

## Resale Royalty legislation to commence by June *Implications for Artists, Galleries and Collectors*

The Resale Royalty for Visual Artists Act 2009 received Royal Assent on 9 December last year and therefore the scheme will commence on 9 June 2010 at the latest.

At the time of writing the Collecting Society, which will administer the scheme, had yet to be selected. From a practical viewpoint once chosen the Collecting Society will have little more than three months to implement procedures for the scheme to operate efficiently across the arts industry. Below is a discussion of the implications of the resale royalty legislation from the perspective of artists, galleries/auction houses and collectors.

### Artists

Tamara Winikoff, the executive director of NAVA, says that apart from providing extra income for artists the resale royalty scheme recognizes the relationship that artists have with their work. "With artists, the relationship between them and their work is a very intimate one. It's an expression of their own ideas and identity and having a resale royalty like this reaffirms that continuing interest."

For Aboriginal artists, a resale royalty might also be a form of acknowledgement of the intrinsic cultural and personal

relationships some practitioners have with their work and in a wider sense to their extended family and community.

Artists cannot opt out entirely other than on an artwork by artwork basis by notifying the Collecting Society not to collect or enforce the right once a notice of commercial resale has been published. Some commentators of the scheme have said that this is contrary to its original intent but I feel that it is actually consistent with the findings of the 2002 Myer Report which stated that artists should have the right to represent their own resale royalty rights *where they have the adequate resources to do so* (my emphasis).

Now that the scheme has been legislated it will be interesting to see which artists who do have these "adequate resources" will now take an active interest in the resale of their work, to the ultimate point of negotiating rates and amounts with art market professionals. This is a significant departure from other forms of voluntary copyright collection and opens the possibility of expanding the management of artists' affairs, either directly or by their representatives.

Resale royalties will also apply to non-living artists or more particularly their heirs and successors for 70 years after their death (after satisfying a 'succession' test). This approach differs from the United Kingdom where it was decided that only living artists would benefit from the resale scheme when it was introduced.



Emily Floyd born 1972, *I Don't Understand* 2003, wood, various sizes, sold by Bonhams & Goodman, Melbourne, 24/11/2009, \$5,640, a record price for the artist

The 2004 Proposed Resale Royalty Discussion Paper provided estimates of the distribution of income to artists under the scheme that has now been legislated.

### Key findings

\$2.7 million in resale royalties would have been paid to 823 artists

\$1.65 million would have been paid to 345 deceased artists

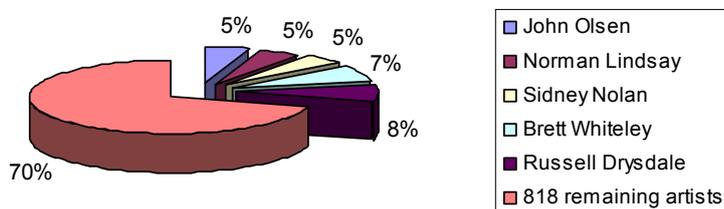
\$1.05 million would have been paid to 478 living artists

The top 5 artists – John Olsen and the estates of Norman Lindsay, Sidney Nolan, Brett Whiteley and Russell Drysdale - would receive 30% of all resale royalties – with payments ranging from \$130,000 to \$207,000

The bottom 752 artists would share in \$410,000 with payments ranging from \$40 to \$5000 – around 73% of these artists would receive \$500 or less

218 Aboriginal artists would be eligible to receive resale royalties with an average royalty payment of \$1,800 – 21% of these artists would receive less than \$100.

### \$1,000 threshold, 5% rate: Top 5 artists



### Top 5 artists

The top five highest grossing artists would together receive around \$0.79 million, or 30% of the total royalties payable, with payments ranging from around \$130,000–\$207,000.

If one estimated the number of resales occurring elsewhere in the Australian art market was about the same again then the estimated value of resale royalties would be expected to be about \$5 million per year in current market conditions. It may take some years for this figure to be achieved as it is dependant on factors such as the length of time that artworks are held before being resold and ultimately on how efficiently the arts industry as a whole will implement and administer the scheme.

The above analysis bears out experiences from other jurisdictions with similar resale royalty schemes – a few artists and their estates receive a high percentage of the total take and most practicing artists receive little, if any royalty. A British study concluded that 98% of artists receive no resale royalties under their scheme, however their minimum threshold is much higher than the Australian legislation.

One final observation that can be made about the Act is that the term 'artist' is not actually defined and this has the potential to create ambiguities in terms of its application.

## Galleries/Auction Houses

Galleries and auction houses will bear most of the responsibility for ensuring the smooth operation of the scheme and have the most to lose if they cannot manage it efficiently. As such there is an urgent need for industry codes of practice to deal with the real operational issues of a post-resale royalty art industry.

