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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

The Artist's Resale Rights Bill 2006

(Mr McMullan)

**A Bill for an Act to amend the *Copyright Act 1968*
to provide for resale royalties for visual artists.**

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**A Bill for an Act to amend the *Copyright Act 1968*
to provide for royalties for visual artists.**

The Parliament of Australia enacts:

[^]1 Short title

This Act may be cited as the *Artist's Resale Rights Bill 2006*.

[^]2 Commencement

This Act commences on the day on which it receives the Royal Assent.

1

2 **3 Schedule(s)**

3 Each Act that is specified in a Schedule to this Act is amended or
4 repealed as set out in the applicable items in the Schedule
5 concerned, and any other item in a Schedule to this Act has effect
6 according to its terms.

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Schedule 1 — Amendments to the *Copyright Act 1968*

1 After Part XIA

Insert

Part XIB

248W Interpretation

In this Part

“*author*”, in relation to a work, means the person who creates it;

“*collecting society*” has the meaning given in subsection 248AI (5);

“*contract date*”, in relation to a sale, means the time at which the contract of sale was made;

“*qualifying body*” has the meaning given in subsection 248AB (4);

“*qualifying individual*” has the meaning given in subsection 248AE (3);

“*resale*” is to be construed in accordance with section 248AG;

“*resale right*” has the meaning given in section 248X (and, unless the context otherwise requires, includes a share in resale right);

“*resale royalty*” has the meaning given in section 248X;

“*sale price*” has the meaning given in subsection 248X (4);

“*work*” has the meaning given in section 248Y; and

“*work of joint authorship*” has the meaning given in subsection 248Z (4).

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2 **248X Artist's resale right**

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(1) The author of a work in which copyright subsists shall, in accordance with this Part, have a right ("resale right") to a royalty on any sale of the work which is a resale subsequent to the first transfer of ownership by the author ("resale royalty").

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(2) Resale right in a work shall continue to subsist so long as copyright subsists in the work.

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(3) The royalty shall be an amount based on the sale price which is calculated in accordance with the following table. The resale royalty payable on the sale of a work will be the sum of the following amounts, being percentage amounts of consecutive portions of the sale price.

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Portion of the sale price:	Percentage
From 0 to \$100,000	4%
From \$100,000.01 to \$400,000	3%
From \$400,000.01 to \$700,000	1%
From \$700,000.01 to \$1,000,000	0.5%
Exceeding \$1,000,000	0.25%

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(4) The total amount of royalty payable on the sale shall not exceed \$25,000.

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(5) The sale price is the price obtained for the sale, net of the tax payable on the sale.

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(6) For the purposes of subsection (1), "transfer of ownership by the author" includes in particular –

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(a) transmission of the work from the author by testamentary disposition, or in accordance with the rules of intestate succession;

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(b) disposal of the work by the author's personal representatives for the purposes of the administration of his estate; and

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- 1 (c) disposal of the work by an official receiver or a trustee in
2 bankruptcy, for the purposes of the realisation of the author's
3 estate.

4 **248Y Works covered**

- 5 (1) For the purposes of this Part, "work" means any work of graphic or
6 plastic art such as a picture, a collage, a painting, a drawing, an
7 engraving, a print, a lithograph, a sculpture, a tapestry, a ceramic,
8 an item of glassware or a photograph.
- 9 (2) However, a copy of a work is not to be regarded as a work unless
10 the copy is one of a limited number which have been made by the
11 author or under his authority.

12 **248Z Joint authorship**

- 13 (1) In the case of a work of joint authorship, the resale right shall
14 belong to the authors as owners in common.
- 15 (2) The right shall be held in equal shares or in such other shares as
16 may be agreed.
- 17 (3) Such an agreement must be in writing signed by or on behalf of
18 each party to the agreement.
- 19 (4) "Work of joint authorship" means a work created by two or more
20 authors.

21 **248AA Proof of authorship**

- 22 (1) Where a name purporting to be that of the author appeared on the
23 work when it was made, the person whose name appeared shall,
24 unless the contrary is proved, be presumed to be the author of the
25 work.
- 26 (2) In the case of a work alleged to be a work of joint authorship,
27 subsection (1) applies in relation to each person alleged to be one
28 of the authors.

