distribute royalties on rights holders' behalf.
51. This agency could either be appointed for a fixed term or indefinitely. In the case of a fixed-term appointment, at the end of the term a new tender process would be opened and the incumbent collection agency could choose to reapply for its role or to no longer manage the scheme. In the case of an indefinite appointment, the agency would hold the role permanently but could choose to request that its appointment is rescinded. In either case, because the collection agency is appointed by the Minister, their appointment could also be revoked by the Minister in cases of non-performance.

### Key for qualitative judgements:

- ++ much better than the counterfactual
- + better than the counterfactual
- 0 about the same as the counterfactual
- worse than the counterfactual
- much worse than the counterfactual

	<b>Counterfactual: The collection agency is appointed indefinitely, unless appointment is revoked (broadly aligns with UK scheme)</b>	<b>Option Two: The collection agency is appointed for a maximum term, e.g. five years (preferred)</b>
<b>Benefits to artists</b>	<b>0</b> This option would provide maximum certainty for artists regarding who they will be dealing with and who will be holding their data. However, it could be harder to address long-term underperformance that does not meet the threshold for revocation (e.g. breach of contractual obligations). It also limits the opportunity for another organisation that might emerge or grow its capability that has stronger relationships with the artistic community and could deliver the services better.	<b>0</b> This option would provide an additional and effective means of addressing a long-term under performance from the collection agency that does not meet the threshold for revocation. It could also incentivise the collection agency to build its capability knowing it will have to compete for its position every five years. This increased accountability would likely lead to the provision of a better service for artists. However, if the collection agency were to change after the five-year fixed term period, a new collection agency would have to build new relationships with art market professionals and would be inexperienced.

<b>Administration costs</b>	<b>0</b> Because a change in collection agency is unlikely, this option minimises establishment and handover costs due to the agency losing their tender.	<b>0</b> The collection agency would need to reapply for its position each term and could lose its tender. This would create significant if infrequent costs. For example, staff whose positions are affected may need to be compensated (although they could be retained by an incoming collection agency). However, having to reapply for their tender regularly would incentivise the agency to run the scheme efficiently and effectively.
<b>Flexibility / sustainability</b>	<b>0</b> This option would provide maximum continuity for the scheme. Because the collection agency's appointment could still be revoked, this option does not create significant risks around the scheme relying on the collection agency to perform well.	<b>+</b> Enhances the sustainability of the scheme because it provides another measure to address persistent underperformance and offers the opportunity for a new collection agency that may have stronger capability to be appointed in the future.
<b>Overall assessment</b>	<b>0</b>	<b>1</b>

52. Option Two is the preferred option because, although it creates a slightly higher long-term administrative burden on the scheme it should act as an incentive on the collection agency to run the scheme efficiently and effectively and provides an additional measure with which government can hold the collection agency to account. It also better future-proofs the scheme if over time a more capable and effective collection agency emerges and wants to take on the role.

#### Options for involving Māori in the governance and decision-making of the collection agency

53. The Bill requires the collection agency to act in accordance with operational principles, one of which is to acknowledge and respect the role of Māori as tangata whenua and provide culturally appropriate support to Māori artists in carrying out its functions and duties under the Act. There would need to be appropriate knowledge and capability in place to do this effectively.
54. Under Te Tiriti, the Crown has an obligation to establish and implement the scheme in a way that supports rangatiratanga and ōritetanga. As such, it is important that the Crown plays its part in providing a mechanism for Māori to be involved in the scheme's governance and decision-making so that the scheme can provide equal benefit for Māori artists. As the collection agency is not a government organisation, the Crown is limited on how prescriptive it can be regarding its governance and that has been taken into account in the options for involving Māori in governance and decision-making of the scheme below.

	Counterfactual: Regulations do not provide for Māori to be involved in governance and decision-making around the scheme	Option Two: Regulations require that during the tender process for the collection agency, applicants will need to demonstrate how they will provide culturally appropriate support to Māori artists and involve Māori artists in governance and decision-making (preferred)	Option Three: Regulations provide that the collection agency must be a Māori-led organisation	Option Four: Regulations provide that governance sits outside the collection agency to enable a co-governance model (recommended by Te Rōpū Toi Māori)
Benefits to artists	<p>0 The Bill provides a base level of protection of Māori interests by requiring the agency to acknowledge and respect the role of Māori as tangata whenua and provide culturally appropriate support to Māori artists. However, by providing no regulatory mechanism for Māori to have involvement in governance and decision-making around the scheme the Crown risks the scheme not providing equal benefit for Māori.</p>	<p>+ Using the appointment process to require prospective collection agencies to outline how they would involve Māori in governance and decision-making would provide assurance of the collection agency's ability to provide an effective service to Māori artists, including administering the cultural fund to Māori artists and increase trust in the agency by Māori artists.</p>	<p>+ Providing for the collection agency to be a Māori led organisation is likely to significantly improve the ability to deliver an effective service to Māori artists as the collection agency would better understand the unique needs of Māori artists and could likely build a greater degree of trust. There is a risk that the agency would be seen by non-Māori artists as overly focused on toi Māori and this could impact trust in the agency among these groups</p>	<p>++ Providing for a co-governance model is also likely to significantly improve the ability of the collection agency to deliver an effective service to Māori artists and should enhance trust in the organisation among Māori artists.</p>
Administration costs	<p>0 This option would not impose administrative costs on prospective collection agencies, or limit the pool</p>	<p>- This option would impose some administrative costs on prospective collection agencies, who would have to plan for and detail in their tenders how they would provide culturally</p>	<p>-- This option would limit the number of eligible entities to be the collection agency. Very few entities have the required systems and</p>	<p>-- This option would require a bespoke governance model to be established for the collection agency. This</p>

	of potential candidates to be the collection agency.	appropriate support and involvement in governance and decision-making. This may also impose further administrative costs on an agency depending on if / how much capability already exists in-house.	capability to be the collection agency. Artificially limiting the pool of applicants is more likely to require significant capability building, which will create significant extra costs for government.	would not be feasible without high levels of ongoing government funding.
<b>Flexibility / sustainability</b>	<b>0</b> As governance would be up to the collection agency, this option would not impact the sustainability of the scheme. Maximises flexibility in the appointment of the collection agency.	<b>0</b> As governance would be up to the collection agency, this option would not impact the sustainability of the scheme. Maximises flexibility in the appointment of the collection agency.	-- This option would limit options if the collection agency needed to be replaced and increases the risk that no collection agency can be appointed.	-- Governance arrangements would sit outside the collection agency and so could be transferred between successive collection agencies. However, the administrative costs incurred by this model of governance would be a significant ongoing cost to the scheme, and could risk the ability of the scheme to be self-sustaining without government funding.
<b>Te Tiriti o Waitangi considerations</b>	<b>0</b> If no specific provisions are made for Māori representation in governance or decision-making, there is a risk that the collection agency will be unable to meet the requirement in the Bill to acknowledge and respect the role of Māori as tangata whenua and provide culturally appropriate support to Māori artists in its operation of the scheme.	<b>+</b> Requiring the collection agency to demonstrate how it would provide for Māori involvement in governance and decision-making through the appointment process is likely to result in a more effective service to Māori artists compared to the counterfactual and is consistent with the Government's commitment to provide for an operational framework for the	<b>++</b> This option would most strongly enable the collection agency to deliver an effective service for Māori artists and allow the Government to deliver on its commitment to provide for an operational scheme that supports rangatiratanga and ōritetanga, because it guarantees Māori	<b>++</b> Providing for a co-governance model of Māori representation in governance would be more effective at enabling the Government to deliver on its commitment to provide for an operational scheme that supports rangatiratanga and ōritetanga than the

	This option also risks the Government's implementation of the scheme not meeting its commitment (made in the August 2022 policy Cabinet paper) to provide for an operational framework that supports rangatiratanga and ōritetanga, as there would be no mechanism for Māori to be involved in governance and decision-making that impacts Māori artists. This could lead to disputes between Māori rights holders and the collection agency and potentially litigation (or Waitangi Tribunal action against the Crown).	scheme that supports rangatiratanga and ōritetanga.	representation in the governance and management of the organisation. This would make it more likely that decisions made at the strategic level fully account for Māori rights and interests. It would also protect against disputes / litigation against the collection agency on this basis.	counterfactual because it would make it more likely that decisions made at the strategic level fully account for Māori rights and interests.
<b>Overall assessment</b>	<b>0</b>	<b>1</b>	<b>-1</b>	<b>0</b>

55. Option Two is the preferred option because it supports the Crown to deliver on its commitment to provide for an operational framework for the scheme that supports rangatiratanga and ōritetanga, but does so in a way that would not compromise the sustainability of the scheme (as the cost of Option Four would likely do<sup>8</sup>) or lead to a significant narrowing of the candidate pool for the collection agency, therefore increasing the risk that no collection agency can be appointed, or the Government overreaching in placing controls on the governance structure of a private sector organisation (Option Three).
56. Under whichever option is implemented, Manatū Taonga would encourage Māori-led organisations to apply for the role of the collection agency. Further to this, the regulations would place a requirement on the collection agency to report on and be monitored for the involvement of Māori in governance and decision-making, and if this was found to be low, and the scheme to be unpopular with Māori artists, action could be taken either through amendments to the contract for services, or even by replacing the collection agency after its five year term.

<sup>8</sup> 9(2)(f)(iv) The scheme is expected to generate approximately \$702,000 in royalties per annum, and between \$131,550 and \$219,250 in admin fees, and compared to this the costs of establishing new governance are likely to be prohibitive.

57. Under the preferred option, regulations will empower the Bill's principles outlined in the Bill relating to the collection agency's support for Māori artists to be given effect through the selection process of the collection agency and through Manatū Taonga's contract for services with the collection agency.

