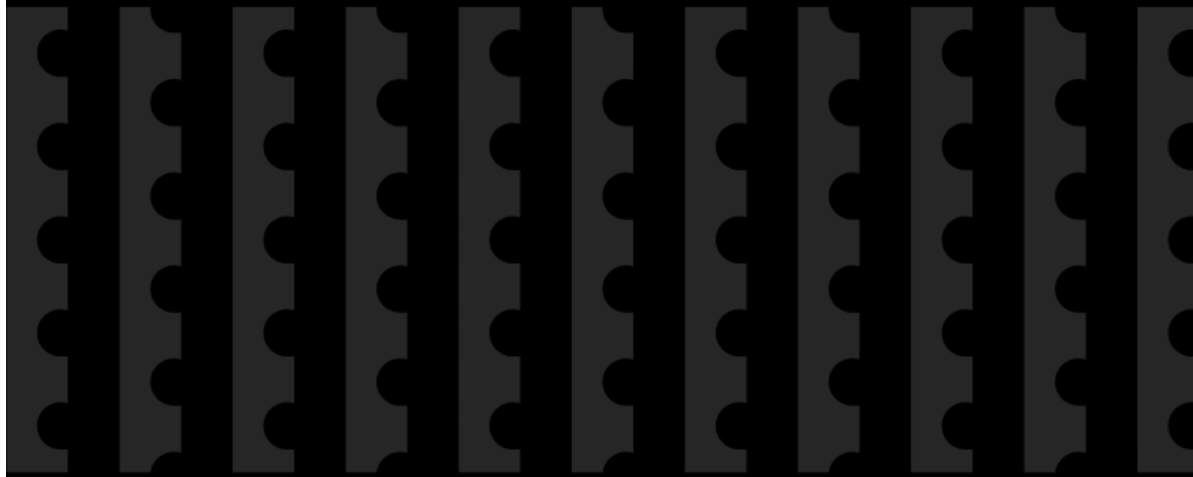




Resale Royalties
Aotearoa
Toi Huarau

Artist Resale Royalty Guide for GLAM

**Publicly funded Galleries,
Libraries, Archives and
Museums**



Artist Resale Royalty Scheme: Information for publicly funded Galleries, Libraries, Archives and Museums (GLAM)

October 2024

Disclaimer: This information sheet is for guidance only. This is not legal advice.

About this Guide

This Guide explains how the Artist Resale Royalty scheme is administered, including when a resale royalty is payable (see **Appendix 1** for a checklist), how **RRA** will collect & distribute the resale royalties, and what obligations **GLAM** have.

For a visual flowchart of when a Resale Royalty is Payable please refer to Appendix 1.

For checklist definitions of key terms like “qualifying resale” please refer to Appendix 1.

For general guidance and frequently asked questions, read on.

About the Artists’ Resale Royalty scheme

The Minister for Arts Culture and Heritage has appointed Copyright Licensing New Zealand (**CLNZ**) as the collection agency for the purposes of the Artist Resale Royalty Scheme.

Resale Royalties Aotearoa Toi Huarau (**RRA**) is a wholly owned not-for-profit subsidiary of CLNZ. It will administer the scheme in accordance with the Resale Right for Visual Artists Act 2023 (**the Act**), its regulations.

Under the scheme, from 1 December 2024:

- **Resale Royalties are payable:** An “**eligible artist**” has a right to be paid a 5% resale royalty each time there is a “**qualifying resale**” of an “**original visual artwork**” by that artist (see Appendix 1 for definitions of these terms)
- **GLAM have certain obligations:** **RRA** will provide resources and support to help **GLAM** understand and comply with the scheme, and which are explained more in Part 2 below.

Part 1: How does the scheme affect GLAM?

Who is GLAM?

GLAM includes publicly funded Galleries, Libraries, Archives and Museums.

GLAM does not include Universities or other publicly funded tertiary institutions.

Who is an Art Market Professional?

The Act defines “Art Market Professionals” in section 11 as:

- (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.