Most galleries in the primary market hold artworks on consignment from the artists they represent. When a sale is made the gallery remits to the artist their agreed share of the proceeds along with accompanying paperwork detailing the transaction. The question that will now arise is whether or not such an arrangement fulfils an agency relationship. In other words will the consignment from the artist to the gallery be seen as the first transfer of ownership (which does not need to be for monetary consideration - artwork swaps and gifts are not excluded as transfers under the Act) and the sale from the gallery to the client be the second transfer and therefore possibly trigger the resale royalty.

This is not just an arcane legal scenario. As an accountant I have observed a wide variance in compliance with taxation and other legislation from art galleries. This is not entirely the fault of the galleries – as a former gallery owner I know that dealing with a stable of artists and their wishes for exhibition, publication and promotion can only be compared to herding cats.

While it may appear to be a glamorous lifestyle, running an art gallery is hard work and the resale royalty legislation is going to make it more difficult, especially for those with little love of double-entry book-keeping. The operation of trust accounts has never been favoured by the industry but it might make sense now for galleries to implement them to clearly demonstrate agency relationships with their artists.

Most galleries that sell Aboriginal art do not have these agency relationships – they purchase the art they sell to their clients via community art centres. This model is at the heart of the recently announced Commercial Art Code of Conduct, which has been introduced to preserve the integrity of this market by ensuring that works are sold and resold through agents that primarily have the welfare of the artist in mind.

Complying with the Code will also mean resale royalties will have to be paid by art galleries on works bought from community art centres after the Act commences. This is clearly spelt out in the explanatory memo to the legislation. Melbourne gallery owner William Mora stated last year that he now expects to abandon his trade in Aboriginal art as the market was too fragile to cope with a 5% impost.

Auction houses will have to collect the majority of the income under the scheme. Their sales results are more transparent than art galleries and as art market professionals (as defined by the Act) they will be jointly and severable liable in the event the resale royalty is not collected. It appears that auction houses will levy the resale royalty to the purchaser and not the seller - this has been adopted elsewhere successfully and seems fairer when you consider that not all sellers are accruing capital gains on their sales.

Issues of scholarship will become more than an academic exercise under the Act and it will be important for auction houses to ensure correct provenance to reduce their liabilities.

Finally, galleries and auction houses face the real financial disincentive of fines under the Act. These fines could be as much as \$22,000 for an individual and \$110,000 for a corporation for failing to comply with a notice from the Collecting Society.

## Collectors

Many collectors, like it or not, are focused on the investment side of the art market and not simply the welfare of the artist (who some may feel are benefiting from the commercialization of their art through the sale and resale process). Some collectors may be tempted to invest in classes of artwork unaffected by the levy such as nineteenth-century paintings and certain works by overseas artists.

Australian artworks sold in jurisdictions which have no resale royalty legislation will also not be liable for the levy. New Zealand and Hong Kong currently do not have such schemes, for example. In countries that do have similar arrangements it is not automatically guaranteed that reciprocal protection can be obtained. One very real legal problem is that Sections 8 and 11 of the Act create a point of difference with other jurisdictions by limiting the right of the royalty to the second sale *after* the commencement where artworks are acquired *before* the commencement.

At the moment there is very little Australian art sold overseas with the exception of the occasional Modernist sale in London and Aboriginal auctions and primary market activity in Europe. This may change if there is enough financial incentive not to pay the levy, which has no maximum cap on the amount payable. In the United Kingdom resale royalties are capped at 12,500 euros or at the current exchange rate \$AUD19,000.

In other words collectors may have an incentive to reduce their exposure to resale royalties for artworks valued at greater than \$380,000 if it was possible to sell the work in jurisdictions where the levy did not apply. This may have an impact on the auction houses and art galleries, which rely on their commissions from the sale of the big-ticket Australian artists to fund their operations.

The Act, however, will also bring some welcome changes to the transparency of the Australian art market. As discussed earlier, it will not be in anyone's interest in the art market to operate inefficiently. Greater scholarship and provenance will be encouraged and this will assist in reducing the widely publicized problem of fakes and forgeries in the industry.

Joanna Cave, the chief executive of Viscopy, has said that research by the British government after its resale royalty was introduced could not find a single buyer who wanted to pay less. She was instrumental in creating the scheme in the United Kingdom and may play a major role in the Australian implementation should Viscopy be awarded the tender to operate as the Collecting Society.

The Federal Government has allocated \$1.5 million to establish the resale royalty scheme, which is less than 3 months from commencement. Time will only tell if the stated aims of providing greater equity for artists' income and more transparency to the market will come to pass; however it is certain that there will be all sorts of unintended consequences for the unprepared.

