

# House of Representatives

# Supplementary Order Paper

**Tuesday, 22 August 2023**

## **Resale Right for Visual Artists Bill**

### *Proposed amendments*

Hon Carmel Sepuloni, in Committee, to move the following amendments:

#### *Clause 4*

In *clause 4*, definition of **expiry date**, replace “**15**” (page 3, line 13) with “**15(2)**”.

#### *Clause 8(2)*

In *clause 8(2)(a)(iv)*, delete “a” (page 5, line 13).

In *clause 8(2)(a)(v)*, delete “a” (page 5, line 15).

In *clause 8(2)(b)(iii)*, replace “any of **paragraph (a)(i), (ii), or (iv) to (ix)**” (page 5, line 27) with “**paragraph (a)(i) to (ix)**”.

#### *Clause 15(2)(b)*

In *clause 15(2)(b)*, replace “by the collaboration of” (page 9, line 8) with “jointly by”.

#### *Clause 18(3)*

Replace *clause 18(3)* (page 10, lines 3 to 8) with:

- (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.

*Clause 19*

Replace *clause 19(1)* (page 10, lines 22 and 23) with:

- (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.

After *clause 19(2)* (page 10, after line 26), insert:

- (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)**.

*Clause 20(3)*

In *clause 20(3)*, delete “for the purpose of **subsection (2)**” (page 11, lines 4 and 5).

*Clause 21*

In *clause 21(1)*, replace “parties to” (page 11, line 8) with “persons involved in”.

In *clause 21(1)(a)(i)*, replace “a party to” (page 11, line 11) with “involved in”.

In *clause 21(1)(a)(ii)*, replace “parties to” (page 11, line 12) with “persons involved in”.

In *clause 21(1)(a)(ii)*, replace “art gallery or museum” (page 11, line 13) with “art gallery, museum, library, or archive”.

In *clause 21(1)(a)(ii)*, replace “a party to” (page 11, line 14) with “involved in”.

In *clause 21(2)*, replace “party” (page 11, line 18) with “person”.

*Clause 22(4)*

Replace *clause 22(4)* (page 12, line 8) with:

- (4) The collection agency holds office for the term specified in the notice, unless the appointment is earlier revoked (*see* **section 22A**).

*New clause 22A*

After *clause 22* (page 12, after line 20), insert:

**22A 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)**.

*Clause 27(1)*

In *clause 27(1)(ab)*, replace “because they cannot be found” (page 14, line 8) with “despite the collection agency’s best endeavours (*see section 18(3)(b)*)”.

After *clause 27(1)(ab)* (page 14, after line 14), insert:

- (ac) 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:
- (ad) specifying the information that the collection agency must provide to the chief executive of the Ministry for the purpose of monitoring under **section 24**:

*Schedule 1*

In *Schedule 1, clause 4*, delete “that specify the percentage” (page 16, lines 5 and 6).

### Explanatory note

This Supplementary Order Paper, which amends the Resale Right for Visual Artists Bill, proposes changes in relation to the definition of original visual artwork, the discharge of the collection agency’s liability to pay a resale royalty to the right holder, a right holder’s ability to decline resale royalties, the revocation of the collection agency, and the purposes for which regulations may be made and makes other minor and technical drafting amendments.

The main amendments are—

- the change to *clause 8(2)(b)(iii)*, which enables compilations that include visual work that is an ethnic or cultural variation of a type of work described in

*clause 8(2)(a)(iv) to (ix)* to be considered visual artwork for the purposes of this Act:

- the change to *clause 18(3)*, which adds an ability for regulations to specify a period after which, if a resale royalty remains unpaid despite the collection agency's best endeavours (for example, because the right holder cannot be identified or contacted), the liability of the collection agency to pay the resale royalty is discharged:
- the change to *clause 19(1)*, which adds an ability for a right holder to decline to receive payment of all resale royalties that might arise on future resales of their visual artworks. A right holder can choose to decline to receive a resale royalty on the future resale of certain visual artworks or all of their visual artworks:
- the insertion of *new clause 19(3)*, which enables a right holder to choose to receive payment of a resale royalty on future resales of any or all of the artworks that were previously declined under *clause 19(1)(b)*:
- the insertion of *new clause 22A*, which enables the Minister to revoke the appointment of the collection agency if requested to do so by the collection agency or 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. The Minister must give the collection agency reasonable notice if revoking its appointment for failure to comply or unsatisfactory performance:
- the changes to *clause 27(1)*, which enable regulations to be made for the following purposes:
  - 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:
  - specifying the information that the collection agency must provide to the chief executive of the Ministry for the purpose of monitoring.

### **Departmental disclosure statement**

The Ministry for Culture and Heritage considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.