1. **GLAM** are **not** Art Market Professionals (**AMPs**).
2. However, resales involving **GLAM** do fall within the Scheme. If any **GLAM** is involved in a resale of **original visual artwork** it may still count as a “**professional resale**” (and therefore a “**qualifying resale**”). (See [Step 1 in Appendix 1](#) to learn what a **qualifying resale** is).
3. Generally, **GLAM** are only required to report to **RRA** on qualifying resales when there are no **AMP** involved in the **Qualifying Resale**. In that event, then **GLAM** may be responsible for reporting information about the resale to **RRA** as well as paying some or all of the **Royalty**.

Reporting and Payment Obligations

Which party is required to pay the royalty?

[\(section 17, the Act\)](#)

The following persons are jointly and severally liable to pay the 5% resale royalty to RRA:

- The seller, and either
 - the agent acting for the seller on the resale (usually the **AMP**); or
 - if the seller does not have an agent, the agent acting for the buyer on the resale; or
 - if there are no agents, the buyer.

Some examples:

Public Art Gallery X (PAGX) needs to sell one of the artworks in their collection to raise some much-needed funds. The following situations outline the different obligations to report and pay the **Royalty** to **RRA**:

1. PAGX sells artwork through one of leading Auction Houses, who is an **AMP**, to a private collector. In this case PAGX as the seller and the **AMP** as their agent are jointly responsible for paying the royalty, and **AMP** is responsible for reporting the sale.
2. PAGX sells artwork to a private dealer gallery, who again is an **AMP**. In this case PAGX as the seller and the **AMP** as the buyer are jointly responsible for paying the royalty, and the **AMP** is responsible for reporting the sale.

3. PAGX sells artwork to TePapa- another GLAM but not an AMP, and there are no dealers or agents involved. In that case both PAGX as the seller and TePapa as the buyer are jointly and severally liable to pay the **Royalty** and either PAGX or TePapa as the **GLAM** would be responsible for reporting the **Qualifying Resale** to **RRA**.
4. PAGX buys an artwork on TradeMe from a private collector. Again, there are not **AMP's** involved and no agents so because PAGX is a **GLAM**, PAGX is required to report the **Qualifying Resale** to **RRA**, and both PAGX as the seller and the private collector as the buyer are jointly and severally liable to pay the **Royalty** to **RRA**.
5. PAGX buys an artwork from a private collector through an art consultant who is acting as agent for the private collector. In this case the private collector as the seller and the art consultant (who is an **AMP**) as their agent are jointly responsible for paying the **Royalty**, and the art consultant as an **AMP** is responsible for reporting the **Qualifying Resale**.
6. PAGX buys an artwork from a private collector through an art consultant who is acting as agent for PAGX. In this case the private collector seller and the art consultant as agent for PAGX as buyer are jointly and severally liable for paying the **Royalty**, and the art consultant as the **AMP** is responsible for reporting the **Qualifying Resale**.

When is the Artist Resale Royalty payable to Resale Royalties Aotearoa?

The **Royalty** is payable to **RRA** within 60 working days after the later of either:

1. the completion of the qualifying resale (or)
2. on the earliest date on which person(s) liable for payment becomes aware of liability.

When is the royalty distributed from Resale Royalties Aotearoa to the visual artist?

Once **RRA** has received the total royalty payment from the liable person(s) we are legally required to use best endeavours to distribute the royalty to the eligible artists or their successors in a timely manner as provided for in the Act. (provided the right holder can be found). We distribute 80% of the royalty collected to the eligible right holder and retain 20% of the royalty for the purpose of funding **RRA's** operations under the Scheme.

What about GST?

The current guidance from IRD:

- The resale payment is exempt from GST when the art professional (for example an art dealer or gallery) passes it to the collection agency.
- The collection agency does not need to pay GST on the percentage of the resale payment that it keeps.
- The resale payment must include GST when the collection agency passes it to the artist, if the artist is registered for GST.

