



Resale Right for Visual Artists Regulations 2024

Cindy Kiro, Governor-General

Order in Council

At Wellington this 15th day of April 2024

Present:

Her Excellency the Governor-General in Council

These regulations are made under section 28 of the Resale Right for Visual Artists Act 2023 on the advice and with the consent of the Executive Council.

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Schedule 1

Transitional, savings, and related provisions

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Regulations

1 Title

These regulations are the Resale Right for Visual Artists Regulations 2024.

2 Commencement

These regulations come into force on 1 December 2024.

Part 1 Preliminary provisions

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Resale Right for Visual Artists Act 2023

cultural fund means a cultural fund established under regulation 15

liability period means the period specified in regulation 11

Māori right holder means a right holder who informs the collection agency that they are a Māori right holder

Pacific right holder means a right holder who informs the collection agency that they are a Pacific right holder.

4 Transitional, savings, and related provisions

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

Part 2 Administration of resale royalty payments

5 Minimum value of qualifying resale

For the purposes of section 9(1)(b) of the Act, the amount is \$2,000.

6 Additional information about qualifying resales to be provided to collection agency

For the purposes of section 21(2)(f) of the Act, each person must ensure that the following information is provided to the collection agency:

- (a) the date on which the qualifying resale is completed:
- (b) the earliest date on which a person liable under section 17 of the Act to pay the resale royalty becomes aware that they are liable to pay the resale royalty, if known.

7 How information about qualifying resales must be provided to collection agency

For the purposes of section 21(3) of the Act, the information must be provided—

- (a) in writing; and

- (b) within 60 working days after the date on which the qualifying resale is completed.

8 When resale royalties must be paid to collection agency

- (1) This regulation applies for the purposes of section 17(4) of the Act.
- (2) Payment of the resale royalty must be made to the collection agency within 60 working days after the later of the following:
 - (a) the date on which the qualifying resale is completed;
 - (b) the earliest date on which a person liable under section 17 of the Act to pay the resale royalty becomes aware that they are liable to pay the resale royalty.

9 Percentage of resale royalty that collection agency is entitled to retain

For the purposes of section 20(2) of the Act, the percentage is 20%.

10 How resale royalty payments must be made to right holders

- (1) This regulation applies for the purposes of section 18(5) of the Act.
- (2) The collection agency must pay the total amount of the resale royalty, less the percentage the collection agency is entitled to retain (*see* section 20 of the Act), to the right holder in a timely manner.
- (3) However, subclause (2) does not apply if, despite the collection agency's best endeavours, the collection agency cannot find the right holder.

11 Period after which liability of collection agency to pay resale royalty is discharged

For the purposes of section 18(3)(b) of the Act, the period is 6 years from the date on which the total amount of the resale royalty is paid to the collection agency.

12 Process for declining resale royalty payment

For the purposes of section 19(1) of the Act, a right holder may decline to receive a payment under section 19(1)(a) or (b) of the Act by giving written notice to the collection agency.

13 Process for opting to receive payment of resale royalty on future resales of artworks previously declined

For the purposes of section 19(3) of the Act, a right holder may opt to receive payment of a resale royalty on future resales of any or all of the artworks previously declined under section 19(1)(b) of the Act by giving written notice to the collection agency.

14 How declined and unclaimed resale royalties must be used

- (1) This regulation specifies what the collection agency must do with an amount of resale royalty that is declined under section 19(1) of the Act or not paid to the right holder despite the collection agency's best endeavours (*see* section 18(3)(b) of the Act).
- (2) The collection agency must—
 - (a) transfer the amount to a cultural fund; or
 - (b) if there is no cultural fund, return the amount to the person who paid the resale royalty under section 17 of the Act; or
 - (c) if there is no cultural fund and the person who paid the resale royalty cannot be found, use the amount to fund the activities of the collection agency under the Act.

15 Collection agency may establish and operate cultural fund

- (1) The collection agency may establish and operate a cultural fund for the purpose of supporting the career sustainability of visual artists.
- (2) The collection agency must determine—
 - (a) how the fund must be used to support the career sustainability of visual artists; and
 - (b) the structure of the fund.
- (3) Before determining how the fund must be used and the structure of the fund, the collection agency must, as far as practicable, engage with the following persons:
 - (a) right holders:
 - (b) art market professionals:
 - (c) publicly funded art galleries:
 - (d) publicly funded museums, libraries, and archives that collect and display artworks:
 - (e) any other person that the collection agency considers is reasonably likely to have an interest in how the fund must be used or the structure of the fund.

