

Cooper review seeks to ban artworks from self-managed super funds

On 29 April the Cooper Review released its Self-Managed Super Solutions, in which Item 8.3 Collectables and Personal Use Assets contained the following preliminary recommendation:

“The Panel recommends that:

- a. the acquisition of collectables and personal use assets by SMSF trustees be prohibited;
- b. SMSFs that own collectables or personal use assets be provided a transitional period, up to 30 June 2020, in which to dispose of those assets; and
- c. APRA-regulated funds be exempted from these changes.”

Should these recommendations become law the impact on the Australian art market will be severe. According to Tom Lowenstein, Partner of Lowensteins Arts Management and Executive Director of the Australian Artists Association:

“It is our view that if the recommendations of the Cooper Review are adopted by the Government, it would have very serious consequences for artists, as it would decrease the pool of funds available for the purchase of art.

“This would not only have an effect on artists but would flow through to their exhibiting galleries and affect all associated business activities, such as framers, art suppliers, carriers, writers, reviewers etc.”

Ian Flanagan of GFL Fine Art, Perth participated in a study into the wider Australian fine art market in 2001. The accompanying diagram from that study shows just how interconnected these 5,000 businesses are in a total industry estimated to have an annual turnover of \$1.5 billion.



Kate Bergin born 1961, *Call of the Highly Improbable* 2010, oil on canvas, 150cm by 100cm, signed mid-right, titled verso.

Kate Bergin wins City of Albany Art Prize

Kate Bergin's oil painting *Call of the Highly Improbable*, of a black swan with spectacles and a Bakelite telephone in the manner of a 17th century Flemish still-life, was announced the best of 30 national finalists at the Vancouver Arts Centre, Albany in late March.

Her work was inspired by commentary on the global financial crisis referring to the black swan as an emblem of the highly improbable.

“The Ern Malley literary hoax that produced sustaining images such as the Black Swan of Trespass has always had particular appeal and hearing the black swan referred to in connection to the global financial crisis made the concept topical again,” she said.

Kate's next exhibition *Tabletop Variations* opens at Mossgreen Gallery, Melbourne on July 14.

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Greg Nazvanov, a leading financial planner who has made detailed studies into the performance of SMSF artwork collections estimates that about \$100 million worth of artworks are bought annually from the estimated 640 commercial galleries in Australia by self-managed super funds.

He says the Cooper recommendations will have a disastrous impact on the Australian art market and pinpoints these unintended consequences:

- loss of income for artists
- artworks will flood the art markets
- reduction in philanthropy
- many galleries will be forced to shut
- increased unemployment for the ancillary industries
- reduction in quality of life for Aboriginal communities
- headaches for accountants and financial planners resulting in higher fees to clients

The ability of self-managed super funds to invest in artworks has been a major factor in the growth of the Australian art market since 1993, particularly for Aboriginal art. Nazvanov says that “art could be viewed as a tangible lifestyle asset, and has come to the fore as a viable alternative to traditional asset classes. It stands out as an irresistible combination of pleasure and profit in otherwise staid, electronic or paper-strewn portfolios.”

