



Resale Right for Visual Artists Act 2023

Public Act 2023 No 59
Date of assent 30 August 2023
Commencement see section 2

Contents

	Page
1 Title	2
2 Commencement	2
Part 1	
Preliminary provisions	
3 Purpose	3
4 Interpretation	3
5 Transitional, savings, and related provisions	4
6 Act binds the Crown	4
Part 2	
Resale right for visual artists	
<i>Resale right</i>	
7 Eligible artists have resale right	4
8 Meaning of original visual artwork	5
9 Meaning of qualifying resale	5
10 Meaning of resale value	6
11 Meaning of art market professional	6
<i>Nature of resale right</i>	
12 Right held in shares where artwork created jointly	7
13 Right is inalienable while held by artist	7
14 Who holds right after artist's death	7
15 Duration of resale right period	8
<i>Resale royalty payments</i>	
16 Amount of royalty	8

17	Liability for payment of resale royalties to collection agency	8
18	Liability for payment of resale royalties to right holders	9
19	Right holder may decline resale royalty payment	9
	<i>Other matters relating to resale royalties</i>	
20	Collection agency entitled to retain percentage of resale royalties	10
21	Requirement to provide collection agency with information about qualifying resales	10
	<i>Collection agency</i>	
22	Minister may appoint collection agency	11
23	Minister may revoke appointment	11
24	Function, duties, and operation of collection agency	11
25	Chief executive must monitor performance of collection agency	12
	<i>Enforcement and remedies</i>	
26	Enforcement	12
27	Remedies	12
	<i>Secondary legislation and other instruments</i>	
28	Regulations	13
29	Reciprocating countries	14
	Schedule 1	15
	Transitional, savings, and related provisions	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Resale Right for Visual Artists Act 2023.

2 Commencement

(1) This Act comes into force—

(a) on a single date appointed by the Governor-General by Order in Council;
or

(b) on 1 December 2024, if it has not commenced by then.

(2) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Part 1

Preliminary provisions

3 Purpose

The purpose of this Act is—

- (a) to provide a right for eligible artists and successive right holders to receive a royalty on qualifying resales of original visual artworks; and
- (b) to enable royalties to be administered in a way that—
 - (i) acknowledges and respects the role of Māori as tangata whenua and provides culturally appropriate support to Māori artists; and
 - (ii) is inclusive of, and recognises the different needs of, all peoples in New Zealand.

4 Interpretation

In this Act, unless the context otherwise requires,—

art market professional has the meaning set out in section 11

collection agency means the person appointed as the collection agency under section 22

expiry date, in relation to the period during which a qualifying resale of an original visual artwork creates a resale right, has the meaning set out in section 15(2)

New Zealand citizen has the same meaning as in section 4 of the Immigration Act 2009

original visual artwork has the meaning set out in section 8(1)

professional resale has the meaning set out in section 9(2)

qualifying resale has the meaning set out in section 9(1)

reciprocating country means an entity that is specified in an Order in Council made under section 29

regulations means regulations made under section 28

resale, in relation to a visual artwork, does not include the first transfer of ownership of the artwork, irrespective of whether the first transfer of ownership was made for money or other consideration

resale right means the right described in section 7

resale royalty means the royalty described in section 7

resale value has the meaning set out in section 10

right holder, in relation to a resale right that arises under section 7, means—

- (a) the artist, if they are alive at the time that the contract for the qualifying resale is entered into; or

- (b) the person who holds the artist's resale right after their death and at the time that the contract for the qualifying resale is entered into (*see* section 14)

visual artwork has the meaning set out in section 8(2)

voluntary qualifying resale has the meaning set out in section 9(3).

5 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

6 Act binds the Crown

This Act binds the Crown.

Part 2 Resale right for visual artists

Resale right

7 Eligible artists have resale right

- (1) An eligible artist has a right to be paid a royalty on the resale of a visual artwork if—
- (a) the visual artwork is an original visual artwork by that artist (*see* section 8); and
 - (b) the resale is a qualifying resale (*see* section 9); and
 - (c) the contract for the resale is entered into on or before the expiry date of the period during which the right may apply (*see* section 15); and
 - (d) either—
 - (i) the artist is alive at the time that the contract for the resale is entered into, and they are eligible at that time; or
 - (ii) the artist is not alive at that time, but they were eligible at the time of their death.
- (2) The artist is **eligible** if they are one of the following at the necessary time:
- (a) a New Zealand citizen;
 - (b) a person domiciled or resident in New Zealand;
 - (c) a citizen or subject of, or a person domiciled or resident in, a reciprocating country.
- (3) An artist has a right under this section irrespective of whether they are or were the first owner of copyright in the artwork.
- (4) A person other than the artist may hold the right after the artist's death (*see* section 14).