Full IRD Guidance is published here: [Resale payments for artists \(ird.govt.nz\)](https://ird.govt.nz)

Reporting

([section 21](#), the Act)

Where an **AMP** is involved in a Qualifying Resale then they will be required to report the required information to RRA. However in instances where no **AMP** is involved, if a **GLAM** is involved as either a seller or buyer in a Qualifying Resale, then they will be required to provide the following information to **RRA**:

1. The name of the **original visual artwork** (if known).
2. A brief description of the **original visual artwork**.
3. The **resale value**
4. The date of the **Qualifying Resale**
5. The name of the Seller
6. The name of the Buyer
7. The name and contact details of the persons liable for paying the **Royalty**.

Please note that names and contact details are not reported to the Ministry or the Government for monitoring. This information is collected by **RRA** for the purpose of performing its royalty collection and distribution functions under the **Act**. All information collected is subject to our **Privacy Policy** (available on our website).

The **ARR Qualifying Resale** Submission form is available to download [here](#)

What is the process for reporting?

If you think you may have legal obligations to report information about qualifying resales to **RRA** (see above) then please register with **RRA**. This is to ensure we have current contact details for you and can assist you to fulfil your obligations under the **Act** to report qualifying resales.

To register:

1. Go to www.resaleroyalties.co.nz
2. Select the 'Register' button, complete the form with your contact details and register. Prior to 1 December 2024, we will supply you with an account and login credentials.
3. Once the scheme is operational, you will be able to make reports by uploading a document (such as an excel spreadsheet) with the necessary information about each qualifying resale. An example template is available to download [here](#).

What is the timeframe for reporting?

This information must be provided in writing and within 60 working days after the date on which the **Qualifying Resale** is completed.

Part 2: How will RRA engage with GLAM?

Support Services

We offer **support services** to assist **GLAM** to comply with the **Act**. This includes :

- **an email support service:** to assist **GLAM** identify qualifying resales, including advice about artist and right holder eligibility. Please email our support service at kiaora@resaleroyalties.co.nz. Query response time will aim to be within 3 working days in the case of New Zealand based eligible artists, and 10 working days for eligible artists based in a reciprocating country.
- **quick reference tools:**
 - for a visual flowchart of when a **Royalty** is Payable (see Appendix 1).
 - for checklist definitions of important terms like “**qualifying resale**” (see Appendix 1).

Collecting & Distributing Royalties

RRA will:

- receive and verify reporting from respective **GLAM** of their qualifying resales;
- confirm and calculate the applicable resale royalty, and invoice respective **GLAM** organisations;
- receive invoiced payment from respective **GLAM** organisations;
- verify **eligible artist(s)** or their successor(s) and distribute **Royalty** payments in accordance with the **Act**.

RRA policy on non-compliance

(sections 26 & 27, the Act)

If a liable person fails to pay an **Royalty**, or fails to provide the required reporting information, or if any other requirement of the **Act** is not complied with, then the **Act** provides that **RRA** may apply to a court for orders enforcing these obligations, and for any other order that is appropriate for an infringement of a property right. The **Act** provides that this does not limit any other proceeding that may otherwise be taken by the Collection Agency, a right holder, or any other person affected. Nor does it limit any other power of the court.

Resale Royalties Aotearoa Toi Huarau appreciates your cooperation, and we look forward to working with you.

Key Terminology

What is a “qualifying resale” of an original visual artwork?

- See **Checklist 1**, in Appendix 1.

Which “original visual artworks” are included in the scheme?

- See **Checklist 2**, in Appendix 1.

What does “resale value” mean in relation to the scheme?

([section 10](#), the Act)

- It means “*the value of the consideration given for the visual artwork under the contract for resale*”. *
This may include:
 - the amount **paid** in New Zealand dollars;
 - the value of **goods and/or services paid in kind**;
 - (if paid in another currency), the amount converted to NZD at the date of payment.
- It does not include goods and services tax (GST), or duties or taxes etc under the Customs and Excise Act 2018, or any costs associated with the resale (e.g. a commission or a buyer’s premium)

Who is an “eligible artist”?

- See **Checklist 3**, in Appendix 1.