16 Process for notifying collection agency of unpaid resale royalty

- (1) This regulation specifies the process for a person to notify the collection agency that they have a right to be paid a resale royalty that has not yet been paid to them.
- (2) The person may, within 6 years after the date on which the relevant resale is completed, give written notice to the collection agency that they have a right to be paid a resale royalty that has not yet been paid to them.
- (3) The notice must be accompanied by the following information:

- (a) evidence that the person is the right holder:
- (b) evidence that the relevant resale is a qualifying resale:
- (c) the names of the persons liable under section 17 of the Act to pay the resale royalty, if known.

Part 3

Collection agency

Subpart 1—Appointment of collection agency

17 Matters that Minister must be satisfied of before appointing collection agency

- (1) This regulation applies for the purposes of section 22(3)(b) of the Act.
- (2) Before appointing a person as the collection agency, the Minister must be satisfied that the appointee has the appropriate knowledge, skills, and experience to carry out the functions and duties of the collection agency in a way that—
 - (a) acknowledges and respects the role of Māori as tangata whenua and provides culturally appropriate support to Māori artists; and
 - (b) is inclusive of, and recognises the different needs of, all peoples in New Zealand.

Subpart 2—Rules of operation of collection agency

18 Rules of operation of collection agency

This subpart specifies the rules of operation of the collection agency for the purposes of section 24(3) of the Act.

19 Collection agency must establish certain policies and processes

- (1) The collection agency must—
 - (a) establish a policy for collecting and distributing resale royalties that includes the following matters:
 - (i) how resale royalties will be collected and distributed, including the time frame within which a resale royalty will be paid to the right holder or the equivalent of the collection agency in a reciprocating country;
 - (ii) how a resale royalty will be held before being paid to the right holder or the equivalent of the collection agency in a reciprocating country;
 - (iii) the collection agency’s privacy policy, to the extent that it relates to the functions and duties of the collection agency under the Act; and

- (b) have a complaints process for dealing with complaints relating to the agency's functions and duties under the Act.
- (2) The collection agency must ensure that the information specified in subclause (1) is publicly available.

20 Collection agency must engage with Māori on certain matters

The collection agency must engage with Māori in relation to the following matters:

- (a) any change that the collection agency proposes to make to the way in which it carries out its functions or duties under the Act that will, or is reasonably likely to, affect 1 or more of the persons specified in regulation 21(1)(a) to (e):
- (b) if a cultural fund is established,—
 - (i) how the fund must be used to support the career sustainability of visual artists:
 - (ii) the structure of the fund:
 - (iii) a review of the fund under regulation 23.

21 Collection agency must seek feedback from affected persons before making changes

- (1) This regulation applies if the collection agency proposes to make a change to the way in which it carries out its functions or duties under the Act that will, or is reasonably likely to, affect 1 or more of the following persons (**affected persons**):
 - (a) right holders:
 - (b) art market professionals:
 - (c) publicly funded art galleries:
 - (d) publicly funded museums, libraries, and archives that collect and display artworks:
 - (e) any other person that the collection agency considers will be, or is reasonably likely to be, affected by the change.
- (2) The collection agency must,—
 - (a) as far as practicable, seek feedback on the proposed change from the affected persons; and
 - (b) have regard to any feedback received.
- (3) After deciding whether to make the change, the collection agency must, as far as practicable, inform the affected persons of its decision.

22 Collection agency must return money collected that is not resale royalty

If the collection agency collects an amount of money that is not a resale royalty, the collection agency must return the amount to the person who paid it.

23 Collection agency must periodically review use and structure of cultural fund

- (1) This regulation applies if a cultural fund is established.
- (2) The collection agency must periodically review—
 - (a) how the fund is used to support the career sustainability of visual artists; and
 - (b) the structure of the fund.
- (3) The collection agency must, as far as practicable, engage with the following persons in reviewing how the fund is used and the structure of the fund:
 - (a) right holders;
 - (b) art market professionals;
 - (c) publicly funded art galleries;
 - (d) publicly funded museums, libraries, and archives that collect and display artworks;
 - (e) any other person that the collection agency considers is reasonably likely to have an interest in how the fund must be used or the structure of the fund.

24 Collection agency must keep financial records

- (1) The collection agency must, for each financial year, keep financial records that include the collection agency's operating expenses.
- (2) The collection agency must publish the financial records each year.