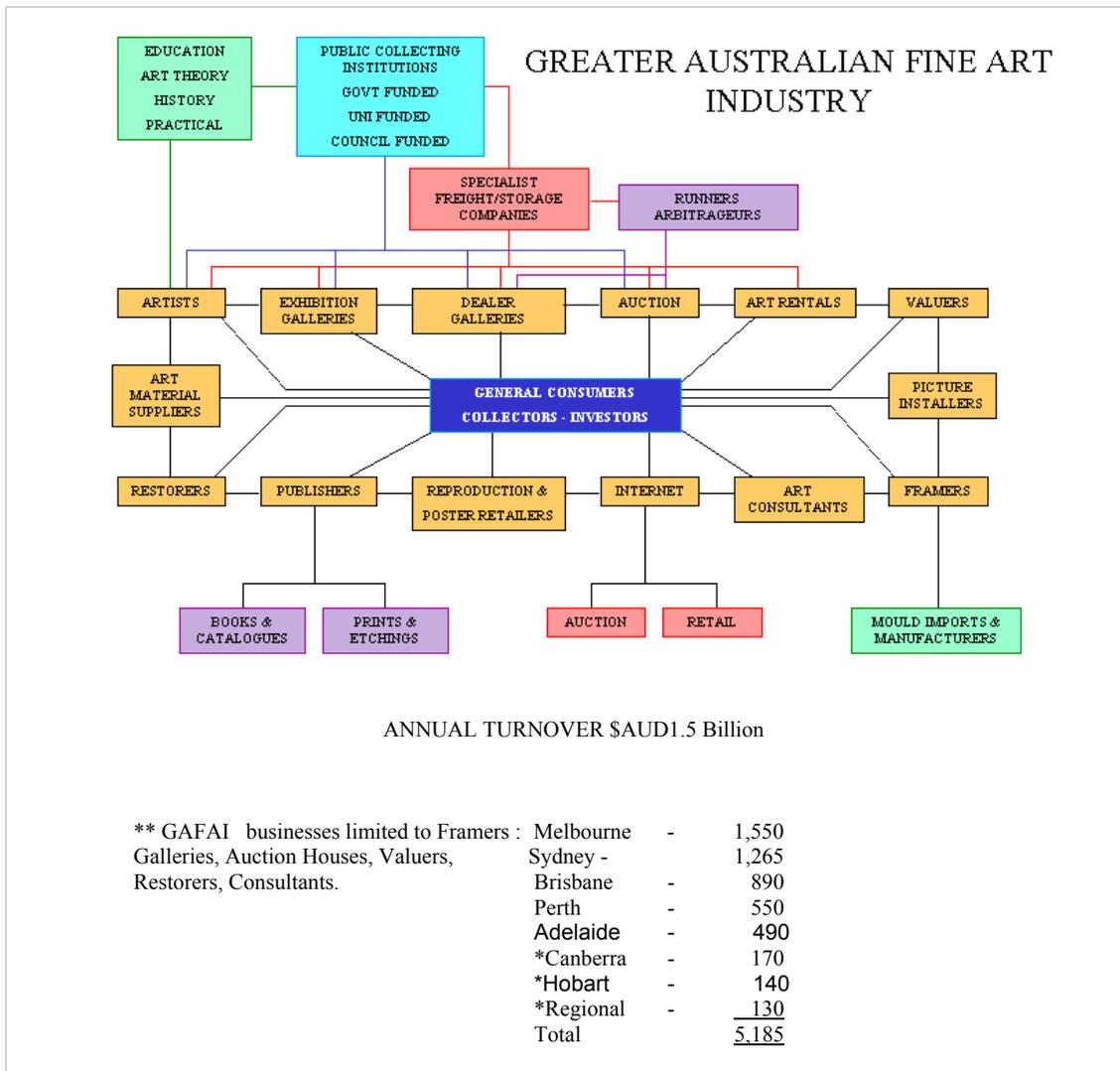
He says that “there are distinct variances between investing in art and other traditional assets, such as shares and bonds. Studies by Higgs and Worthington have shown that a low correlation exists between returns in the art market and returns in other mainstream markets, strengthening the argument for portfolio diversification by Australian investors into art.”

Anecdotally the Cooper review has had an immediate impact on the art market since the recommendations were made

public a little over a month ago. The situation is being compounded by the imminent commencement of the resale royalty scheme on June 9.

Galleries and consultants have reported lost sales caused by the sheer uncertainty of the regulations. Clients who were committed to purchasing artworks with their super funds before June 9 have now had a change of mind. The situation has not been helped by the absence of any government comment on the impact the Cooper recommendations will have on the arts sector.

The ability of SMSFs to invest in the art market has been important to its growth over the last 15 years and enabled many people to participate who would not otherwise had the chance. Incentives need to be maintained and not withdrawn to convince gallery owners and their stakeholders to remain in a difficult business but one with great rewards for the Australian community.



2011 Federal Budget and the Henry Review

There were few personal taxation announcements made in this year's Federal Budget. Unusually these changes were flagged a week before the Budget through the release of the Henry Review into taxation, which although unable to make comment on the GST (this was outside its terms of reference) made almost 140 recommendations to the Government.

The Government chose to focus its attentions on just 2 of these recommendations - the resources super profits tax (outside our area of commentary) and a slight decrease in company taxation rates from 30% to 28% by 1 July 2014 - and then decided to add one of its own.

There will now be an increase in the compulsory superannuation contribution charge on wages from the current level of 9% to 12% by 1 July 2019. Almost a third of the recommendations of the Henry review were immediately ruled out, which leaves almost 100 possible policy changes to be contemplated sometime in the future. The Budget itself delivered a few of these policy changes when it was unveiled on May 12.