**Options for establishing a dispute resolution process**

- 58. A dispute resolution process can be used to resolve a conflict or dispute, in this case about the operation of the scheme. Having a dispute resolution process means that any concerns raised with the operation of the scheme can be addressed through a fair process involving all affected parties.
- 59. The process would need to cover both disputes between participants and participants' disputes with the collection agency (a formal complaints process).
- 60. Dispute resolution could be managed fully by the collection agency, or required in regulations. If it is required in regulations, a specific process could also be regulated.
- 61. Agencies who have the existing capacity to operate the scheme are highly likely to already have a dispute resolution process. Therefore, the options outlined below are safeguards to ensure a suitable process is and continues to be used.
- 62. Rather than prescribing in detail a dispute resolution process that must be used, Option Three instead proposes that there is effectively a minimum standard for dispute resolution processes that must be in place.

	<b>Counterfactual: Dispute resolution is not regulated and is determined by the collection agency</b>	<b>Option Two: The regulations require the collection agency to have a dispute resolution process</b>	<b>Option Three: The regulations outline what dispute resolution process is to be used in the case that the collection agency does not already have a process that meets a minimum standard (preferred)</b>
<b>Benefits to artists</b>	<b>0</b> There is a possibility that the collection agency does not have or would need to establish a fit for purpose dispute resolution process, making it harder and more costly for artists to contest	<b>+</b> This option is stronger than the counterfactual as it guarantees the scheme has a dispute resolution process, meaning artists would have an easier, cheaper and more timely way to resolve grievances than through legal action. However, it would still be	<b>++</b> As with Option Two, this would guarantee artists a cheaper and easier way to resolve disputes than legal action. Prescribing a minimum standard for the process in regulations would help ensure that the process is robust and effective, particularly if the



	and protect their rights under the scheme. This could deter some artists from doing so and mean they don't realise the full benefits of the scheme or what they are entitled to under it.	up to the collection agency to determine the process, so could end up being less effective than under Option Three.	collection agency does not have a suitable process.
<b>Administration costs</b>	<b>0</b> If a dispute resolution process is not established, this option would create mediation, arbitration and/or court costs for participants in the scheme who have a dispute.	<b>+</b> This option would impose minor administrative costs on the collection agency associated with running a dispute resolution process, but could significantly reduce costs for scheme participants with a dispute.	<b>+</b> This option would impose minor administrative costs on the collection agency associated with running a dispute resolution process, but is likely to reduce costs on scheme participants with a dispute by more than the additional costs on the collection agency. There may be some additional costs if the collection agency needs to change their existing processes.
<b>Flexibility / sustainability</b>	<b>0</b> This option provides flexibility to the collection agency to manage disputes as best suits its existing operations. Dispute and complaints processes could be changed as and when needed in response to participants' feedback.	<b>0</b> This option provides flexibility to the collection agency to manage disputes as best suits its existing operations. Dispute and complaints processes could be changed as and when needed in response to participants' feedback.	<b>-</b> This option may require the collection agency to build capability to manage disputes according to the minimum standard process required. If it becomes clear that the minimum standard is insufficient to meet participants' needs, amendments would need to be made to regulations.
<b>Overall assessment</b>	<b>0</b>	<b>2</b>	<b>2</b>

63. Option Three is the preferred option, despite the equal scores between Options Two and Three, because it is most likely to provide a robust and effective process that scheme participants have confidence in, and best guards against the risk of artists not contesting their right if it has been infringed and therefore them not realising the full benefits from the scheme. While Option Three could create higher admin costs than under Option Two the difference is unlikely to be significant.

## What options are likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

64. The preferred options are:
- a. the collection agency is appointed for a fixed term. This provides accountability to the collection agency and a strong incentive to act in the best interests of scheme participants.
  - b. the regulations require applicants to demonstrate how they will provide culturally appropriate support to Māori artists and involve Māori artists in governance and decision-making.
  - c. the regulations outline what dispute resolution process is to be used in the case that the collection agency does not already have a suitable process.

### Tiriti o Waitangi implications of collection agency policy settings

#### *Māori representation in scheme governance*

65. Officials have considered what the role of government should be in ensuring that the scheme supports Māori and Te Tiriti interests in this policy, including reflecting the government commitment that the scheme will support rangatiratanga and ōritetanga.. The collection agency will have significant responsibilities in this area but are not representatives of the Crown; therefore, the provisions set out in legislation and regulations that govern the agency's operation will be the main lever to ensure the scheme protects Māori rights and interests.
66. The requirement for the collection agency to demonstrate how it will include Māori in governance and decision-making, and to report and be monitored on how it gives effect to this, will support the exercise of rangatiratanga within the scheme and improve the scheme's responsiveness to issues involving toi Māori.
67. Te Rōpū Toi Māori suggested that the collection agency could be required to be Māori-led. We have discounted this option as it would severely limit the pool of entities who could be appointed as the collection agency, which creates a risk that no collection agency can be appointed and creates risks to the future flexibility of the scheme. Similarly, establishing a co-governance model independent of the collection agency is cost prohibitive. However, this does not preclude the collection agency from indicating its intent to work towards being Māori-led or establishing a co-governance model in its application for the role of collection agency.

# Policy area 2: Administrative fee

## Section 1: Diagnosing the policy problem

### What is the policy problem or opportunity?

#### The scheme needs to collect revenue to meet administrative costs

- 68. Running an ARR scheme will impose operating costs on the collection agency. The Bill includes provision for an administrative fee to be collected to meet these costs, however, there needs to be flexibility in the detail around how this is calculated and set, and the amount of the fee charged to enable it to be future proofed and responsive to changes in market circumstances. Including detail around how the fee is calculated and set in regulations rather than legislation enables this flexibility.
- 69. International ARR schemes generally cost recover through an administrative fee. Both the Australian and UK schemes, for example, have a 15% administrative fee.
- 70. 9(2)(f)(iv) [redacted] it is the Government’s expectation that the administrative fee eventually fully recovers the costs of royalty collection and distribution so that the scheme will be self-sustaining and will not require ongoing government funding.
- 71. Options related to the administrative fee have cost recovery implications. An assessment of these is attached as Appendix One.

#### A method is needed to manage the amount of revenue collected

- 72. The purpose of an administrative fee is to meet scheme costs, and no more. This means that there are two potential scenarios where the fee might need to be changed:
  - a. the fee is not meeting scheme costs, due to a smaller than expected secondary art market or high spend by the collection agency;
  - b. the fee is generating a large surplus, due to an increase in resales of artworks or low spend by the collection agency.

## Section 2: Deciding upon options to address the policy problem

### What options are being considered?

73. A range of options are being considered for the method for setting the administrative fee and how the administrative fee is calculated in relation to the royalty payment.

Policy setting	Options
How the administrative fee is set	<ol style="list-style-type: none"> <li>1. <b>Counterfactual:</b> The administrative fee is determined by the collection agency.</li> <li>2. <b>The administrative fee amount is determined by the Minister by notice in writing given to the collection agency (preferred).</b></li> <li>3. The administrative fee amount is set in the regulations.</li> </ol>
How the administrative fee is calculated	<ol style="list-style-type: none"> <li>4. <b>Counterfactual: Administrative fee is deducted from the 5% resale royalty payment (preferred).</b></li> <li>5. Administrative fee is an additional charge on top of the 5% (the art market would absorb this extra cost).</li> </ol>

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### Options for how the administrative fee is set

74. In return for collecting and distributing the royalty, the Bill provides for the collection agency to deduct an administrative fee from the five percent royalty that is collected. This would be a fee in exchange for the service provided by the collection agency when it collects and distributes royalties.
75. The counterfactual enables the collection agency itself to set the level of administrative fee, thereby enabling the agency to determine what revenue it needs to generate to meet its operating costs. Option Two provides for the Minister to set the fee by giving the collection agency notice in writing (the same way it is done in the Australian scheme). The Minister would need to consider advice from Manatū Taonga (the monitoring agency), and that advice would need to reflect relevant forecasting and admin fee data from the collection agency in relation to revenue generated. Option Three would set the amount of the fee in the supporting regulations to the Bill.

#### **Key for qualitative judgements:**

- ++ much better than the counterfactual
- + better than the counterfactual
- 0 about the same as the counterfactual
- worse than the counterfactual
- much worse than the counterfactual

	<b>Counterfactual: The amount is determined by the collection agency (aligns with UK scheme)</b>	<b>Option Two: The amount is determined by the Minister by notice in writing given to the collection agency (preferred)</b>	<b>Option Three: The amount is set in the regulations</b>
<b>Benefits to artists</b>	0 The collection agency is required under the Bill to act in artists' best interests, so would have to account for this when setting the administrative fee. The agency's perception of what is in artists' best interests may not fully match the expectations of artists.	+ While the collection agency is required under the Bill to act in artists' best interests, the Minister (on the advice of Manatū Taonga) has some distance from the collection agency and from artists. This means they can act as a disinterested party to determine an	- Like Option Two, this option provides for a more neutral assessment process for the setting of the administrative fee. However, the time required to amend regulations could mean artists lose out on financial returns for long periods if the fee is set too high.

		<p>appropriate balance between supporting artists and ensuring the collection agency is appropriately resourced.</p> <p>Although the Minister would not engage regularly with the day-to-day operation of the scheme, this lack of first-hand knowledge could be addressed by taking advice from the collection agency and / or monitoring agency.</p>	
<b>Administration costs</b>	<p>0 This option creates administrative costs for the collection agency, who would need to monitor the administrative costs of the scheme, determine the administrative fee needed to meet them and communicate any changes to the administrative fee.</p>	<p>- This option creates administrative costs for Manatū Taonga which would have to advise the Minister on where to set the admin fee. The collection agency would also likely incur similar administrative costs to the counterfactual due to ongoing assessment of the administrative fee's impact on their operations.</p>	<p>-- Manatū Taonga would have to amend regulations to change the administrative fee. The collection agency would need to work with Manatū Taonga to make this change and could face cost pressures during the process to amend regulations if the administrative fee is too low.</p>
<b>Flexibility / sustainability</b>	<p>0 This option allows for the collection agency to make changes to the administrative fee in the future as and when needed. Minimises the risk that the collection agency is financially exposed for long periods of time if the administrative fee is too low.</p>	<p>+ This option allows for variations to the administrative fee in the future as and when needed. While Ministerial oversight would slow this process down, it would also provide an additional check that decisions are being taken in the interests of the scheme's sustainability. The collection agency could run at a deficit for a short period if the fee is too low.</p>	<p>- Embedding the administrative fee in regulations would make it harder to amend than in the other options presented. This may cause the collection agency to run at a deficit while the issue is fixed, which could negatively impact the sustainability of the scheme.</p>
<b>Overall assessment</b>	<b>0</b>	<b>1</b>	<b>-4</b>

76. The Minister setting the fee on the advice of Manatū Taonga ensures a more transparent and robust process than if the collection agency had full control over fee setting. It is also more flexible than if the fee was set in regulations, as the latter would require amendment to the regulations if

the fee needed to be adjusted in the future. The collection agency could face cost pressures while regulations are being amended which would likely negatively impact the sustainability of the scheme. The collection agency itself setting the fee would not provide any oversight or restraint on what level the fee might be set at. The Aotearoa New Zealand market is not large enough to sustain more than one collection agency and so the appointed agency will have a monopoly, effectively enabling it to set its fee higher if desired.<sup>9</sup> Therefore, the preferred option is for the Minister to set the admin fee.