25 Collection agency must keep records relating to qualifying resales

- (1) The collection agency must, for each financial year, keep records of the following:
 - (a) the total number of qualifying resales that the collection agency was provided with information about under section 21 of the Act;
 - (b) the resale value of each qualifying resale that the collection agency was provided with information about under section 21 of the Act.
- (2) The collection agency must publish the records specified in subclause (1) each year.

26 Collection agency must keep records relating to resale royalties

- (1) The collection agency must, for each financial year, keep records of the following:

Records relating to resale royalties collected by collection agency

- (a) the total number and amount of resale royalties collected by the collection agency:
- (b) the amount of each resale royalty collected by the collection agency:
- (c) the total number of resale royalties that were not paid to the collection agency within the period specified in regulation 8:

Records relating to percentage of resale royalty that collection agency is entitled to retain

- (d) the total amount retained by the collection agency under section 20 of the Act:
- (e) the amount of each percentage of resale royalty retained by the collection agency under section 20 of the Act:

Records relating to resale royalty payments made to right holders

- (f) the total number and amount of resale royalty payments made to right holders:
- (g) the amount of each resale royalty payment made to a right holder:

Records relating to declined resale royalty payments

- (h) the total number and amount of resale royalty payments declined by right holders:
- (i) the amount of each resale royalty payment declined by a right holder:

Records relating to unclaimed resale royalty payments

- (j) the total number and amount of resale royalty payments not paid to right holders on or before the expiry of the liability period:
 - (k) the amount of each resale royalty payment not paid to a right holder on or before the expiry of the liability period.
- (2) The collection agency must also keep records of the matters specified in subclause (1)(f) to (k) for—
- (a) Māori right holders:
 - (b) Pacific right holders.
- (3) The collection agency must publish the records specified in subclauses (1) and (2) each year.

27 Collection agency must keep records relating to cultural fund

- (1) The collection agency must, for each financial year that a cultural fund is established, keep records of the following:
- (a) the total number and amount of resale royalty payments transferred to the cultural fund:

- (b) the amount of each resale royalty payment transferred to the cultural fund:
 - (c) the proportion of resale royalty payments transferred to the cultural fund that were declined by or not paid to—
 - (i) Māori right holders:
 - (ii) Pacific right holders:
 - (d) for each payment made out of the cultural fund,—
 - (i) the amount of the payment:
 - (ii) the name of the person to whom the payment is made:
 - (iii) the purpose for which the payment is made:
 - (e) the total amount of money in the cultural fund as at the end of the financial year.
- (2) The collection agency must publish the records specified in subclause (1) each year.

28 Collection agency must keep other records

- (1) The collection agency must, for each financial year, keep records of the following:
- (a) how the collection agency is engaging with Māori in relation to the matters specified in regulation 20:
 - (b) any enforcement action taken by the collection agency and the outcome of that enforcement action, including whether any enforcement action was taken on behalf of a Māori or Pacific right holder:
 - (c) the total number of complaints received by the collection agency and whether and how those complaints have been resolved:
 - (d) the total number of complaints received by the collection agency from the following right holders and whether and how those complaints have been resolved:
 - (i) Māori right holders:
 - (ii) Pacific right holders.
- (2) The collection agency must publish the records specified in subclause (1) each year.

Subpart 3—Other matters

29 Collection agency may establish and maintain register of right holders

The collection agency may establish and maintain a register of right holders.

30 Information that collection agency must provide to chief executive for monitoring

For the purposes of monitoring under section 25 of the Act, the collection agency must provide the information specified in regulations 24 to 28 to the chief executive of the Ministry.

Schedule 1

Transitional, savings, and related provisions

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Part 1

Provisions relating to these regulations as made

There are no transitional, savings, or related provisions in these regulations as made.

Rachel Hayward,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations but is intended to indicate their general effect.

These regulations, which come into force on 1 December 2024, are made under section 28 of the Resale Right for Visual Artists Act 2023 (the **Act**).

These regulations specify matters that are necessary for the administration of resale royalty payments and the appointment and operation of the collection agency.

Administration of resale royalty payments

Regulation 5 sets the minimum value of a qualifying resale at \$2,000.

Regulation 6 specifies additional information about a qualifying resale that must be provided to the collection agency. The information is as follows:

- the date on which the qualifying resale is completed;
- the earliest date on which a person liable under section 17 of the Act to pay the resale royalty becomes aware that the resale is a qualifying resale, if known.

Regulation 7 specifies how and when information about a qualifying resale must be provided to the collection agency. Information about a qualifying resale must be provided to the collection agency in writing and within 60 working days after the date on which the qualifying resale is completed.