1 **248AB Assignment etc.**

- 2 (1) Resale right is not assignable.
- 3 (2) Any charge on a resale right is void.
- 4 (3) Subsection (1) does not prevent the transfer of a resale right which
5 was transmitted to a qualifying body under section 248AD (or is
6 deemed to have been so transmitted under section 248AL),
7 provided that the transfer is to another qualifying body.
- 8 (4) A qualifying body is a body which —
9 (a) is a charitable institution as recognised by the Australian
10 Taxation Office; or;
11 (b) is a foreign charity, and has its central administration in a
12 state or a country designated in regulations made by the
13 relevant Minister as states or countries with reciprocal rights
14 for resale royalties.
- 15 (5) in subsection (4) “foreign charity” means a body which is
16 established outside Australia for purposes similar to those for
17 which a body within paragraph 4(a) may be established, and which
18 is subject to similar rules regarding the distribution and application
19 of its assets.

20 **248AC Waiver etc.**

- 21 (1) A waiver of a resale right shall have no effect.
- 22 (2) An agreement to share or repay resale royalties shall be void.
- 23 (3) Subsection (2) does not affect any agreement made for the
24 purposes of the management of resale right in accordance with
25 section B.

26 **248AD Persons entitled on succession**

- 27 (1) Subject to section 11, resale right in respect of a work is
28 transmissible as personal or moveable property by testamentary
29 disposition or in accordance with the rules of intestate succession;
30 and it may be further so transmitted by any person into whose
31 hands it passes.

- 1 (2) Resale right may be so transmitted only to —
2 (a) a natural person; or
3 (b) a qualifying body.
- 4 (3) Where a resale right is transmitted to more than one person, it shall
5 belong to them as owners in common.

6 **248AE Requirements as to nationality etc.**

- 7 (1) Resale right may be exercised in respect of a sale only by a person
8 who, at the contract date, is —
9 (a) a qualifying individual; or
10 (b) a qualifying body.
- 11 (2) Resale right may be transmitted under section 248AD only by a
12 person who, at the time of his death, is a qualifying individual.
- 13 (3) A qualifying individual is a natural person who is an Australian
14 citizen or a national of a state or a country designated in
15 regulations made by the relevant Minister as states or countries
16 with reciprocal rights for resale royalties.
- 17 (4) Resale right may vest by operation of law in —
18 (a) a personal representative of a deceased person; or
19 (b) an official receiver or a trustee in bankruptcy.
- 20 and nothing in this regulation prevents a resale right from being
21 exercised by any person acting in that capacity.

22 **248AF Trusts**

- 23 Nothing in sections 248AB, 248AD or 248AE prevents a resale
24 right from being—
25 (a) held, and exercised in respect of a sale, by any person acting
26 as trustee for the person who would otherwise be entitled to
27 exercise the right (“the beneficiary”); or
28 (b) transferred to such a trustee, or from the trustee to the
29 beneficiary.

1 **248AG “Resale”**

- 2 (1) The sale of a work may be regarded as a resale notwithstanding
3 that the first transfer of ownership was not made for a money (or
4 any) consideration.
- 5 (2) The sale of a work may be regarded as a resale only if the
6 conditions mentioned in subsection (3) are satisfied in respect of
7 that sale.
- 8 (3) The conditions are that —
9 (a) the buyer or the seller, or (where the sale takes place through
10 an agent) the agent of the buyer or the seller, is acting in the
11 course of a business of dealing in works of art; and
12 (b) the sale price is not less than \$2000.
- 13 (4) The sale of a work is not to be regarded as a resale if —
14 (a) the seller previously acquired the work directly from the
15 author less than three years before the sale; and
16 (b) the sale price does not exceed \$20,000.

17 **248AH Liability to pay resale royalty**

- 18 (1) The following shall be jointly and severally liable to pay the resale
19 royalty due in respect of a sale —
20 (a) the seller; and
21 (b) the relevant person (within the meaning of subsection (2)).
- 22 (2) The relevant person is a person who satisfies the condition
23 mentioned in paragraph 248AG (3)(a) and who is —
24 (a) the agent of the seller; or
25 (b) where there is no such agent, the agent of the buyer; or
26 (c) where there are no such agents, the buyer.
- 27 (3) Liability shall arise on the completion of the sale; however, a
28 person who is liable may withhold payment until evidence of
29 entitlement to be paid the royalty is produced.
- 30 (4) Any liability to pay resale royalty in respect of a resale right which
31 belongs to two or more persons as owners in common is

1 discharged by a payment of the total amount of royalty to one of
2 those persons.

3 **248AI Collective management**

4 (1) Resale right may be exercised only through a collecting society.