### Options for how the administrative fee is calculated

77. The way the administrative fee is calculated will need to balance the benefits to artists and the costs to art market professionals, buyers and sellers and the broader market, with potential flow-on effects for the administration of the scheme through compliance costs.
78. The two options assess whether the costs of administration should be met by the **artists** or the **art market**. The counterfactual (deducting the fee from the royalty) would mean the artist subsidises the cost of the scheme by receiving a smaller royalty in exchange for the service provided by the collection agency. Option Two would mean the art market (i.e., art market professionals, buyers and sellers) subsidises the costs via an additional charge on top of each royalty (likely an additional one percent on top of the five percent royalty, for a total of six percent).

	<b>Counterfactual: Administrative fee is deducted from the five percent royalty payment (as in UK scheme) (preferred)</b>	<b>Option Two: Administrative fee is an additional charge on top of the five percent royalty payment (recommended by Te Rōpū Toi Māori)</b>
<b>Benefits to artists</b>	<p>0 Artists would receive a lower royalty payment. In 2020 an average of \$99 per sale, and a total of \$166,959, would have been deducted from royalties assuming a royalty threshold of \$1,000.</p> <p>Rights holders would not face increased costs, but would see less financial benefit than if they were not charged the administrative fee.</p>	<p>0 Artists would receive higher royalty payments and greater financial benefit from the scheme. However, this would amount to a tax on the secondary art market, which could damage compliance with the scheme to artists' financial detriment.</p>
<b>Administration costs</b>	<p>0 This option would not have any specific impacts on administrative costs. Administrative fees would</p>	<p>-- Sellers and art market professionals selling art on the secondary market would face an additional cost, and costs may also be passed on</p>

<sup>9</sup> When the UK scheme was first introduced, there was initially only one collection agency which was able to set its admin fee relatively high at 25%. It was not until a second competing agency with a lower fee of 15% entered the market that the first agency lowered its fee to 15%.

	be deducted by the collection agency after collecting the royalty, meaning a fee could be guaranteed to be collected on every royalty.	to buyers. In the case of a 20% administrative fee on the royalty amount, this additional cost could be up to one percent of the total price of the artwork. This would change the nature of the fee from a fee deducted for services to being an additional levy, charge or tax on the secondary art market. It is likely to be perceived as unreasonable by liable parties that they bear the administrative costs on a benefit the artist is receiving at their expense.  This could impact compliance with the scheme, which would impact the funding available to the collection agency through the administrative fee.
<b>Flexibility / sustainability</b>	<b>0</b> This option would protect the sustainability of the scheme, as an admin fee would be able to be taken from every royalty that is collected.	- This option could impact the sustainability of the scheme due to lower levels of compliance with paying the administrative fee.
<b>Te Tiriti o Waitangi considerations</b>	<b>0</b> Engagement to date suggests that applying the principle of rangatiratanga to the notion of royalty suggests that payments are in recognition of the mauri and mana that reside within artwork as cultural taonga, and that those things have ongoing value and significance.  During engagement, Te Ropū Toi Māori expressed concern that deducting the administrative fee from the royalty payment could impact the rangatiratanga of artists to determine how a royalty payment that is considered their right is used.	+ Engagement to date suggests that under this option, rights holders may consider that their rangatiratanga is more fully recognised than in the counterfactual.
<b>Overall assessment</b>	<b>0</b>	<b>-2</b>

79. Option Two would provide additional financial benefits to right holders and, importantly, engagement suggests it would more appropriately recognise the rangatiratanga of Māori right holders. However, the secondary art market is already meeting the costs of the five percent royalty; it is not reasonable for the market to also subsidise the administration costs associated with a payment that artists are receiving and could negatively impact compliance with the scheme. Adding the administrative fee on top of the royalty would also change the nature of the administrative fee from a fee in exchange for services to an additional tax or charge on the secondary market, which could negatively impact compliance with the scheme. Additionally, we have not been able to identify any other scheme which adds the fee on top of the royalty, or a



scheme with a higher royalty rate than 5% (under the counterfactual/Option One, liable parties would effectively have to pay 6%) and so there is no international evidence as to how this would impact the New Zealand scheme and art market in practice. Consequently, we also feel there is a risk that this could suppress the market. Therefore, the preferred option is that the administrative fee is deducted from the royalty.

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## What options are likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

80. The preferred options are:
- a. the administrative fee amount is determined by the Minister by notice in writing given to the collection agency
  - b. the administrative fee is deducted from the five percent royalty payment
81. The scheme is intended to eventually be fully funded by the administrative fee. A fee in the region of 20% will likely allow the scheme to become self-sustaining in the medium term. This is not impacted by the fee-setting method chosen. Anything lower, and the scheme will likely struggle to become self-sustaining in the long-term. Anything higher would affect the integrity of the scheme as a substantial portion of the royalty would be used for the collection agency's costs, and the fee would need to be revised downward if the funding is not needed to meet the collection agency's costs.
82. The purpose of the administrative fee is to cover the costs of administering the scheme and nothing else. If the collection agency notices a consistent surplus or deficit, this could mean the administrative fee will need to be reviewed.
83. Further cost recovery implications for the administrative fee are set out in Appendix One, including discussion of the potential level of the fee.

### Te Tiriti o Waitangi implications of the administrative fee

84. Engagement with Te Rōpū Toi Māori suggests that deducting the administrative fee from the royalty payment could impact the rangatiratanga of artists to determine how a royalty payment is used. This could be considered to infringe on the resale right, which Te Rōpū Toi Māori noted recognises the mauri and mana that reside within artwork as cultural taonga. While charging the administrative fee in addition to the royalty is likely not feasible due to the reasons outlined above, feedback gathered through engagement on the public consultation document will inform final analysis and proposals in this area.

## Policy area 3: Threshold sale price

### Section 1: Diagnosing the policy problem

#### What is the policy problem or opportunity?

**A threshold is needed to ensure the scheme can be managed efficiently**

85. All international ARR schemes that we investigated included a minimum threshold. The scheme is not likely to be feasible without a threshold, as below a certain sale price the cost of royalty collection and distribution may outweigh the value of the royalty, and the number of eligible sales would be unmanageable for the collection agency.
86. The Bill states that the threshold can be anywhere between \$500 and \$5000 and empowers the regulations to set this specific threshold.
87. If no, or too low, a threshold is established, it could be difficult for art market professionals to identify all eligible sales, the royalty collection process would be more expensive and time-consuming, and the scheme may not be able to become self-sustaining.
88. Setting the exact threshold in regulations means it can be changed in future, for example to respond to inflationary pressure.

**Where the threshold is set will impact which artists receive royalties**

89. A high threshold may disadvantage emerging artists whose works tend to resell for lower prices. For example, based on 2020 auction house data, a threshold of \$2,000 would mean 495 fewer sales were eligible for the royalty than with a threshold of \$1,000. This may limit the ability of demographics whose work tends to sell for under this price to benefit from the scheme.
  - a. Of visual artists whose works sold for \$1,000 or more between 2018 and 2020, approximately 10% were by Māori artists and less than 5% were by Pacific artists.
  - b. Of the visual artists selling works for \$1,000 or more between 2019 and 2021 in Aotearoa New Zealand, 38% were female and 62% were male.
  - c. Engagement suggests works by disabled artists rarely exceed \$1,000.

## Section 2: Deciding upon options to address the policy problem

### What options are being considered?

Policy setting	Options
The threshold sale price (how much a work must be sold for to be subject to the royalty)	<ul style="list-style-type: none"> <li>• <b>Counterfactual:</b> The regulations will require a sale price threshold equal to or over \$1,600 (roughly equivalent to the UK threshold of EUR 1,000).</li> <li>• The regulations will require a sale price threshold equal to or over \$500 (the threshold proposed in the 2008 Bill).</li> <li>• <b>The regulations will require a sale price threshold equal to or over \$1,000 (preferred).</b></li> <li>• The regulations will require a sale price threshold equal to or over \$2,000.</li> </ul>

90. We consider \$2,000 is the maximum viable starting threshold as a threshold that is any higher would severely limit the royalties to artists (particularly emerging artists).. While the Bill allows for a \$5,000 threshold, this upper limit is to future proof the scheme against inflation and market growth over many years.

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## Options for the threshold sale price

91. Setting the threshold sale price involves a trade-off between ensuring the simplicity of administering the scheme and maximising the benefits to artists. The most direct way to ensure the scheme is easy to administer is by minimising the number of sales included, particularly low-value sales, while the simplest way to maximise the benefits to artists is to include the greatest number of sales. We propose establishing a threshold sale price that will balance these outcomes.
92. Key considerations are that the value of the royalty needs to be higher than the costs associated with collecting it for the scheme to be an effective use of funds; that engagement with the sector has established there is an upper acceptable limit for a threshold sale price; and that higher threshold levels may disproportionately exclude a range of groups who face structural barriers to exhibiting and selling art.
93. A variety of thresholds are used internationally ranging from approximately \$26 NZD in Hungary to approximately \$4,800 in Ireland. No country with an ARR scheme in place has both a similar population and comparably sized art market to New Zealand, making direct comparisons difficult. Feedback from art market professionals and the Australian collection agency recommended that the threshold be set at a round and memorable number to increase the simplicity of and compliance with the scheme.
94. The four threshold options considered range from \$500 to \$2,000 NZD. The counterfactual option would broadly align with the minimum threshold in the UK scheme (1,000 euros). Option Two would set the minimum threshold at \$500 which is what was proposed in the discharged 2008 New Zealand artist resale royalty Bill (\$500 in 2008 would be just under \$700 in 2023 accounting for inflation). \$500 is also broadly comparable to schemes in Finland and Denmark. Option Three would set the minimum threshold at \$1,000 while Option Four would set the threshold at \$2,000.