8 Meaning of original visual artwork

- (1) An artwork is an **original visual artwork** if it is—
 - (a) a visual artwork created by, or under the authority of, an artist; or
 - (b) one of a limited number of copies of a visual artwork made by that artist or under their authority.
- (2) In this Act, **visual artwork**—
 - (a) includes a visual work of any 1 or more of the following types:
 - (i) a cultural expression of Māori:
 - (ii) a cultural expression of Pacific peoples:
 - (iii) ethnic or cultural art that is a variation of a type of work described in any of subparagraphs (iv) to (ix):
 - (iv) painting, drawing, carving, engraving, etching, lithography, wood-cutting, or printing (including a book of prints):
 - (v) sculpture, collage, or modelling:
 - (vi) craftwork, ceramics, glassware, jewellery, textiles, weaving, metalware, or furniture:
 - (vii) photography or video art:
 - (viii) multimedia art:
 - (ix) art that is created using computers or other electronic devices; but
 - (b) does not include—
 - (i) a building, as defined in section 2(1) of the Copyright Act 1994:
 - (ii) a dramatic work or musical work, as those terms are defined in section 2(1) of the Copyright Act 1994:
 - (iii) a literary work, as defined in section 2(1) of the Copyright Act 1994, unless it is a compilation that includes a visual work of a type specified in paragraph (a)(i) to (ix):
 - (iv) a work of a type specified in the regulations.

9 Meaning of qualifying resale

- (1) A resale of an original visual artwork is a **qualifying resale** if—
 - (a) it is a professional resale or a voluntary qualifying resale; and
 - (b) the resale value is no less than the amount specified by the regulations, which must be within the range of \$500 to \$5,000.
- (2) A resale is a **professional resale** if—
 - (a) at least 1 person involved in the resale is—
 - (i) an art market professional acting in that capacity; or
 - (ii) a publicly funded art gallery; or

- (iii) a publicly funded museum, library, or archive that collects and displays artworks; and
- (b) the resale has a connection to New Zealand, in that—
 - (i) the person described in paragraph (a) is resident, incorporated, registered, or carrying on business in New Zealand; and
 - (ii) the resale relates to that part of the person's dealings in visual artworks that occur (in part or otherwise) within New Zealand.
- (3) Any other resale may be a **voluntary qualifying resale** if—
 - (a) all the parties to the resale agree in writing that the resale is a qualifying resale for the purpose of this Act; and
 - (b) the agreement records the percentage of the resale value that the parties agree will be payable as a resale royalty (*see* section 16); and
 - (c) the agreement records which party will provide information about the qualifying resale to the collection agency (*see* section 21).

10 Meaning of resale value

- (1) In this Act, **resale value**, in relation to a qualifying resale of an original visual artwork, means the value of the consideration given for the visual artwork under the contract for resale, which may include—
 - (a) an amount paid in New Zealand dollars;
 - (b) if an amount is paid in a currency other than New Zealand dollars, that amount converted to New Zealand dollars at the Reserve Bank of New Zealand reference rate as at the date of payment;
 - (c) the value of goods or services paid in kind.
- (2) However, **resale value** does not include—
 - (a) goods and services tax payable under the Goods and Services Tax Act 1985; or
 - (b) any duty, tax, fee, charge, or levy imposed on goods under the Customs and Excise Act 2018; or
 - (c) any costs associated with the resale, for example, a commission or a buyer's premium.

11 Meaning of art market professional

In this Act, **art market professional** means any 1 or more of the following:

- (a) a person who carries on business as an auctioneer (within the meaning of section 5(3) of the Auctioneers Act 2013);
- (b) an art dealer;
- (c) an art consultant;
- (d) the owner or operator of an art gallery that deals in visual artworks:

- (e) any other person who is in the business of dealing in visual artworks.

Nature of resale right

12 Right held in shares where artwork created jointly

- (1) This section applies if a resale right arises in relation to an original visual artwork that is created jointly by 2 or more artists (**joint artists**).
- (2) The resale right—
- (a) belongs only to those joint artists who are eligible at the necessary time (*see* section 7(1)(d) and (2)); and
- (b) is held by those eligible joint artists in equal shares or in any other shares that are specified in a written agreement signed by or on behalf of all of the eligible joint artists.