### Michael Fox

*The full essay of this edited article is being published in the next issue of the Australian Art Market Report.*

*For more details visit [www.aamr.com.au](http://www.aamr.com.au).*



Camilla Tadich born 1982  
2.30am, Broken Hill 2009  
Oil on linen  
30 by 40cm

Camilla Tadich SLABALONG  
Current to 27 March  
Sophie Gannon Gallery  
[www.sophiegannongallery.com.au](http://www.sophiegannongallery.com.au)

# Nam Le awarded Prime Minister's literary award for fiction



Vietnamese-born author Nam Le has been awarded the Prime Minister's Literary Award for Fiction for his novel "The Boat".

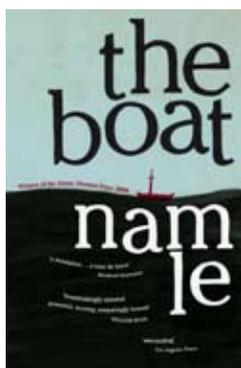
The awards, held annually, celebrate the contribution of Australian literature to the nation's cultural and intellectual life as well as our economy. A tax-free prize of \$100,000 is awarded to the works judged to be of the highest literary merit in each of two categories: fiction and non-fiction.

Nam Le's life story could almost be a work of fiction itself. In 1979 his family left Vietnam for Australia, an experience that inspires the first and last stories in *The Boat*. In between, however, Le's imagination lays claim to the world. *The Boat* takes us from a tourist in Tehran to a teenage hit man in Columbia; from an aging New York artist to a boy coming of age in a small Victorian fishing town; from the city of Hiroshima just before the bomb is dropped to the haunting waste of the South China Sea in the wake of another war.

According to his publisher Penguin Books each story uncovers a raw human truth. Each story is absorbing and fully realised as a novel. Together, they make up a collection of astonishing diversity and achievement.

Nam Le grew up in Melbourne. He received his BA / LLB from the University of Melbourne and his MFA from the University of Iowa. He is currently the fiction editor of the *Harvard Review* and the David Wong fellow at the University of East Anglia.

He has received the Dylan Thomas Prize, (US) National Book Foundation's '5 Under 35' Award, the Pushcart Prize, the Michener-Copernicus Society of America Award, and fellowships from the Iowa Writers' Workshop, the Fine Arts Work Center in Provincetown, Phillips Exeter Academy, and the University of East Anglia. His short stories have been published and anthologised in the United States, the United Kingdom and Australia. *The Boat* has now been sold into 13 territories.



## Land tax developments in NSW

The land tax threshold for the 2010 land tax year is \$376,000. The premium land tax threshold for the 2010 land tax year is \$2,299,000.

As land tax is assessed through a self-registering process clients who have purchased an investment property during the year should contact us to register as soon as possible.

## Genuine redundancy payments

The tax-free amounts of a genuine redundancy payment (formally referred to as a 'bona fide redundancy payment') or of an approved early retirement scheme payment are:

Income year	Tax-free amount
2008	\$7,020 + \$3,511 for each completed year of service
2009	\$7,350 + \$3,676 for each completed year of service
2010	\$7,732 + \$3,867 for each completed year of service

## Does someone prepare your activity statement for a fee?

Clients need to be aware that under the Tax Agent Services Act 2009, commencing 1 March 2010, business activity statement (BAS) service-providers must be registered.

The ATO has adopted these new regulations to ensure the standard of these services. The Act mandates that an entity which provides a "BAS service" for a fee must be registered. To be eligible for BAS agent registration an applicant must meet the registration requirements set out in the new legislation.

The practical implications of this Act? Accountants may decide not to accept the MYOB files and other accounts and working papers of clients with unregistered book-keepers because of indemnity concerns.

For more information about the Tax Agent Services Act 2009 please contact our offices in Melbourne and Sydney.

# Eva Anne Breuer

b.1942-d.2010



Image: Phillip Castleton

This month the Eva Breuer Gallery in Woollahra will open with a powerful show by former ROAR artist Wayne Eager. But a key guest won't be there. In early February Eva Breuer had finally succumbed to a long illness and passed away, aged 68.

She had expressed excitement at introducing Eager to her large and loyal coterie, exuding the same enthusiasm she had for numerous artists over the year including Sir Sidney Nolan, John Coburn and James Gleeson.

After opening a tiny gallery in Woollahra 16 years ago, she became one of Australia's leading dealers. She had entered the art world comparatively late in life, studying art history at the University of Sydney as a mature-age student. Soon after she began dealing from home, leading to a major sale of a painting by David Boyd (she had bought the work at auction for \$1200 and sold it for \$17,000) which allowed her to finance her dream - the Eva Breuer Gallery.