### **Key for qualitative judgements:**

- |    |                                      |
|----|--------------------------------------|
| ++ | much better than the counterfactual  |
| +  | better than the counterfactual       |
| 0  | about the same as the counterfactual |
| -  | worse than the counterfactual        |
| -- | much worse than the counterfactual   |

	<b>Counterfactual: Threshold of \$1,600 or more (roughly the same as the UK scheme)</b>	<b>Option Two: Threshold of \$500 or more (as proposed in the 2008 Bill)</b>	<b>Option Three: Threshold of \$1,000 or more (preferred)</b>	<b>Option Four: Threshold of \$2,000 or more</b>
<b>Benefits to artists</b>	<p><b>0</b> This option would provide limited benefits to artists whose works tend to sell for lower prices. 31.9% of sales through auction houses during 2020 would have met this threshold.</p>	<p><b>++</b> A \$500 threshold would benefit many more artists than the counterfactual. For example, 54% of sales through auction houses during 2020 would have met this threshold. This would maximise the non-monetary benefits to artists relating to recognition of an artist's contribution through their work.</p> <p>A low threshold would benefit artists more likely to sell at the lower end of the market, such as emerging artists, female artists, and disabled artists.</p> <p>However, the value of the royalties collected at a \$500 threshold would be low, with a minimum royalty of \$25 before tax and administrative fees (even if taxed at the lowest tax bracket, this would result in a net payment of \$17.38, assuming a 20% administrative fee).</p>	<p><b>+</b> A \$1000 threshold would benefit significantly more artists than the counterfactual, with 40.3% of sales through auction houses during 2020 meeting this threshold. The minimum royalty would be \$50 before tax and administrative fees.</p>	<p><b>-</b> A high threshold would disadvantage emerging artists who tend to make less money from sales. Only 28% of sales through auction houses during 2020 would have met this threshold.</p> <p>Fewer artists receiving royalties would also limit the extent to which the scheme recognises artists' contribution through their work, particularly emerging artists, who stand to benefit most from this recognition.</p> <p>A higher threshold risks excluding demographics of artists whose work tends to sell for lower prices, as well as art forms which tend to attract lower resale prices.</p>
<b>Administration costs</b>	<p><b>0</b> This option would have modest administrative impacts on liable parties and the collection agency from the royalty collection process.</p>	<p><b>--</b> Approximately 50% more resales would need to be reported and royalties paid compared to the counterfactual, according to 2020 auction house data. These royalties would take longer to collect and distribute as the collection agency/art market professional would</p>	<p><b>-</b> Approximately 18% more resales would need to be reported and royalties paid compared to the counterfactual, according to 2020 auction house data. These royalties would take</p>	<p><b>0</b> The number of royalties that would need to be processed and distributed is comparable to the counterfactual. Raising the threshold above the level of the counterfactual would</p>

		<p>need to identify the increased number of works that would be eligible.</p> <p>The low administrative fee generated for sales between \$500 and \$1000 would create a significant administrative burden for the collection agency with a low return for both the collection agency and the rights holder.</p>	<p>longer to collect and distribute as the collection agency/art market professional would need to identify the increased number of works that would be eligible.</p>	<p>provide diminishing returns; only around three percent more sales would be excluded under a \$2000 threshold than the counterfactual.</p>
<b>Flexibility / sustainability</b>	<p><b>0</b> Administrative fees are likely to be enough to sustain the scheme in the long term with a \$1,600 threshold.</p>	<p>-- The low administrative fee generated per royalty could significantly impact the sustainability and flexibility of the scheme. The collection agency would be likely to be less responsive, and less able to improve the scheme over time, if its resources are stretched.</p> <p>Collecting and distributing a large volume of low value royalties could have financial impacts for the collection agency as these royalties would only provide a low administrative fee to the agency (e.g. a \$500 sale would attract a \$5 admin fee). This could make it harder for the scheme to become self-sustaining in the long term.</p>	<p><b>0</b> Administrative fees are likely to be enough to sustain the scheme in the long term with a \$1,000 threshold, but it is difficult to predict when the scheme will become self-sustaining, due to market fluctuation.</p>	<p><b>0</b> Administrative fees are likely to be enough to sustain the scheme in the long term with a \$2,000 threshold. Compared with Options Two and Three, the collection agency would be likely to be more responsive and able to improve the scheme over time as funding would be available for long-term planning, as well as royalty collection and distribution. However, given the small difference in sales captured between this option and the counterfactual, this would not have a significant impact over the counterfactual.</p>
<b>Te Tiriti o Waitangi considerations</b>	<p><b>0</b> Feedback received from Māori artists indicates that many sales of Māori art are undertaken online and directly in primary sales, and that many Māori artists do not have dealer</p>	<p>++ A \$500 threshold would include the most sales possible under the parameters in the Bill and therefore benefit the most Māori artists possible through royalties, particularly emerging Māori artists. This could have a positive</p>	<p>+ A \$1000 threshold would include more sales than the counterfactual and therefore recognise more Māori artists through royalties. This could have a small positive impact</p>	<p>- A \$2000 threshold would benefit fewer Māori artists than the counterfactual, limiting the ability of the scheme to contribute</p>

	galleries or public galleries promoting their work. The higher the threshold sale price is set, the less benefit from the scheme will be passed on to Māori artists selling at the lower end of the market, which would particularly impact emerging Māori artists.	impact on the ability of these artists to sustain creative careers, and therefore on toi Māori art forms	on the ability of these artists to sustain creative careers, and therefore on toi Māori art forms.	financially to artists working in toi Māori art forms.
<b>Overall assessment</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>-2</b>

95. A minimum threshold of \$1,000 strikes a balance between ensuring a large number of artists can benefit from the scheme, and ensuring administrative costs and impacts are not too high. The additional benefits to artists from a \$500 threshold would be low (a \$500 resale would generate a royalty of \$25 before tax), especially when weighed against the additional administrative costs of having to process many lower value royalties. Thresholds of \$1,600 and \$2,000 would ensure the scheme is simpler and more cost-effective to administer, but the lesser benefits to artists (particularly emerging artists) would lessen the overall reach and positive impacts of the scheme. Therefore, the preferred option is a threshold of \$1,000.

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**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

96. The preferred option is a \$1,000 threshold as analysis demonstrates this is the option most likely to meet and balance the policy objectives. A threshold of \$1,000 would ensure high benefits to visual artists while also not placing too high costs on the secondary art market, thereby supporting a well-functioning market. It would also ensure the scheme is simple and cost effective for the collection agency to administer.

**Te Tiriti o Waitangi implications of the threshold sale price**

97. Feedback received from Māori artists indicates that many sales of toi Māori are undertaken online and directly in primary sales, and that many Māori artists do not have dealer galleries or public galleries promoting their work.
98. The higher the threshold sale price is set, the less benefit from the scheme will be passed on to Māori artists selling at the lower end of the market, which would particularly impact emerging Māori artists. However, below a sale price of \$1,000, each royalty payment would be of limited financial benefit to artists. Te Rōpū Toi Māori indicated that they would support a threshold of \$1,000.

PROACTIVELY RELEASED

## Policy area 4: Undistributed royalties

### Section 1: Diagnosing the policy problem

#### What is the policy problem or opportunity?

A process is needed to handle declined, unclaimed and donated royalties

99. The Resale Royalty for Visual Artists Bill allows artists to decline individual royalties, or all royalties collected on their behalf<sup>10</sup>. Artists may also choose to donate their royalties to the collection agency. In addition, the collection agency may not always be able to locate artists who are due royalties. The Bill provides for royalties to be retained by the collection agency in these situations, and used in accordance with the regulations.
100. Regulations therefore need to specify how resale royalties that are not distributed to rights holders must be used or managed. This would include:
  - a. how long royalties must be claimable if the rights holder/s cannot be reached
  - b. what is done with undistributed royalties, including unclaimed, declined and donated royalties.
101. Establishing a process to manage undistributed royalties provides an opportunity to broaden the reach of the ARR scheme, as opposed to ARR schemes overseas which generally benefit artists selling at the high end of the secondary art market more than emerging artists.
102. For example, a cultural fund could be established as a redistribution mechanism to enable royalties that are not distributed to be used for the benefit of visual artists more generally and could help promote equitable outcomes for demographics of artists who face barriers to creating, exhibiting and selling art or whose work tends to sell for lower prices.
103. Cabinet has agreed to consider as part of the process of developing supporting regulations if royalties declined by an artist or voluntary donations of part of an eligible artist's royalty could be held in a cultural fund, dedicated to supporting career sustainability for visual artists.

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<sup>10</sup> The Bill requires that all payable royalties are collected, to avoid the possibility of art market professionals pressuring artists to opt out of the scheme as a condition of sale.