Standard deductions for work-related expenses

Individual taxpayers can make a standard deduction of \$500 for work-related expenses and for the cost of managing tax affairs from 1 July 2012. The standard deduction will increase to \$1,000 from 1 July 2013.

The standard deduction will reduce individuals' and families' adjusted taxable income for the purpose of determining their eligibility for transfer payments and other concessions (eg the Family Tax Benefit, the Baby Bonus, Child Care Benefit, the Commonwealth Seniors Health Card (CSHC) and the Seniors Supplement).

Tax discounts on interest income

From 1 July 2011, individuals will be eligible for a 50% tax discount on up to \$1,000 earned on interest. This includes interest earned on deposits held with any bank, building society or credit union as well as on bonds, debentures or annuity products. The discount will be available for interest income earned directly as well as indirectly, such as via a trust or a managed investment scheme (MIS).

Medical expenses rebate threshold increased

From 1 July 2010, the medical expenses

rebate threshold will increase from \$1,500 to \$2,000.

Taxpayers presently receive a rebate equal to 20% of net un-reimbursed eligible medical expenses above \$1,500. This \$1,500 threshold will increase to \$2,000.

In addition, from 1 July 2011, the threshold will be indexed annually to the Consumer Price Index (CPI).

Super co-contribution matching rate permanently reduced to 100%

The Government has announced that it will seek to permanently set the matching rate for the superannuation co-contribution at 100% and the maximum co-contribution that is payable on an individual's eligible personal non-concessional superannuation contributions at \$1,000.

As a result, the previously-legislated increase in the matching rate to 125% for the 2012/13 and 2013/14 years (and to 150% for 2014/15 and later years) will not proceed.

Slight decreases in personal income tax rates

From 1 July 2010, the income thresholds and tax rates for residents will be:

Income thresholds	Rate	2010-11 tax payable
\$0 - \$6,000	0%	Nil
\$6,001 - \$37,000	15%	Nil + 15% of excess over \$6,000
\$37,001 - \$80,000	30%	\$4,650 + 30% excess over \$37,000
\$80,001 - \$180,000	37%	\$17,550 + 37% excess over \$80,000
\$180,001 +	45%	\$54,550 + 45% excess over \$180,000

Artwork donations

Artists are continually being asked to donate artworks to charities. With June 30 imminent it is important for artists to understand that there are three acceptable ways of making these gifts to charities:

1. Cultural Gifts Programme – whereby works can be gifted to eligible institutes called deductible gift recipients (DGRs). Valuers approved by the Commonwealth Government determine the market value of the artwork gift to the relevant DGR and the donor receives a tax deduction upon approval from the ATO

2. Philanthropic Programme – this enables the taxpayer to make a gift of property, in excess of \$5,000 to a charitable institution and obtain a tax deduction, based on the valuation obtained by the ATO.

3. Gifts to charities – only in very specified circumstances.

Artists should be aware that not all gifts of artworks to charities to sell on their behalf will enable them to claim a tax deduction. Similarly, depending on the nature of the artwork being donated it may not suffice as a deduction under the Cultural Gifts Programme or Philanthropic Programme.

We recommend that any artist who is approached to donate their artworks seek appropriate taxation advise.



Prudence Flint born 1962, *World map* 2009. Oil on linen, 122cm by 109cm.
Courtesy of Nellie Castan Gallery

Mark Newson's Lockheed Lounge sells for \$US2.1 million

An Australian world record price was made at the Phillips de Pury New York evening art auction in early May when a rare Mark Newson Lockheed Lounge from 1988 sold for \$US2.1 million, far exceeding its pre-sale estimates of \$US1 million to \$US1.5 million.

There are a number of interesting aspects about this result:

1. The Lockheed Lounge is not specifically defined as an artwork under



the resale royalty legislation - it might be better described as decorative furniture and hence exempt from resale royalties even though each prototype is now worth more than \$1million a piece.

2. Mark Newson is known as a designer and not an artist - but the term 'artist' is not actually defined in the resale royalty legislation.

3. The United States does not have resale royalty legislation so there would be no royalties payable in any event (assuming that this sale occurred post June 9 and was the first commercial resale etc).

4. In Australia there have only been 6 artwork sales by Australian artists at auction that have exceeded the amount realised for the Newson Lockheed Lounge.

CAL Appointed as Collecting Society for Resale Royalty Scheme

Copyright Agency Limited (CAL) has been announced as the scheme's collecting society.