Australian Galleries' Stuart Purves praised Breuer's knack to deal in both the secondary and primary markets. "She had a good marketing mind to buy and sell paintings and she had the sensitivity to handle living artists," he told *The Sydney Morning Herald*.

Breuer was a natural-born bower-bird when it came to seeking out high quality artworks. The walls of her gallery sparkled with strong painting and works on paper by the likes of Brett Whiteley, Fred Williams, John Coburn, James Gleeson, Ray Croke, David Boyd, Sidney Nolan and Garry Shead.

Eva Breuer had delivered a beautiful eulogy for artist Brian Dunlop only a matter of weeks before she herself passed away.

# Brian Dunlop

b.1940-d.2009



Brian Dunlop, 1938-2009, *Untitled (Self-Portrait)* 1985, lithograph, 32.5 by 31.5 cm

In the mid 1980s the art world was firmly in the grip of postmodernism, a cool, cerebral period indeed. So what did Brian Dunlop do? He went to London in 1984 to paint the Queen for Victoria's sesquicentenary.

Dunlop, who died last December from a congenital heart condition at the age of 69, never succumbed to fashion. Indeed, he eschewed any attempt at fitting in the trends around him. He was practically obsessed with his core practice of figuration and portraiture.

He was, at heart, a romantic. For some years, working from his studio in Victoria's rural Beechworth, he executed a series of nudes based on the mythology of Orpheus and Eurydice. Central to these new works was his new muse and partner, Janine Carstein, 50, a classical pianist. The results were shown, to both critical and commercial success, at Sydney's Eva Breuer gallery in Woollahra in May, 2009.

Dunlop's working-class English parents migrated to Sydney during the Depression. His love of painting and drawing was warmly encouraged by his father, and he won a scholarship to study at the National Art School and graduated at the end of the 1950s.

Dunlop won numerous prizes, including the prestigious Sulman Prize for genre painting, the 1999 Savage Club drawing prize, the 1978 Andrew and Lillian Pedersen Drawing Prize, the 1976 and 1977 Civic Permanent Award, the R.N. Ansett Hamilton Award and the 1958 Robert Le Gay Brereton Drawing Prize.

Over the years Dunlop accepted commissions from some of the most prominent entities in Australia. Amongst his commissions were two sets of postage stamps and more than 90 portraits, with his subjects including a governor-general, The Rt Hon. Sir Garfield Barwick, three chief justices and three archbishops. His work is represented in all major State Galleries and numerous regional and private collections.

# Peter Blizzard, OAM

b.1940 -d.2010

A man renowned for his generosity as both a teacher and a friend, Peter Blizzard, who made a major impact on contemporary Australian sculpture, died of cancer earlier this year at the age of 69.

Blizzard was able to attend the opening of a major retrospective of his work at the Art Gallery of Ballarat in November last year. The exhibition embraces his early figurative work through to his abstract work and the latter development of works that reflected his veneration of nature.

Blizzard left school at 15 and came to sculpture after a career that ranged from engineering draftsman to graphic designer. He had always wanted to be an artist and by the late 1960s he was exhibiting both paintings and sculpture.

From 1972-1995 Blizzard worked as Senior Lecturer and Head of Sculpture at the University of Ballarat. In 1995 he retired from that position to work on his sculpture full time.

“He had more time to ponder and draw, and his career as a sculptor reached new heights,” wrote Ken Scarlett in *The Age*. “The landscape that he loved was the source of his inspiration and he evolved a series of personal symbols – a semi-circle hinting at a rainbow, a full circle the moon, an undulating line a river, while a series of peaks suggested mountain ranges. These works became visible expressions of his philosophy: “Venerate the earth and walk lightly upon it.”

Blizzard held numerous solo Exhibitions at a variety of spaces including Axia Modern Art, the Hakone Open-Air Museum, Hakone Japan and Australian Art Resources.

He was one of the few Australian artists to make a serious international impact, showing in the Shanghai Art Fair, China, the Moscow International Art Fair, Russia, the International Sculpture Exhibition, Singapore, Australian Embassy, San Francisco, U.S.A., the International Trade Fair, New York, U.S.A and several highly successful shows in Japan

## Ashley Crawford

Ashley is a Melbourne-based arts writer who is also the author of a number of visual arts books, including *Wimmera: The Work of Philip Hunter*



Peter Blizzard stands next to one of his favourite sculptures, *Monument for Mike*, at the Art Gallery of Ballarat, November 2009.

(Margaret Burin - ABC Local, source: <http://www.abc.net.au/local/stories/2009/11/12/2740936.htm>)

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ARTS MANAGEMENT

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