13 Right is inalienable while held by artist

- (1) This section applies to a resale right while it is held by the artist.
- (2) The resale right cannot be waived, assigned, or charged.
- (3) Any waiver or assignment of, or charge over, the resale right is void.
- (4) *See* section 19, which enables a right holder to decline to receive payment of a resale royalty.

14 Who holds right after artist's death

- (1) This section sets out who holds an artist's resale rights after their death.
- (2) The resale right that arises on a qualifying resale is held by the successor of the resale rights but only if, at the time that the contract for the qualifying resale is entered into,—
- (a) the successor holds those rights; and
- (b) the successor,—
- (i) in the case of an individual, is—
- (A) a New Zealand citizen; or
- (B) domiciled or resident in New Zealand; or
- (C) a citizen or subject of, or domiciled or resident in, a reciprocating country;
- (ii) in the case of any other person, is incorporated, registered, or carrying on business in New Zealand or a reciprocating country.
- (3) A successor may transfer the resale rights to another person, as personal property, by—
- (a) assignment; or
- (b) testamentary disposition; or

- (c) operation of law.
- (4) If 2 or more successors hold a resale right after the artist's death, each successor holds the share of the right that they inherit or that is transferred to them.
- (5) In this section, **successor**, in relation to an artist's resale rights, means—
 - (a) the person who inherited the resale rights under the will or on the intestacy of the artist; or
 - (b) the person who holds the resale rights after 1 or more transfers of the rights under subsection (3).

15 Duration of resale right period

- (1) This section sets out the period during which a qualifying resale of an original visual artwork creates a resale right.
- (2) The period begins when the artwork is created and ends at the close of the last day (the **expiry date**) of the following period:
 - (a) if the artwork is created by 1 artist, the period of 50 years after the end of the calendar year in which the artist dies:
 - (b) if the artwork is created jointly by 2 or more artists, the period of 50 years after the end of the calendar year in which the last of those artists dies.

Resale royalty payments

16 Amount of royalty

The resale royalty payable in respect of a qualifying resale is,—

- (a) for a professional resale, 5% of the resale value; and
- (b) for a voluntary qualifying resale, the percentage of the resale value that the parties have agreed to.

17 Liability for payment of resale royalties to collection agency

- (1) The following persons are jointly and severally liable to pay a resale royalty to the collection agency:
 - (a) the seller; and
 - (b) either—
 - (i) the agent acting for the seller on the resale; or
 - (ii) if the seller does not have an agent, the agent acting for the buyer on the resale; or
 - (iii) if there are no agents, the buyer.
- (2) The liability arises on the completion of the qualifying resale.
- (3) The liability is discharged when the total amount of the resale royalty is paid to the collection agency.

- (4) Payment of the resale royalty must be made to the collection agency within the time frame, and otherwise in the manner, specified by the regulations.
- (5) Any agreement to share or repay the resale royalty, other than as provided for in this Act, is void.

18 Liability for payment of resale royalties to right holders

- (1) The collection agency is liable to pay, to the right holder, each resale royalty it receives under section 17.
- (2) The liability arises when the total amount of the resale royalty is paid to the collection agency.
- (3) The liability is discharged—
 - (a) on the date on which the total amount, less the percentage that the collection agency is entitled to retain (*see* section 20), is paid—
 - (i) to the right holder, if the right holder is New Zealand-based;
 - (ii) to the equivalent of the collection agency in the relevant reciprocating country, in all other cases; or
 - (b) if the total amount is unpaid on the expiry of the period specified by the regulations despite the collection agency's best endeavours, on the expiry of that period.
- (4) If there are 2 or more right holders (*see* section 12 or 14), the liability to each right holder is discharged if that right holder or the equivalent to the collection agency in the relevant reciprocating country (whichever applies) is paid the share of the amount to be paid under subsection (3) that corresponds to the person's share of the right.
- (5) Payments to right holders must be made in accordance with the regulations.
- (6) In this section, a right holder is **New Zealand-based** if,—
 - (a) in the case of an individual, they are—
 - (i) a New Zealand citizen; or
 - (ii) domiciled or resident in New Zealand;
 - (b) in the case of any other person, they are incorporated, registered, or carrying on business in New Zealand.

19 Right holder may decline resale royalty payment

- (1) A right holder may, in accordance with the process specified by the regulations, decline to receive—
 - (a) payment of all or part of a resale royalty;
 - (b) payment of a resale royalty on the future resale of any or all of their visual artworks.