## Section 2: Deciding upon an option to address the policy problem

### What options are being considered?

Policy setting	Options
Length of time a royalty will be claimable if the rights holder cannot be located	<ul style="list-style-type: none"> <li>• <b>Counterfactual:</b> The regulations will require royalty payments, where the rights holder cannot be located, to be claimable for a fixed term, e.g. six years (preferred).</li> <li>• <b>The regulations will require royalty payments, where the rights holder cannot be located, to be claimable indefinitely (recommended by Te Rōpū Toi Māori) (preferred).</b></li> </ul>
How royalties that cannot be distributed are used	<ul style="list-style-type: none"> <li>• <b>Counterfactual:</b> The use of undistributed royalties is not regulated.</li> <li>• The regulations require payments that are not distributed after a given time period to be returned to the liable party/ies.</li> <li>• The regulations enable payments that are not distributed after a given time period to be used for administrative costs</li> <li>• <b>The regulations provide for the establishment of a cultural fund to be used for the benefit of artists (preferred).</b></li> </ul>

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### Options for the length of time a royalty will be held if the rights holder cannot be located

104. The collection agency would be required to use its best endeavours to locate the rights holder/s and distribute royalties to them. However, the collection agency may not always be able to identify or locate the rights holder.
105. The counterfactual option would require that unclaimed royalties be held by the collection agency for a fixed term, such as six years, with rights holders able to come forward and claim a royalty at any time within that period. DACS, one of the UK collection agencies, holds royalties for six years but the UK scheme's regulations do not stipulate a timeframe. The Australian legislation requires that unclaimed royalties be held for six years.
106. Option Two would require that unclaimed royalties be held by the collection agency indefinitely, which would mean that artists or their successors could come forward and claim these payments at any time in the future. While there are no comparable examples in overseas schemes of holding unclaimed royalties indefinitely, Option Two was recommended by Te Rōpū Toi Māori as it recognises the perpetual nature of relationships between a creator and their work.

#### Key for qualitative judgements:

- ++ much better than the counterfactual
- + better than the counterfactual
- 0 about the same as the counterfactual
- worse than the counterfactual
- much worse than the counterfactual

	<b>Counterfactual: The regulations will require royalty payments, where the rights holder cannot be located, to be claimable for a fixed term, e.g. six years (broadly aligns with UK scheme)</b>	<b>Option Two: The regulations will require royalty payments, where the rights holder cannot be located, to be claimable indefinitely (recommended by Te Rōpū Toi Māori) (preferred)</b>
<b>Benefits to artists</b>	0 Most right holders should be able to be located close to the date of sale. A fixed term may result in rights holders missing out on royalty payments if they do not identify themselves to the collection agency (e.g., if they do not know about the resale), or if the collection agency cannot	0 This option may benefit artists and estates if they are not aware at the time of sale that the work has been sold. However, some unclaimed royalties (e.g. 25%) would need to be retained to protect against the collection agency protecting against

	otherwise locate them. This option would limit the recognition of artists' social contribution through royalty payments.	future claims on royalties it cannot pay, meaning this money could not be used for the benefit of other artists.
<b>Administration costs</b>	<b>0</b> Some administrative costs would be incurred by the need to hold royalties. The agency would be required to use its "best endeavours" <sup>11</sup> to locate and distribute royalties to rights holders.	- Some administrative costs would be incurred by the need to hold royalties and this cost would be higher if funds need to be retained to pay claimants indefinitely. However, the agency would not be required to continue to look for rights holders indefinitely under "best endeavours" so the distribution process would not incur extra admin costs.
<b>Flexibility / sustainability</b>	<b>0</b> This option would not have any specific impacts on the flexibility and sustainability of the scheme.	- This option is unlikely to have significant operational impacts in initial years. In the long-term (e.g. 50 years), there would be implications for the collection agency's financial liability. If the organisation acting as the collection agency were to change in the future, this financial liability would need to be transferred to the new organisation.
<b>Te Tiriti o Waitangi considerations</b>	<b>0</b> The scheme has the potential to recognise the relationship between a Māori artist(s) or rights holder and a taonga work. In general, the establishment of the scheme would benefit Māori rights holders by recognising this ongoing relationship. However, because kaitiaki relationships are generally considered to exist in perpetuity, a time limit on when this right can be exercised would be in tension with the kaitiaki relationship in rare cases where taonga works could be captured under the scheme.	<b>++</b> An indefinite royalty claiming period would more fully recognise relationships between Māori artists and toi Māori, including any taonga works that could be captured, and may improve the ability of the scheme to locate rights holders in cases where toi Māori has been disconnected from its creator/s. In the rare case that taonga works are captured by the scheme this would recognise the kaitiaki relationship with these works.
<b>Overall assessment</b>	<b>0</b>	<b>0</b>

<sup>11</sup> "Best endeavours" (or best efforts) is a legal term, often found in commercial contracts, which places upon a party the onus of making every reasonable effort to achieve the required objective.

107. Holding unclaimed royalties for a fixed term is more administratively practical and more sustainable in the long term, as it ensures the collection agency has no long-term financial liability emerging from unclaimed royalties. However, holding royalties indefinitely more fully recognises the relationships between artists and their art and is more closely aligned with te ao Māori. Holding royalties indefinitely would limit the ability to use unclaimed royalties for the wider benefit of artists (e.g. distributing unclaimed royalties through a cultural fund as proposed below), but this could potentially be mitigated to some extent by retaining a portion of the unclaimed royalties to cover future claims. The remainder could then be used to support the wider artistic community. Therefore, the preferred option is Option Two.

#### **Options for the use of royalties that cannot be distributed**

108. A process is needed to determine how funds that cannot be distributed to artists are used.
109. The counterfactual option aligns with the UK scheme, where the use of undistributed royalties is not set out in regulation, but rather the collection agency can choose how it manages this money.<sup>12</sup> Under the counterfactual, the contract for services with the collection agency could require that unclaimed royalties are used by the collection agency to benefit artists with the specifics of this left up to the agency to determine. Option Two would require that unclaimed royalties are returned to the liable parties who paid the royalty (this aligns with the Australian legislation, which requires that undistributed royalties are returned after six years). Option Three would enable the collection agency to retain unclaimed royalties to be used for its own administrative costs (the Australian legislation allows the collection agency to retain unclaimed royalties if they cannot be returned to the liable parties as under Option Two). Option Four would establish a cultural fund operated by the collection agency, with the purpose of the fund being to support the wider community of visual artists. The details of the fund would be determined by the collection agency and not specified in regulations.
110. A cultural fund option would likely require additional funding to operate. Funding required would depend on the design of the fund, for example, whether it is a contestable fund or there are multiple funding streams within the fund.

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<sup>12</sup> At 2021 AGM, the UK collection agency DACS voted to donate unclaimed royalties to the Art360 Foundation if no claimed within six years.

	<b>Counterfactual: The use of undistributed royalties is not regulated</b>	<b>Option Two: Return payments to the liable party</b>	<b>Option Three: Keep payments to be used for administrative costs</b>	<b>Option Four: Establish a cultural fund to be used for the benefit of artists (preferred)</b>
<b>Benefits to artists</b>	<p><b>0</b> Undistributed royalties could be used to support artists who would not otherwise benefit from the scheme. The collection agency would need to agree to use undistributed funds in this way, or it would need to be specified in their contract. There are limited other opportunities for the scheme to support equitable outcomes within the artistic community as royalties are premised on the sale price of artworks.</p>	<p>-- If undistributed royalties are returned to the liable parties, there will be no benefit from the scheme for artists who do not sell works for high enough prices to receive royalties.</p>	<p>- If undistributed royalties are used for administrative costs there will be no benefit from the scheme for artists who do not sell works for high enough prices to receive royalties. However, having extra resourcing through this mechanism could enable the collection agency to provide a better service to eligible artists.</p>	<p>++ Establishing a cultural fund would extend the benefits of the scheme to artists who do not receive royalties, and would maximise the value of the scheme for the visual arts sector.</p>
<b>Administration costs</b>	<p><b>0</b> This option creates an extra pool of funds that the collection agency could use to meet administrative costs if needed.</p>	<p>-- Unlike the counterfactual, this option does not allow the collection agency to use the funds to meet its needs. Returning payments would also create administrative costs for the collection agency, e.g. collecting information from liable parties to allow payments to be returned. Would not be feasible if royalties are claimable indefinitely.</p>	<p><b>0</b> This option creates an extra pool of funds for the collection agency to use to meet administrative costs.</p>	<p>-- Regulating a cultural fund would prevent the collection agency from using the funds for other purposes. Creates administrative costs for the collection agency related to establishing a cultural fund.</p>

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<b>Flexibility / sustainability</b>	<b>0</b> This option would be the most flexible as the collection agency would have full discretion regarding use of undistributed royalties. Extra funds being available to meet the collection agency's costs would contribute to the scheme breaking even.	- This option would be less sustainable than the counterfactual, as undistributed funds could not be used to meet scheme costs. Less flexible as the collection agency would not be able to choose how the funds are used.	- Extra funds being available to meet administration costs would contribute to the scheme breaking even. However, this funding would not be available for any other purpose, so would be less flexible (but no more sustainable) than the counterfactual.	- Funds would be committed to the cultural fund so could not be used to meet scheme costs.
<b>Te Tiriti o Waitangi considerations</b>	<b>0</b> This option would not provide a guarantee to Māori rights holders of how funds would be used if they cannot be distributed to them, and would not provide any particular benefits to ōritetanga.	- - Under this option, undistributed funds could not be used for the benefit of Māori rights holders.	+ This option would guarantee that all undistributed funds would be used to ensure the longevity of the scheme. However, to the extent that this benefits Māori artists, benefits would accrue to those who would already benefit from the scheme.	++ The cultural fund could be a means to provide culturally appropriate support to Māori artists, as required by the Bill. Funds that are not able to be distributed to Māori artists could still be used to recognise and protect Māori interests in toi Māori.
<b>Overall assessment</b>	<b>0</b>	<b>-7</b>	<b>-1</b>	<b>1</b>

111. In contrast to Options Two and Three, establishing a cultural fund would enable the scheme to provide benefits to the wider visual artistic community beyond just those who receive resale royalties. This means others within the artistic community would be able to benefit from visual artists' success through the scheme. However, it is important to note that the impacts of a cultural fund would be reduced if the preferred approach is to hold unclaimed royalties indefinitely because this would significantly decrease the money available for the cultural fund to draw upon. While the collection agency could transfer some unclaimed royalties into the cultural fund, it would need to ensure it retains sufficient money to cover the financial liability imposed by holding unclaimed royalties indefinitely. Therefore, the preferred option is Option Four.



**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

112. The preferred options are:
- a. undistributed royalties can be claimed indefinitely
  - b. the regulations establish a cultural fund to be used for the benefit of artists.
113. Note that there would be a significant financial liability on the collection agency arising from the combination of royalties being claimable indefinitely and the establishment of a cultural fund which may mean only one of these two options can be practically implemented. Final decisions in this area will be informed by feedback gathered through further public consultation.