Deceased eligible artists:

- Note that an eligible artist can’t “alienate” (e.g. sell or transfer) their resale right during their lifetime.
- After an eligible artist’s death, the resale right passes to their successor(s) (meaning that the successor(s) are entitled to payment of the royalty (provided they meet the same criteria for eligibility)).

How long does the resale right last?

- Resale rights do expire. This means that a resale royalty will only be payable if the contract for resale was entered into on or before the **expiry date**:
 - The resale right period **begins** when the original artwork is created. It **expires** 50 years after the end of the calendar year in which the artist dies. (If the artwork is created jointly by 2 or more artists, the right expires 50 years after the end of the calendar year in which the last of those artists dies).
- See **Checklist 4**, in Appendix 1, for an expiry date checklist.

More information

Additional information is available from www.resaleroyalties.co.nz

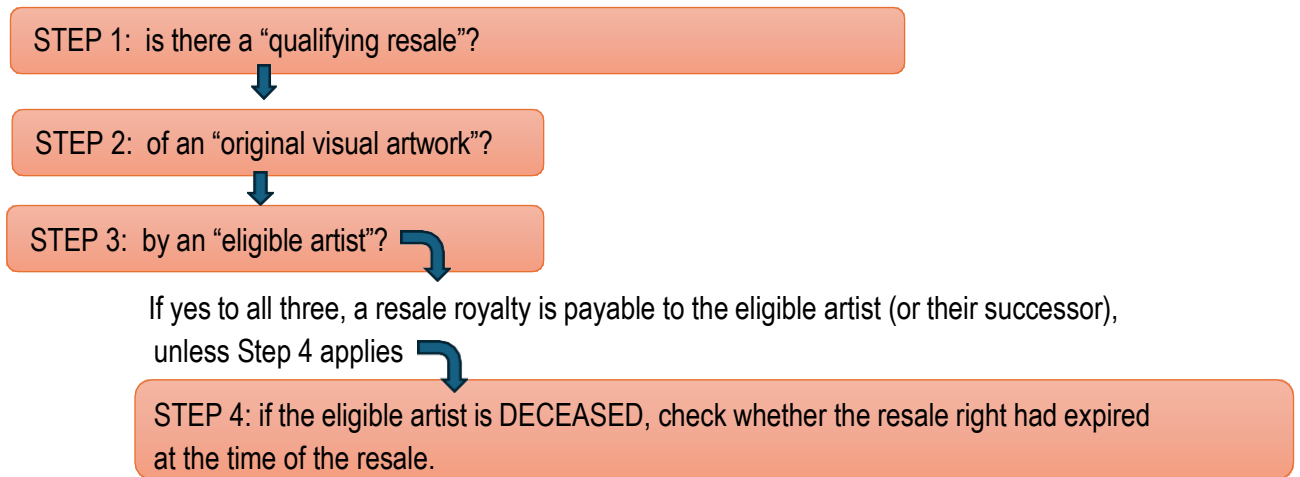
To talk to us please use the email address kiaora@resaleroyalties.co.nz

APPENDIX 1 - FLOWCHART & CHECKLISTS:

When is a Resale Royalty Payable?

Summary: An “eligible artist” has a right to be paid a resale royalty each time there is a “qualifying resale” of an “original visual artwork” by that artist (provided the resale right had not “expired” at the time of resale).

Flowchart: Apply the above test in four steps:



Apply each step using the **checklists** below.

Additional support from RRA: If after applying these steps you’re uncertain or have questions:

- please email our support service at kiaora@resaleroyalties.co.nz;
- for eligible artists who consent, we will develop & publish a searchable directory of eligible visual artists on our website. (If an artist is not listed there, however, apply STEP 3 in the checklists below, or email us above).

STEPS 1 to 4: CHECKLISTS

STEP 1: Is there a “qualifying resale”?

Checklist 1: If all three boxes are checked, the resale is a “qualifying resale”

- The **resale value** must be \$2,000 NZD (excl. GST) or greater
- The contract for the resale must be entered into on or after the **commencement date** of the Act (1st December 2024)
- The sale must be a “Professional Resale” or a “Voluntary Qualifying Resale”.