- (2) If a right holder declines to receive payment of any amount of a resale royalty, the collection agency must use or manage the amount in the manner specified by the regulations.
- (3) A right holder may, in accordance with the process specified by the regulations, opt to receive payment of a royalty on future resales of any or all of the artworks previously declined under subsection (1)(b).

Other matters relating to resale royalties

20 Collection agency entitled to retain percentage of resale royalties

- (1) For the purpose of funding its activities under this Act, the collection agency is entitled to retain a specified percentage of the resale royalties it collects.
- (2) The **specified percentage** is the percentage specified by the regulations.
- (3) The Minister must consult with the collection agency before recommending that regulations be made to specify the percentage.

21 Requirement to provide collection agency with information about qualifying resales

- (1) This section applies to the following persons involved in a qualifying resale of an original visual artwork:
 - (a) in the case of a professional resale,—
 - (i) each art market professional that is involved in the resale; or
 - (ii) if none of the persons involved in the resale is an art market professional, each art gallery, museum, library, or archive referred to in section 9(2)(a) that is involved in the resale:
 - (b) in the case of a voluntary qualifying resale, the person that the parties to the resale agreed would be responsible for providing information to the collection agency.
- (2) Each person must ensure that the following information about the resale is provided to the collection agency:
 - (a) the name of the artwork, if known:
 - (b) a brief description of the artwork:
 - (c) the resale value:
 - (d) the name of the artist, if known:
 - (e) the name and contact details of the persons liable under section 17 to pay the resale royalty, if known:
 - (f) any other information specified by the regulations.
- (3) The information must be provided within the time frame, and otherwise in the manner, specified by the regulations.

Collection agency

22 Minister may appoint collection agency

- (1) There must at all times be a person appointed by the Minister as the collection agency.
- (2) The Minister may, by notice in the *Gazette*, appoint a person as the collection agency for the purposes of this Act.
- (3) Before appointing a person as the collection agency, the Minister must—
 - (a) be satisfied that the appointee has the appropriate knowledge, skills, and experience to carry out the functions of the collection agency under this Act; and
 - (b) consider, or be satisfied of, any other matters specified in the regulations.
- (4) The collection agency holds office for the term specified in the notice, unless the appointment is earlier revoked (*see* section 23).
- (5) A person is not to be regarded as being employed in the service of the Crown for the purposes of the Public Service Act 2020 or the Government Superannuation Fund Act 1956 solely because of their appointment as the collection agency.
- (6) The collection agency is subject to the Ombudsmen Act 1975, the Official Information Act 1982, and the Public Records Act 2005 in respect of functions that it performs under this Act.

23 Minister may revoke appointment

- (1) The Minister may, by notice in the *Gazette*, revoke the appointment of the collection agency—
 - (a) if, in the opinion of the Minister, the collection agency has failed to comply with any of the terms or conditions of the appointment or satisfactorily perform its functions or duties under this Act;
 - (b) if requested to do so by the collection agency.
- (2) The Minister must give the collection agency reasonable notice of a revocation under subsection (1)(a).

24 Function, duties, and operation of collection agency

- (1) The function of the collection agency is to collect and distribute resale royalties to right holders.
- (2) The collection agency must—
 - (a) comply with the rules of operation set out in the regulations; and
 - (b) operate in a way that is transparent, accountable, and respectful; and
 - (c) act in the best interests of right holders; and
 - (d) in carrying out its function and duties,—

- (i) acknowledge and respect the role of Māori as tangata whenua and provide culturally appropriate support to Māori artists; and
 - (ii) be inclusive of, and recognise the different needs of, all peoples in New Zealand.
- (3) The regulations may specify the rules of operation of the collection agency, including rules in relation to any or all of the following matters:
 - (a) how resale royalties are to be collected, held, and distributed:
 - (b) how resale royalties that are not distributed are to be used or managed (for example, where right holders decline payment or cannot be found):
 - (c) how right holders are to be represented in the management of the collection agency:
 - (d) how financial records are to be disclosed:
 - (e) how information relating to resale rights is to be collected and retained:
 - (f) what records must be kept and how they are to be kept and made available:
 - (g) any other matter that relates to the role of the collection agency under this Act.
- (4) The regulations may provide for the collection agency to establish and maintain a register of right holders.

25 Chief executive must monitor performance of collection agency

The chief executive of the Ministry must monitor and report on the performance of the collection agency in the manner required by the regulations.