**Te Tiriti o Waitangi implications of the preferred options**

114. A time limit on when the resale right can be exercised would restrict the relationship between an artist and their art. In any case where the scheme could affect a taonga work, this would create a tension with the kaitiaki relationship, which is generally considered to exist in perpetuity. This is a key factor in our recommendation that unclaimed royalty payments should be claimable indefinitely.
115. The establishment of a cultural fund would provide some benefit from the scheme to emerging artists and artists who work sells for lower prices or who do not sell their work through art market professionals. This could have particular benefits for emerging Māori artists.

## Summary of preferred options

**Table 2: Summary of preferred options**

Policy setting	Preferred option
<i>Collection agency</i>	
Appointment term of the collection agency	The collection agency is appointed for a fixed term, e.g. five years.
Requiring Māori representation in collection agency governance	Regulations require that during the tender process for the collection agency, applicants will need to demonstrate how they will provide culturally appropriate support to Māori artists and involve Māori artists in governance and decision-making.
Establishing a dispute resolution process	The regulations outline what dispute resolution process is to be used in the case that the collection agency does not already have a suitable process.
<i>Administrative fee</i>	
How the administrative fee is set	The amount is determined by the Minister by notice in writing given to the collection agency.
How the administrative fee is calculated	Administrative fee is deducted from the five percent royalty payment.
<i>Threshold sale price</i>	
Threshold sale price	Threshold of \$1,000 or more.
<i>Undistributed royalties</i>	
Length of time a royalty will be claimable if the rights holder cannot be located	The regulations will require royalty payments, where the rights holder cannot be located, to be claimable indefinitely.
Use of royalties that cannot be distributed	The regulations establish a cultural fund to be used for the benefit of artists.

## What are the marginal costs and benefits of the preferred option?

116. Note that Manatū Taonga does not have access to complete 2022 domestic art market sales figures to inform the analysis in this RIS.

Affected groups	Comment	Impact	Evidence certainty
<b>Additional costs of the preferred option compared to the counterfactual (taking no action)</b>			
<b>Regulated groups</b>			
Auction houses and dealer galleries	<p>The preferred threshold of \$1,000 is lower than the counterfactual option of the UK scheme (approx. \$1,600). This means art market professionals will likely have slightly higher administrative costs as there will be a higher volume of sales to report on due to a lower threshold.</p> <p>The difference in administrative costs at different thresholds can be demonstrated to a certain extent using data from the reviews of the Australian and UK schemes.</p> <p>The review of the UK scheme with a threshold of \$1,600 estimated the median time spent on administration per quarter was estimated at 95 minutes, costing £26.40 (approx. \$50 NZD) when adjusted to the 2021 UK median wage.</p> <p>The Australian scheme has a threshold of approx. \$850 NZD (\$1,000 AUD inclusive of GST). The review of that scheme estimated an average of three hours per quarter for administration, costing \$90.68 AUD (approx. \$98 NZD) when adjusted to the 2021 Australian median wage.</p> <p>However, it is not possible to determine if these costs would translate to the New Zealand context.</p>	<b>Low</b>	<p>Medium – based on data from reviews of the UK and Australian schemes and then adjusted for wage inflation. However, it is important to note these costs would not necessarily translate to the New Zealand market.</p>
Right holders (artists and their successors)	<p>The preferred level of admin fee to be deducted by the collection agency is 20% which is higher than the counterfactual of 15%. This will mean right holders will receive a smaller net royalty overall as they would be paying a marginally higher admin fee.</p>	<b>Approx. additional \$44,000 in admin fees per annum from 2018 to 2020</b>	<p>Medium – based on data from Australian Art Sales Digest, comprising data on NZ auction house sales (estimated to be approx. 80% of resales in NZ).</p>

Regulators			
Collection agency	A threshold of \$1,000 will mean more sales qualify for a royalty which will likely mean marginally increased administrative costs for the collection agency. The impact of any additional administrative costs cannot be readily quantified.	Low	Medium – impacts cannot be readily quantified.
Crown	The establishment of a cultural fund will have some additional setup costs to the Crown. 9(2)(f)(iv) [REDACTED] [REDACTED] [REDACTED] 9(2)(ba)(i) [REDACTED] [REDACTED] [REDACTED] [REDACTED]	9(2)(ba)(i)	Medium – based on insights 9(2)(ba)(i) [REDACTED] [REDACTED] [REDACTED]
Total costs			
Total monetised costs	Costs to right holders from higher admin fee of 20%.  Costs to the Crown to establish a cultural fund.	Approx. \$44,000 per annum + 9(2)(ba)(i) in one-off set up costs	Medium
Total non-monetised costs	Administrative impacts for art market professionals and the collection agency from the lower threshold of \$1,000	Low	Medium
Additional benefits of the preferred option compared to taking no action			
Regulated groups			
Right holders (artists and their successors)	More right holders would receive a royalty under a threshold of \$1,000 compared to the counterfactual threshold of approx. \$1,600.  Based on 2018-2020 auction house data, 409 additional artists (an increase of 18%) would have benefitted from this lower threshold.  This would have equated to an additional approx. \$16,800 in royalties being distributed compared to the counterfactual.	18% more artists and approx. \$16,800 per annum from 2018 to 2020	Medium  Based on data from Australian Art Sales Digest, comprising data on NZ auction house sales (estimated to be approx. 80% of resales in NZ)
Visual arts sector	Any undistributed royalties could be distributed to the broader visual arts sector through a cultural fund with	Low	Low – impacts cannot be readily quantified

	<p>the purpose of supporting visual artists' career sustainability.</p> <p>The impacts of a cultural fund cannot be readily quantified as this would likely fluctuate depending on how many royalties are not distributed.</p>		
<b>Others (e.g. wider government, consumers)</b>			
Crown	The lower threshold of \$1,000 means more artists are receiving royalties which is taxable income. The Crown would therefore expect to receive marginally more tax revenue compared to the counterfactual.	<b>Low</b>	Low – impacts cannot be readily quantified
<b>Total benefits</b>			
Total monetised benefits	Approx. \$16,800 in additional royalties distributed to right holders per annum with a lower threshold of \$1,000.	<b>\$16,800 per annum</b>	Medium
Total non-monetised benefits	<p>18% more artists (409) receiving royalties per annum with a lower threshold of \$1,000.</p> <p>Wider visual arts community benefits from the distribution of undistributed royalties through a cultural fund.</p>	<b>Medium</b>	Medium

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# Delivering an option

## How will the preferred options be implemented?

117. Consultation on the regulations, as well as any changes to the Bill through the parliamentary process, may result in refinement of the proposals and how they will be implemented.
118. Regulations will commence when the Act commences; the commencement date of the Act will be set through Order in Council no later than 1 December 2024. The commencement date is to be set through Order in Council because the legislation cannot commence until the collection agency has been appointed and relevant systems and processes are in place for the scheme to begin operating.
119. The collection agency will be responsible for the overall operation of the scheme. Manatū Taonga will provide monitoring and oversight.
120. Manatū Taonga will run a procurement process, including a tender process. An entity must apply to be considered for appointment as the collection agency.
121. When the collection agency is appointed, a contract for services between the agency and Manatū Taonga will set out:
  - a. the responsibilities and obligations of the collection agency
  - b. agreed outcomes and performance measures
  - c. detail on monitoring arrangements.

### *Risks and mitigations*

122. There is a risk that no suitable collection agency can be appointed, which would cause Aotearoa New Zealand to be in breach of the NZ-UK FTA. In the case that a collection agency is not appointed, government will consider the most appropriate interim option to manage the scheme, including if the Crown can manage the scheme until an appropriate agency can be appointed. Assistance could also be provided to build the needed capability in an existing organisation to manage the scheme in the longer term.
123. If the collection agency's appointment were to be revoked, there will need to be an appropriate transitional plan/process in place, which would be set out in regulations and include:
  - a. how transition would ensure continuity of the scheme and the least possible impact for rights holders
  - b. how rights holders would be engaged in the transition
  - c. how information would be safely and securely transferred (including in line with privacy requirements).
124. If the collection agency itself wanted to end its role, it would need to request in writing that the Minister revoke its appointment, and give an appropriate notice period (e.g. one year).

## Communications and engagement with participants

125. Manatū Taonga and/or the collection agency would run a campaign to publicise the scheme when it comes into effect. This would include information about when the scheme is commencing; rights and obligations of participants in the scheme, including rights holders, art market professionals, and buyers and sellers of visual art; and could include information about any cultural fund/s that are established. Detailed information about the scheme would also be made available online, ideally on both the Manatū Taonga website and that of the collection agency.
126. Manatū Taonga and the collection agency would need to engage on an ongoing basis with scheme participants to ensure rights and responsibilities under the scheme continue to be common knowledge within the sector.

### *Risks and mitigations*

127. If any aspects of the regulations are poorly understood, or are considered to place an unfair burden on art market professionals, buyers and sellers, compliance may be negatively impacted. To mitigate this, the collection agency will have clear communications (e.g. information sheets, FAQs etc.) on how the scheme works, what the obligations are on art market professionals, buyers and sellers, and what right holders' rights are. This has been taken into account in the budget proposed for scheme establishment.
128. The proposal that unclaimed royalties will be able to be claimed indefinitely would create a significant financial liability for the collection agency if unclaimed royalties are used for any purpose. A possible mitigation outlined above is keeping a portion of unclaimed royalties to ensure that royalties can be paid if rights holders come forward after an extended period of time, but ultimately an indefinite royalty claiming period may not be able to be implemented in combination with proposals to use undistributed royalties for another purpose.