<input type="checkbox"/> at least 1 person involved in the resale is an “Art Market professional” (see p 3), or a publicly funded art gallery, museum, library, or archive that collects and displays artworks; and	<i>A “Voluntary Qualifying Resale” means that all parties to the resale agree the following in writing:</i>
<input type="checkbox"/> that person is either resident, incorporated, registered, or carrying on business in NZ; and	<input type="checkbox"/> what % of the resale value they agree will be payable to the artist as a resale royalty; and
<input type="checkbox"/> the resale relates to that person’s dealings in visual artworks that occur within New Zealand	<input type="checkbox"/> who will provide the relevant information to the Collection Agency.
<p>If you ticked all 3 boxes, the qualifying resale is a “Professional Resale”</p>	<p>If you ticked all 3 boxes, the qualifying resale is a “Voluntary Qualifying Resale”</p>

Note:

“Resale” 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).



STEP 2: Of an “original visual artwork”?

Checklist 2.1: If any of the following boxes are checked, the work is a “visual artwork”:

- cultural expressions of Māori or Pacific peoples;
- painting, drawing, carving, engraving, etching, lithography, woodcutting, printing (including a book of prints) ;
- sculpture, collage, modelling;
- craftwork, ceramics, glassware, jewellery, textiles, weaving, metalware, furniture;
- photography or video art;
- multimedia art;
- art created using computers or other electronic devices;
- ethnic or cultural art that is a variation of any type of work described above in the 2nd through final bullets.

However, visual artwork **does not** include:

- a building* ; or
- a dramatic work* or musical work* ; or
- a literary work* , unless it is a compilation that includes a visual artwork.

*(*these terms are defined in s 2(1) of the Copyright Act 1993)*

Checklist 2.2: To be an “original”, the visual artwork must have been:

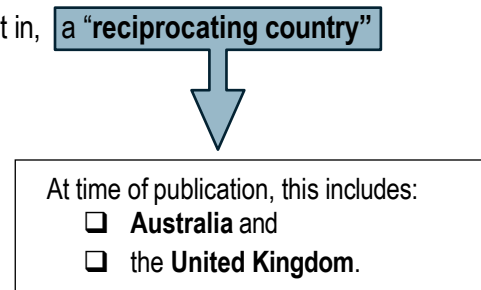
- Created by, or under the authority of, the artist; or
- One of a limited number of copies of visual artwork made by that artist or under their authority.

STEP 3: By an “eligible artist”?

Checklist 3.1: IF the artist is *alive* at the time the contract for resale is entered into: is the artist:

- a New Zealand Citizen, or a person domiciled or resident in New Zealand; or
- a citizen or subject of, or a person domiciled or resident in, a “reciprocating country”

→ If you ticked either of these boxes, then the artist is an eligible artist.



Checklist 3.2: IF the artist is *deceased* at the time the contract for resale is entered into: at the time of their death was the artist:

- a New Zealand Citizen, or a person domiciled or resident in New Zealand; or
- a citizen or subject of, or a person domiciled or resident in, a reciprocating country

→ If you ticked either of the above, then the deceased artist is an eligible artist. Although the eligible artist is deceased, the resale right is held by their successor(s) (meaning the successor(s) are entitled to payment of the royalty, provided they meet the same criteria for eligibility (above).

STEP 4: if the eligible artist is DECEASED, check whether the resale right had expired at the time of the resale.

In the case of deceased eligible artists, their resale right may or may not have **expired**. A resale royalty will **only** be payable if the contract for the resale was entered into **on or before** the following **expiry dates** (as applicable):

- (where the artwork is by a single artist) - the expiry date is 50 years from the end of the calendar year in which the artist died
 - (where the artwork was created jointly by 2 or more artists) - the expiry date is 50 years passed from the end of the calendar year in which the last of those artists died.
- If the resale contract was entered on or before the expiry date, a resale royalty is payable.
→ If the resale contract was entered into after the expiry date, no resale royalty is payable.