5 (2) Where the holder of the resale right has not transferred the
6 management of his right to a collecting society, the collecting
7 society which manages copyright on behalf of artists shall be
8 deemed to be mandated to manage his right.

9 (3) Where there is more than one such collecting society, the holder
10 may choose which of them is so mandated.

11 (4) A holder to whom subsection (2) applies has the same rights and
12 obligations in respect of the management of his right, as have
13 holders who have transferred the management of their right to the
14 collecting society concerned.

15 (5) For those purposes —

16 (a) “collecting society” means a society or other organisation
17 which has as its main object, or one of its main objects, the
18 administration of rights on behalf of more than one artist; and

19 (b) the management of resale right is the collection of resale
20 royalty on behalf of the holder of the right in return for a
21 fixed fee or a percentage of the royalty.

22 **248AJ Assistance to new and emerging artists**

23 (1) Where the sale price of a work regarded as a resale exceeds
24 \$50000, ten percent of the resale royalty shall be paid by the
25 collecting society into an Artists Support Fund administered by the
26 Australia Council.

27 (2) The Australia Council shall disperse monies from the Artists
28 Support Fund to new and emerging artists.

1 **248AK Right to information**

- 2 (1) A holder of resale right in respect of a sale, or a person acting on
3 his behalf, shall have the right to obtain information by making a
4 request under this regulation.
- 5 (2) Such a request —
- 6 (a) may be made to any person who (in relation to that sale)
7 satisfies the condition mentioned in subsection 248AG (3)(a);
8 but
9 (b) must be made within three years of the sale to which it
10 relates.
- 11 (3) The information that may be so requested is any that may be
12 necessary in order to secure payment of the resale royalty, and in
13 particular to ascertain —
- 14 (a) the amount of royalty that is due; and
15 (b) where the royalty is not paid by the person to whom the
16 request is made, the name and address of any person who is
17 liable.
- 18 (4) The person to whom the request is made shall do everything within
19 his power to supply the information requested within 90 days of
20 the receipt of the request.
- 21 (5) If that information is not supplied within the period mentioned in
22 paragraph (4), the person making the request may, in accordance
23 with rules of court, apply to a local court for an order requiring the
24 person to whom the request is made to supply the information.
- 25 (6) Information obtained under this regulation shall be treated as
26 confidential.

27 **248AL Transitional provisions**

- 28 (1) This Act —
- 29 (a) does not apply to sales where the contract date preceded the
30 commencement of the Act; but
31 (b) applies notwithstanding that the work sold was made before
32 that commencement.

- 1 (2) Where the author of a work (or a person to whom the resale right in
2 that work is deemed to have been transmitted under this section)
3 died before the commencement of this Act and was at the time of
4 his death a qualifying individual—
5 (a) if he was the owner of the copyright in the work immediately
6 before his death, and on his death a qualifying person became
7 beneficially entitled to that copyright (or to part of it), the
8 resale right in the work shall be deemed to have been
9 transmitted to that person;
10 (b) if he was the owner of the work (but not the copyright in it)
11 immediately before his death, and on his death a qualifying
12 person became beneficially entitled to the work, the resale
13 right shall be deemed to have been transmitted to that person;
14 (c) otherwise, the resale right shall be deemed to have been
15 transmitted to the qualifying persons who were beneficially
16 entitled to the residue of his personal estate.
- 17 (3) Where the author of the work was one of a number of joint authors,
18 the right deemed to have been transmitted by the author under this
19 regulation is one of that number of equal shares in the resale right.
- 20 (4) Where a resale right is deemed to have been transmitted to more
21 than one person under paragraph (2)(a), (b) or (c), the resale right
22 shall be deemed to have been transmitted to them in equal shares as
23 owners in common.
- 24 (5) In this section, “qualifying person” means a person to whom a
25 resale right may be transmitted under subsections 248AD(2) and
26 (3).

27 **248AM Review of resale right provisions**

- 28 (1) The provisions of this Act should be reviewed within five years of
29 the commencement of the Act.
- 30 (2) The review, to be initiated by the relevant Minister should
31 examine -
32 (a) who is benefiting from the resale royalties;
33 (b) how efficiently the resale royalty arrangement is working;
34 and

Section ^2

1 (c) whether the resale royalty arrangement is undermining the art
2 market.

3 (3) The review should be tabled in both Houses of Parliament within
4 five years of the commencement of this Act

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