Enforcement and remedies

26 Enforcement

- (1) The collection agency may apply to a court of competent jurisdiction for orders under section 27 if—
 - (a) information is not provided in accordance with section 21:
 - (b) a person liable under section 17 to make resale royalty payments fails to do so:
 - (c) any other requirement under this Act is not complied with in accordance with this Act.
- (2) This section does not limit any proceedings that may otherwise be taken by the collection agency, a right holder, or any other person.

27 Remedies

- (1) In proceedings brought under section 26, the court may grant relief by making orders that—

- (a) the necessary information be provided, as required by section 21:
 - (b) payment be made of any resale royalties owing under section 17:
 - (c) are appropriate for an infringement of a property right.
- (2) Nothing in this section affects any other power of the court.

Secondary legislation and other instruments

28 Regulations

- (1) The Governor-General may, by Order in Council, make regulations for any or all of the following purposes:
- (a) providing for anything this Act says may or must be provided for by regulations:
 - (b) providing for the establishment and operation of a cultural fund to be used for the purpose of supporting the career sustainability of visual artists:
 - (c) requiring the collection agency to do the following with any amount of resale royalty that is declined under section 19 or not paid to the right holder despite the collection agency's best endeavours (*see* section 18(3)(b)):
 - (i) transfer the amount to the cultural fund; or
 - (ii) return the amount to the person who paid the resale royalty under section 17; or
 - (iii) if the person who paid the resale royalty cannot be found, use the amount to fund the activities of the collection agency under this Act:
 - (d) specifying a process for a person to notify the collection agency that they have, or another person has, a right to be paid a resale royalty that has not yet been paid to them, including—
 - (i) the time frame within which a person must notify the collection agency if they believe that they have, or another person has, a right to be paid a resale royalty that has not yet been paid:
 - (ii) the information that a person must provide to the collection agency to help it determine whether a resale royalty is payable:
 - (e) specifying the information that the collection agency must provide to the chief executive of the Ministry for the purpose of monitoring under section 25:
 - (f) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.
- (2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

29 Reciprocating countries

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, specify a reciprocating country for the purposes of this Act.
 - (2) The reciprocating country must be an entity (whether a State, part of a State, a territory for whose international relations a State is responsible, a political union, an international organisation, or any other entity).
 - (3) The Minister must, before recommending that an order be made, be satisfied that the law of the reciprocating country does or will provide for a reciprocal resale right.
 - (4) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
-

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 1

Transitional, savings, and related provisions

s 5

Part 1

Provisions relating to this Act as enacted

1 Interpretation

In this Part, **commencement date** means the date on which this Act comes into force.

2 Who holds resale rights of artists deceased before commencement date

- (1) This clause applies to the resale rights of an artist who dies before the commencement date.
- (2) Section 14 applies as if the person who holds the resale rights on the commencement date were the person who would have been beneficially entitled to them immediately before the commencement date if all of the following were true:
 - (a) the right to hold the artist's resale rights (the **property right**) existed at the time of the artist's death;
 - (b) the artist died intestate;
 - (c) the property right passed to 1 or more successors in accordance with the intestacy legislation as in force at the time of the artist's death;
 - (d) if a successor (**S**) dies before the commencement date,—
 - (i) they died intestate; and
 - (ii) their share of the property right passed to 1 or more other successors under the intestacy legislation as in force at the time of S's death.
- (3) The person who holds the resale rights in accordance with this clause must be treated as the successor for the purposes of section 14.
- (4) In this clause, **intestacy legislation** means—
 - (a) the provisions about intestacy in the Administration Act 1969 (*see in particular* Part 3 of that Act); or
 - (b) any repealed or amended legislation about intestacy that the Administration Act 1969 replaces or corresponds to, with or without modification.

3 Resales agreed to before commencement date are not qualifying resales

The resale of an original visual artwork is not a qualifying resale if the contract for the resale was entered into before the commencement date, even if 1 or

more of the terms of the contract are satisfied on or after the commencement date.

4 Minister does not need to consult with collection agency before setting specified percentage for first time

Section 20(3) does not apply to the making of regulations for the purpose of section 20(2) for the first time.

Legislative history

28 March 2023	Introduction (Bill 236–1), first reading and referral to Social Services and Community Committee
31 July 2023	Reported from Social Services and Community Committee (Bill 236–2)
22 August 2023	Second reading, committee of the whole House, third reading
30 August 2023	Royal assent

This Act is administered by the Ministry for Culture and Heritage.