Regulation 8 specifies the time frame within which a resale royalty must be paid to the collection agency. Payment must be made within 60 working days after either the date on which the qualifying resale is completed or the earliest date on which a person liable under section 17 of the Act to pay the resale royalty becomes aware that the resale is a qualifying resale, whichever is later.

Regulation 9 sets the percentage of resale royalties that the collection agency is entitled to retain at 20%.

Regulation 10 specifies how a resale royalty payment must be made to the right holder. The total amount of resale royalty, less the percentage that the collection agency is entitled to retain, must be paid to the right holder in a timely manner. However, that does not apply if the right holder cannot be found.

Regulation 11 specifies when the liability of the collection agency to pay a resale royalty to the right holder is discharged in circumstances where, despite the collection agency's best endeavours, it is unable to pay the resale royalty to the right holder. The liability of the collection agency is discharged on the date that is 6 years from the date on which the total amount of the resale royalty is paid to the collection agency.

Regulation 12 specifies the process for a right holder to decline to receive payment of—

- all or part of a resale royalty;
- a resale royalty on the future resale of any or all of their visual artworks.

Regulation 13 specifies the process for a right holder to opt to receive payment of a resale royalty on future resales of any or all artworks that were previously declined.

The process specified in *regulations 12 and 13* is the same. The process is that the right holder must give written notice to the collection agency.

Regulation 14 specifies what the collection agency must do with an amount of resale royalty that is declined under section 19(1) of the Act or not paid to the right holder despite the collection agency's best endeavours. If a cultural fund has been established under *regulation 15 (cultural fund)*, the collection agency must transfer the amount to the cultural fund. If there is no cultural fund, the collection agency must return the amount to the person who paid it. If there is no cultural fund and that person cannot be found, the collection agency must use the amount to fund its activities under the Act.

Regulation 16 specifies the process for a right holder to notify the collection agency that they have a right to be paid a resale royalty that has not yet been paid to them. The process is as follows:

- the right holder may, within 6 years after the date on which the resale is completed, give written notice to the collection agency that they have a right to be paid a resale royalty that has not been paid to them;
- when giving notice, the right holder must provide the collection agency with the information listed in *regulation 16(3)*.

Appointment of collection agency

Regulation 17 specifies an additional matter for the purposes of section 22(3)(b) of the Act that the Minister for Arts, Culture and Heritage must be satisfied of before appointing a person as the collection agency. The Minister must be satisfied that the appointee has the appropriate knowledge, skills, and experience to carry out the functions and duties of the collection agency in a way that—

- acknowledges and respects the role of Māori as tangata whenua and provides culturally appropriate support to Māori artists; and
- is inclusive of, and recognises the different needs of, all peoples in New Zealand.

Operation of collection agency

Regulations 19 to 28 specify the rules of operation of the collection agency. The rules of operation include the following:

- the collection agency must establish certain policies and procedures, including a policy for collecting and distributing resale royalties and a complaints process (*see regulation 19*):
- the collection agency must engage with Māori in relation to certain matters, including in relation to how the cultural fund, if established, must be used to support the career sustainability of visual artists (*see regulation 20*) (to avoid doubt, the collection agency is not required to engage with Māori in relation to each payment made out of the cultural fund):
- if the collection agency collects an amount of money that is not a resale royalty, the collection agency must return the amount to the person who paid it (*see regulation 22*):
- if a cultural fund is established, the collection agency must periodically review how the fund is used to support the career sustainability of visual artists and the structure of the cultural fund (*see regulation 23*):
- the collection agency must keep certain records relating to resale royalties for each financial year, such as the amount of each resale royalty that it collects (*see regulation 26*):
- the collection agency must keep other records for each financial year, such as the total number of complaints received by the collection agency and whether and how those complaints have been resolved (*see regulation 28*).

Regulation 29 enables the collection agency to establish and maintain a register of right holders.

Regulation 30 specifies the information that the collection agency must provide to the chief executive of the Ministry for Culture and Heritage for the purpose of monitoring under section 25 of the Act. The collection agency must provide the chief executive with the records that it is required to keep under *regulations 24 to 28*.

Regulatory impact statement

The Ministry for Culture and Heritage produced a regulatory impact statement on 10 August 2023 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- <https://mch.govt.nz/sites/default/files/2023-11/Final-policy-decisions-resale-right-visual-artists-supporting-regulations.pdf>
- <https://treasury.govt.nz/publications/informationreleases/ris>

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These regulations are administered by the Ministry for Culture and Heritage.