## How will the scheme be monitored, evaluated, and reviewed?

129. Because the collection agency has duties and functions set out in legislation, it will need to be monitored to ensure it is carrying out these functions satisfactorily. In the early years of the scheme the collection agency will also receive Government funding for set-up costs so will need to be monitored to ensure its use of public money is efficient and effective.
130. The collection agency will be required to keep detailed records of how it operates the scheme. This enables both the collection agency and Manatū Taonga as the monitoring agency to identify any emerging problems or opportunities with the scheme. This reporting information can be used to inform decision making around any changes or refinements to the scheme.
131. The collection agency will be required to keep records including:
  - a. financial records (e.g. operating expenses, admin fees collected, transactions of artworks which require a royalty, royalties collected and distributed, any other use of funds)
  - b. how the scheme is impacting artists, including impacts on specific demographics (including details on use of the dispute resolution process, how many artists from specific demographics received a royalty, the value of the royalties, how many royalties were declined by artists or their estates, details of enforcement action)
  - c. how Māori are being represented in decision making at the governance and management levels of the collection agency in relation to the scheme
  - d. compliance with the scheme, including any disputes raised, how they have been resolved, and any enforcement action taken by the collection agency.
132. Manatū Taonga will be the monitoring agency for the scheme. Manatū Taonga already has a monitoring function for a range of sector bodies and is well-placed to take on this new function.
133. Evaluation of the scheme's impacts will also be informed by Manatū Taonga's regular engagement with the visual arts sector.
134. The collection agency could collect some information on artists participating in the scheme via a voluntary register of artists, and this could be used to support evaluation of the scheme's impacts. This would be an operational matter.
135. A review would be conducted within five years after the scheme commences to determine if any changes are needed to improve the efficiency and effectiveness of the scheme. This review would be an operational matter, conducted by Manatū Taonga as the monitoring agency, and would be informed by engagement with rights holders, art market professionals, and public institutions. The scheme could be reviewed earlier, for example if it is not delivering the intended benefits to artists, or if it becomes clear that the policy settings as implemented are preventing the scheme from becoming self-sustaining.
136. The collection agency's appointment being revoked, as discussed above, could also prompt a review of the scheme.



# Appendices

## Appendix One: Cost recovery implications for the administrative fee

### Policy rationale: Why a user charge, and what type is most appropriate?

- 137. A user charge is proposed so that the artist resale royalty scheme will be self-sustaining in the long term. It is common practice internationally to use an administrative fee to achieve this. Per the analysis above, an administrative fee would be deducted from the royalty.
- 138. The Bill provides that the collection agency is entitled to charge a fixed administrative fee or percentage of the royalty, with the process for setting this fee to be outlined in regulations. An administrative fee is considered appropriate because it is a fee in exchange for services (the collection and distribution of the royalty). All international ARR schemes we investigated<sup>13</sup> had a percentage-based administrative fee, though the amount of the percentage varied. This means that artists whose work sells for higher prices cross-subsidise the collection of royalties of lower value sales.
- 139. The service of collecting and distributing the royalty primarily benefits artists, who receive the royalty and do not need to manage the right themselves.
- 140. The collection and distribution of the royalty is a club good, i.e. people can be excluded from its benefits at a low cost (via the threshold sale price) but its use by one person does not detract from its use by another<sup>14</sup>. This means it is feasible to charge for the collection agency's services in this area.
- 141. As the time associated with collecting and distributing each royalty is likely to be similar, a fixed administrative charge is consistent with Treasury's cost recovery guidelines<sup>15</sup>. However an equitable approach may justify a percentage-based charge, as artists who benefit the most from the scheme will also contribute the most to its administration.
- 142. 9(2)(f)(iv)  
[REDACTED]  
[REDACTED] it is the Government's expectation that the administrative fee eventually fully recovers the costs of royalty collection and distribution so that the scheme will be self-sustaining and will not require ongoing government funding.
- 143. Table 3 below shows the number of sales, artists, and living artists receiving royalties who would therefore have been liable for an administrative fee in 2020 under a range of threshold sale prices, according to auction house data.

<sup>13</sup> This includes the UK, Australian, Danish, German, French, Icelandic and Finnish ARR schemes; admin fee percentages ranged from 12% (Germany) to 25% (Finland).

<sup>14</sup> Ibid., section 3.2

<sup>15</sup> [Guidelines for Setting Charges in the Public Sector - April 2017](#), Treasury, section 3.93

Table 3: Royalties that would have been distributed in 2020 for various threshold prices				
Threshold	\$2000	\$1600	\$1000	\$500
Sales incurring royalties	1184	1329	1679	2254
Unique artists receiving a royalty	274	300	369	497
Living artists receiving a royalty	176	193	249	339

**The level of the proposed fee and its cost components**

144. Based on current market data we estimate that an administrative fee of around 20% would be necessary for the scheme to be self-sustaining. Some international schemes impose a lower charge (for example, the German scheme has a 12% fee), but Aotearoa New Zealand's small art market means a higher charge is required. The Finnish scheme's 25% admin fee was the highest fee of the schemes Manatū Taonga investigated.

145. 9(2)(f)(v) [Redacted]

[Redacted]

[Redacted]

[Redacted]

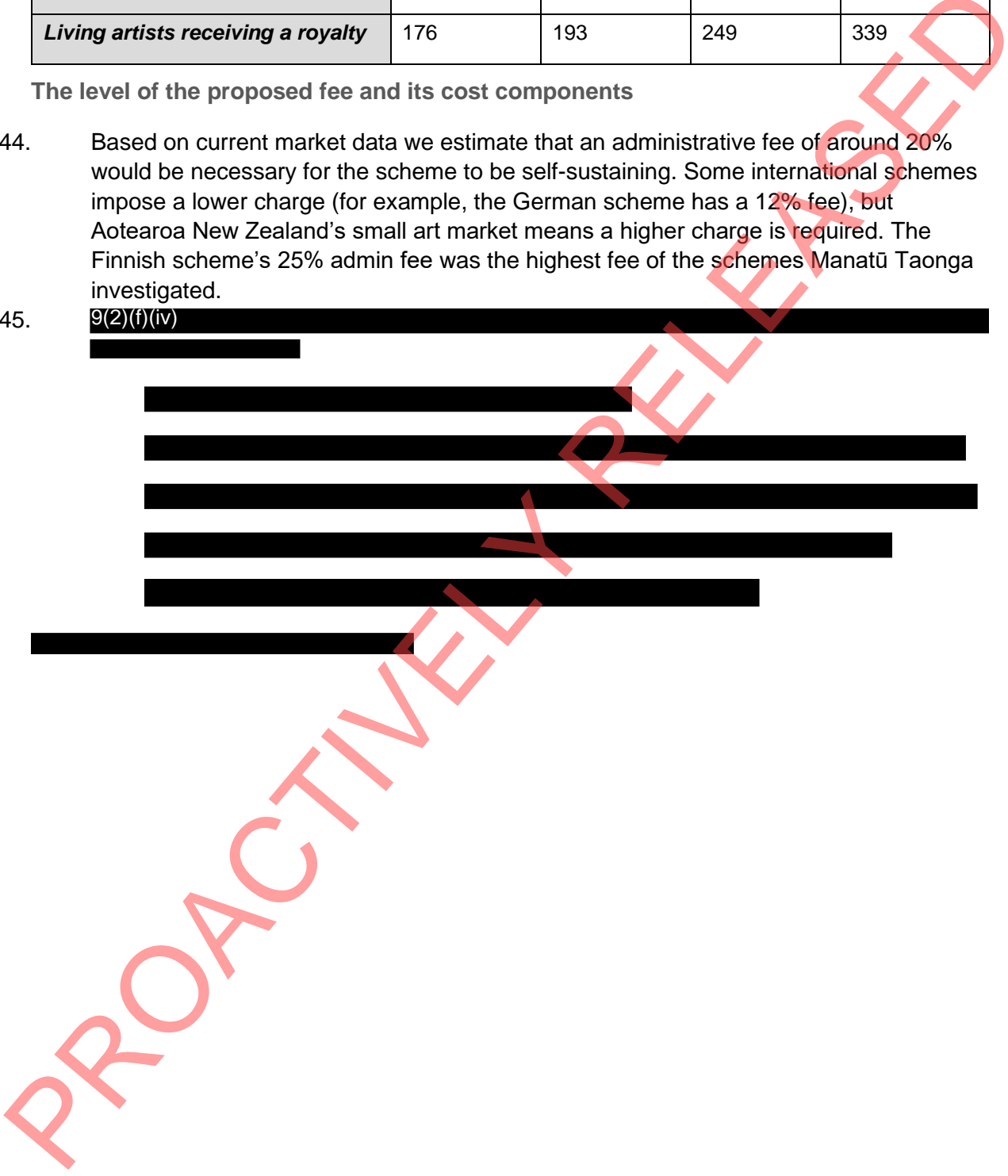
[Redacted]

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[Redacted]



146. If centrally funded during the establishment period, the collection agency could generate a surplus from the administrative fee. This would enable it to build financial reserves which could be used to cover future shortfalls between revenue and annual operating costs.
147. Based on only auction house sales figures for 2021 and early 2022, the scheme would have generated enough revenue to be self-sustaining with a 20% administrative fee. However, 2021 was a record sales year and may prove to be an outlier in the long term. Trends over the last 20 years show that the market fluctuates and usually dips after a year in which a particularly high sales value is recorded.
148. Auction house sales values from 2018-2020 would have generated an average of \$131,550 per annum with a 15% fee, \$175,400 with a 20% fee and \$219,250 with a 25% fee. None of these fee levels would have been sufficient to sustain the scheme.
149. However, it is important to note that auction house sales do not constitute all secondary sales in New Zealand. Dealer gallery sales, sales to or from a publicly funded museum or art gallery, and private sellers/buyers who opt in, will also attract an administrative fee and contribute to the costs of the scheme. Sales figures are not readily available for these groups.
150. The art market is expected to grow gradually over time, which would generate more revenue through admin fees for the collection agency and eventually result in the scheme becoming self-sustaining.

#### Effect on revenue if assumptions change

151. Forecasting future sales volume and value is difficult due to the unpredictable fluctuations of the art market. The small size of New Zealand's market also means fluctuations are more noticeable and likely to have a greater impact.
152. Once the scheme has been operating for a few years, Manatū Taonga and the collection agency will have a better view of revenue generated by the scheme and the point at which the scheme will be self-sustaining.