Historically CAL has been more concerned with the written word, collecting royalties on behalf of authors, journalists, surveyors, photographers and newspaper, magazine and book publishers. The visual arts has only been a minor part of its business. But it is a large organisation with central Sydney offices, revenues exceeding \$100 million, staffing levels of about 100 and deep legal experience within its executive. It is probably the latter factor along with the scale of the company that swayed the Federal Government to award the tender to CAL.

Section 28 & Section 29 Notices

The industry will soon become familiar with the phrase Section 28 Notice but it is the Section 29 Notice that will become the dreaded turn of phrase. This is a notice that CAL will request of individuals if it has reasonable grounds to believe they are art professionals and have made commercial resales. Section 29 Notices apply to all such commercial resales for a period of up to 6 years, must be complied with within 90 days of the notice being given and may carry penalties of \$11,000 for an individual and \$55,000 for a company.

The more familiar Section 28 Notice, on the other hand, is a notice that must be given to CAL within 90 days of a commercial resale of an eligible artwork (ie sold for \$1,000 or more including GST and otherwise qualifies). To comply with the legislation it would appear the following should be supplied to CAL:

- 1.Name of artist(s)
- 2.Date of birth
- 3.Date of death (if applicable)
- 4.Pseudonym (if applicable)
- 5.Nationality
- 6.Title and edition

- 7.Medium
- 8.Dimensions
- 9.Sale price (inclusive of GST but not including buyer's premium)
- 10.Date of sale
- 11.Image of artwork
- 12.Provenance

Art professionals should first be aware of what is a commercial resale of an artwork before supplying this information. Section 8 of the Act states:

“(1) There is a commercial resale of an artwork if:

- (a) ownership of the artwork is transferred from one person to another for monetary consideration; and
- (b) the transfer is not the first transfer of ownership of the artwork*; and
- (c) the transfer is not otherwise of an excluded class.”

*after 8 June 2010

It should be noted that transfers of ownership include not only sales of artworks but also gifts and inheritances. Another area that would appear to be caught by this definition is the payment of guarantees to vendors regardless of whether the artwork subject to the guarantee is sold or not.

Unlike auction houses, whose sales results are publicly reported and hence available to CAL, art galleries who resell works for their clients would be wise to register their interests and become familiar with the Section 28 Notice.

In saying this, however, a positive outcome of these compulsory notices will be more transparency and more information about art market trades that will surely assist valuations.

**For more information -
www.copyright.com.au**



Lin Onus 1948-1996
Reflections, Barmah Forest 1996
synthetic polymer paint on canvas,
182.5 by 182.5 cm,
sold by Deutscher-Menzies
Sydney, 25/03/2010, Lot No. 45 \$264,000

17th Biennale of Sydney



Daniel Crooks, *Static No.12 (seek stillness in movement)*, 2009–10 Detail of HD video (RED transferred to Blu-ray), dimensions variable.
Courtesy the artist and Anna Schwartz Gallery. Copyright © Daniel Crooks 2009

David Elliott, Artistic Director, has unveiled one of the most ambitious exhibitions ever staged by the Biennale of Sydney, which is presented free to the public from 12 May until 1 August 2010 at seven venues across the heart of the city.

Based on the curatorial premise of *THE BEAUTY OF DISTANCE: Songs of Survival in a Precarious Age*, the exhibition presents more than 440 works by 166 artists and collaborators from 36 countries, making it the largest exhibition ever staged by the Biennale of Sydney in its 37-year history.

In the largest Australian representation than ever before, 65 local artists present their works alongside their international peers.

Describing the exhibition as beautiful, challenging and memorable, Elliott said “The 17th Biennale of Sydney aims to present diverse cultures on the equal playing field of contemporary art, where no culture can assume superiority over any other. This exhibition has been designed with Sydney’s position as an iconic modern city in mind. Whilst it would stand up equally well in any international city, I believe many cities would not have the courage to show an exhibition of this scale.”

For details of artists, exhibitions and venues visit - biennaleofsydney.com



Janet Laurence, Born 1947 in Sydney, Australia, lives and works in Sydney
The Green That Was (Crimes against the Landscape series), 2008, Duraclear, polished aluminium, pigment on acrylic, mirror and burnt wood, 100 x 430 cm
Courtesy the artist and Arc One Gallery, Melbourne

Sue Ford

b.1943 - d. 2009



Sue Ford b.1943 -d. 2009, *Dissolution*, 2007, Chromira print on crystal archival, 142cm by 112cm
Image courtesy of Arc One Gallery

With the death of Sue Ford in November 2009, at the early age of 66, Australia lost a guiding light in both art and cultural memory.