153. We have made conservative assumptions about the future size of the secondary art market, as we are cautious of overestimating how much revenue the scheme might expect to generate and therefore underestimating how much Crown investment would be required.
154. If trends in market growth in 2021 and early 2022 continue, the scheme will generate more revenue and be self-sustaining earlier than in the case of a return to 2018-2020 sales figures.
155. Conversely, if there is an unexpected period of low art sales (for example, due to a recession), the scheme would generate less revenue and may need additional government funding.

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## Appendix Two: How advisory groups' recommendations are reflected in preferred options

General Advisory Group recommendation and rationale	Te Rōpū Toi Māori recommendation and rationale	Preferred option identified through regulatory impact analysis
<b>Collection agency</b>		
The collection agency should be appointed for a fixed term rather than indefinitely.	The collection agency should be appointed for a fixed term rather than indefinitely.	The collection agency is appointed for a fixed term, e.g. five years.
Co-governance and co-management should not be a feature of the scheme. The group did not support the Māori Advisory Group's recommendation for co-chairs and two streams of leadership. Instead, it recommended having requirements around Māori involvement in governance and making use of governance subcommittees to support strategic oversight of the scheme.	<p>Two options were proposed:</p> <ul style="list-style-type: none"> <li>• The collection agency should be a Māori-led organisation.</li> <li>• The collection agency should manage the collection of the resale royalty and cultural fund through a bi-cultural model with co-governance and co-management at its core, including co-chairs, two streams of leadership and two streams within the cultural fund.</li> </ul> <p>It should be required, as a condition of contract for services, that there is appropriate knowledge and capability in place to ensure the scheme is effective for Māori artists.</p>	Regulations require applicants for the collection agency role to demonstrate how they will provide culturally appropriate support to Māori artists and involve Māori artists in governance and decision-making.
<p>There should be strong reporting and monitoring requirements around the impact of the scheme on Māori and Pacific artists.</p> <p>Pacific artists should be appropriately supported and the collection agency should have a clear understanding of how the scheme is impacting Pacific artists.</p>	<p>There should be specific reporting requirements related to how the scheme is impacting Māori artists, including how they are benefiting and how the cultural fund is supporting them.</p> <p>Monitoring should ensure the collection agency is giving effect to principles set out in the Act, specifically that Māori are participating equitably in the scheme and that they are consulted on changes to the scheme.</p>	The regulations include general monitoring and reporting requirements, require the collection agency to collect data on how the scheme is impacting artists, and include specific monitoring and reporting provisions related to Māori involvement in governance and decision-making

There should be a dispute resolution process.		The regulations will outline what dispute resolution process is to be used in the case that the collection agency does not already have a suitable process.
<b>Administrative fee</b>		
The administrative fee should be deducted from the royalty, not added on.	<p>The group considered the administrative fee should not be deducted from the 5 percent royalty. Two options were proposed:</p> <ul style="list-style-type: none"> <li>• Government should fund the scheme in perpetuity so that an administrative fee is not necessary. However, note that a key objective of the scheme is for it to be self-sustaining, so ongoing Government funding is not viable.</li> <li>• Add the administrative fee on top of the five percent royalty as an additional one percent on the sale price.</li> </ul>	Administrative fee is deducted from the five percent royalty payment.
<b>Threshold sale price</b>		
The majority of the group agreed the threshold should be as low as possible, ideally \$500. However, art market professional representatives recommended a high threshold (at least \$2,000) to make the scheme easier to administer, and to ensure there is less uncertainty around what is art, and to focus the scheme on professional artists.	The threshold should be set at \$1,000.	The regulations will require a sale price threshold equal to or over \$1,000.
<b>Unclaimed royalties</b>		
There should be a time limit on when an unclaimed royalty can be subsequently claimed by the rights holder.	There should be no time limit on when an unclaimed royalty can be subsequently claimed by the rights holder. Having a time limit impinges on the right and is not consistent with tikanga.	The regulations will require royalty payments, where the rights holder cannot be located, to be claimable indefinitely.

## Appendix Three: Summary of key stakeholder views and consultation from 2007 to 2022

### Responses to the 2008 Bill showed general support from artists, but opposition from auction houses, dealer galleries and most art collectors

A Ministry for Culture and Heritage discussion paper, released in April 2007, canvassed options for a potential ARR scheme as well as alternatives to a scheme. The Ministry received 202 submissions on the paper. Two thirds of these submissions favoured the introduction of a mandatory ARR scheme, and one third was opposed.

The Government Administration Select Committee on the draft Bill received 119 submissions, including 57 form submissions. Taking all 119 submissions into account, 58% (69) were in support, 4% (5) neutral and 38% (45) opposed.

Consultation on the 2008 Bill showed that artists and advocacy groups were mostly in favour of the scheme while auction houses and art collectors opposed it, along with some dealers and galleries/museums.

### A 2018 MBIE discussion paper included a question on visual artists' rights and received strong support for an ARR scheme

In November 2018, as part of the review of the Copyright Act 1994, MBIE released a Copyright Issues paper that asked 'What are the problems (or benefits) with the rights the Copyright Act [1994] gives visual artists (including painting, drawings, prints, sculptures etc.)? What changes (if any) should be considered?'

The paper received twenty-six responses to this question, twenty-three advocating for the introduction of an ARR scheme. Comments supporting an ARR scheme included:

- schemes are in place overseas with no discernible negative impact on the art markets in those countries;
- without a scheme, visual artists miss out on potential royalties when their works are sold on the secondary market, or in global markets;
- an ARR scheme recognises the rights and value of visual artists.

### A 2019 online survey showed there is strong support from artists, but many art market professionals are opposed

A targeted online survey, conducted in late 2019 by Manatū Taonga, attracted 348 responses from the visual arts sector. The survey indicated strong overall support for an ARR scheme; 87.4% of respondents being strongly or moderately in favour and 8.3% opposed.

The survey found that professional artists, particularly those with less professional experience, were more likely to support a scheme, while those in roles supporting visual arts (such as auction houses, art dealers, galleries etc.) were less likely to support a scheme.

Reasons for supporting a scheme included;

- enabling artists to share in the long-term success of their work
- providing some financial security and contributing to sustainable careers
- bringing the visual arts into line with other artistic works such as musical and theatrical works.

Overall, 9.9% of respondents did not support introducing an ARR scheme, 2.0% were moderately opposed, 6.3% strongly opposed, and 1.1% were unsure or did not know if they supported or opposed. The main reasons for opposing a scheme were:

- it would have negative impacts on the art market
- it would be difficult and costly to administer
- the status quo is fair and a scheme would not really benefit emerging artists but rather established artists whose works sell for higher prices.

### Engagement in 2019 and 2020 showed similar trends

Policy work in 2019 and 2020 on an ARR scheme (before it was halted due to COVID-19) was informed by targeted consultation with key stakeholders. This included targeted face-to-face consultation with arts organisations (including Toi Māori Aotearoa), academics, community art spaces, dealer galleries, art collectors, auction houses, online platforms (including TradeMe), Copyright Licensing New Zealand, and artists at all stages in their careers (from students and young emerging artists to established artists). Key government agencies were also consulted.

Targeted engagement in 2022 showed strong support for a scheme and provided key insights on settings for the scheme. As part of the development of policy proposals in 2022, the Ministry once again conducted targeted engagement with key stakeholders, both from the art sector and other government agencies. This engagement did not seek feedback on whether New Zealand should have an ARR scheme (as this has already been agreed to through the FTA), rather engagement tested the proposed policy and administration settings. Key themes of engagement were:

- Consistent with previous engagement, stakeholders were broadly supportive of the proposals but there were some differing views on some of the specific policy settings.
- We received extensive feedback on the definition of visual art with stakeholders emphasising this will need to be carefully defined including appropriately capturing Toi Māori and Pacific art. Stakeholders welcomed the opportunity to contribute to the definition of visual art as part of the development of supporting regulations.
- We heard different views on whether artists should be able to opt out of the scheme; some stakeholders thought it important to give artists the choice (and enable Māori artists to exercise tino rangatiratanga) while others said it would undermine the success of the scheme. There was strong support for investing unclaimed/declined royalties into a cultural fund to support artists' career sustainability.
- Stakeholders were broadly supportive of the proposed royalty rate and the eligibility settings, although art market professionals continued to express concerns about the financial impact of the scheme on their businesses. Generally, stakeholders supported linking the duration of the royalty right to the duration of copyright, although some suggested the right should remain with the artist or their estate indefinitely, particularly in relation to Māori artwork.
- Stakeholders expressed strong support for the collection agency to be independent of government and emphasised it will need to work closely with artists and operate in a culturally appropriate way. Officials also heard that strong enforcement powers would be required to ensure compliance with the scheme.

### Engagement with Māori in 2022

Between June and August 2022, Manatū Taonga undertook targeted engagement with key Māori stakeholders including Māori artists, galleries, representative bodies such as Toi Māori Aotearoa and Toi Iho Charitable Trust, and Māori art and legal experts in relation to the proposals.

Key themes from engagement were:



- that the scheme should recognise collective ownership, support the legacy and stories of the works, the creation of art and the philosophy in which the artist undertakes their work
- the importance of the scheme aligning with Wai 262 and Waitangi Tribunal recommendations
- that the scheme should recognise connection to taonga and kaitiaki obligations
- that the definition of Toi Māori should be broad and inclusive
- that the collection agency should have Māori representation and governance and provide guidance regarding allocation of the funds, or what should happen if the artist cannot be found in instances of collective or Māori ownership
- that the definition of art market professional needs to be broad to capture the mechanisms through which Māori art is sold.

In addition to these conversations Manatū Taonga was approached by over 30 prominent Māori artists expressing their support for a New Zealand ARR scheme.

#### **NZ-UK FTA National Interest Analysis (2022)**

- The National Interests Analysis (NIA) for the NZ-UK FTA was produced by the Ministry of Foreign Affairs and Trade, working with New Zealand stakeholders and agencies across Government. The NIA assesses the likely costs and benefits for New Zealand entering into the FTA, as well as whether it is in New Zealand's national interest to ratify the agreement. This includes an assessment of the costs and benefits of implementing an ARR as required under the FTA. The NIA was published on 1 March 2022 following signature of the FTA, and was examined by the Foreign Defence, Affairs and Trade Select Committee (alongside the treaty text) in March-April 2022.