Alongside such figures as Ponch Hawkes, Tracey Moffat, and Julie Rrap, Sue Ford helped carve a new niche for Australian female photographers. Ford was one of the first photographers of her time to be given a solo exhibition at the National Gallery of Victoria in 1974 where her now famous Time Series was exhibited and she was a founding member of Melbourne's Reall Women film-making and distribution group in the 1980s. At times she turned to a somewhat journalistic approach, capturing the pivotal moments of the meeting between Bob Hawke and Galarwuy Yunupingu when, during the 1988 Bicentennial, Yunupingu offered the Barunga Statement to the government as a model for a land-rights Treaty (but which was never realised).

Ironically, one of her last series, produced in 2006 was titled Last Light. Travelling through Northern New South Wales, Ford, unbeknown to her subjects, photographed photographers aiming their gaze at various sites. While this was part of an ongoing exploration of the way photographers interact with their environment, it was also simultaneously portraiture and landscape photography, forcing the viewer to

contemplate their placement in the world – the gallery viewer looking at the viewer looking at the world, creating a meditative sense of contemplation.

In 2003, she produced the series Continuum, which captured the ghosts of the bushfires at the Yarra River (Birrarung) during the mid-1960's. In Ford's words: "Experiencing a landscape in the process of being transformed by fire was unforgettable. Like the marks left on the trees after a fire, the event is imprinted permanently on my mind. In almost any bush that you might be walking through there are always bone-grey survivors from a previous fire; these black fire marks are like memories."

Memory was very much part of her process. Her well known 1990s series Shadow Portraits explored the history of white settlement and Australian identity, in the process disguising 19th Century studio portraits with botanical photograms which acted like veils of memory in themselves.

Ford lived in the Australian bush for over 15 years. But she strongly acknowledged that she experienced a 'different' sense of landscape following time spent with the Tiwi women on Bathurst Island in 1988. Ford's ongoing concern for Australian cultural history and the environment can also be seen in other major series, including A Different Landscape, (1989), From Van Diemens Land to Video Land,

(1990-92) and The Wonder Book of Empire, (1995).

Other major highlights of Ford's career were her participation in the following group exhibitions, Biennale of Sydney (1982); Continuum 83, Art Gallery, Tokyo, Japan (1983); Living in the 70's: Australian photographs (1987) at the NGA, Canberra; The Thousand Mile Stare (1988) at the Australian Centre for Cont Art, Melbourne; Twenty Contemporary Australian Photographers, National Gallery of Victoria (1990); Clemenger Art Award, Museum of Modern Art Heide, (1999); Berlin Film Festival, Eye for Idea, a decade of Australian women directors experimenting with film, (2002) and most recently, Magic Realism, at the Art Gallery of NSW, Sydney (2006) and the Photographic Portrait Prize, at the Art Gallery of NSW, Sydney (2006).

With over 23 solo exhibitions, a career spanning over four decades, and a future retrospective to be held at Monash Gallery of Art in 2011, and through her two children Emma and Ben, the memory of Sue Ford, along with her work, will most certainly live on.

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

Commercial Code of Conduct commences

The appointment of the inaugural Code Administration Committee in March signalled the formal commencement of the Indigenous Australian Art Commercial Code of Conduct.

Registration is now open for any persons or entities operating in the Indigenous art industry to become a signatory. Note that the term “dealer” is defined in the Code as anyone who buys artwork for the purpose of re-supply by means of sale, consignment or other distribution.

The processes and protocols of the Code will be implemented by the Committee - a voluntary, independent body which will administer it, maintain an on-line register of signatories, deal with complaints against signatories and promote the benefits of the Code to the broader industry.

Fair trade and commercial practice is the broad aim of this initiative, and in particular it seeks to promote:

- fair and ethical trade with artists
- transparency in the promotion and sale of artwork
- a fair and equitable dispute resolution system for disputes arising under the Code.

Joining the Code as a signatory will be voluntary and once the Code Administration Committee confirms that the dealer’s details have been recorded then the dealer will be bound by the Code. Signatories will be required to include a list of terms in agreements about trade in Indigenous artwork.

Other features of the Code are:

- members will sign up to the Code by completing a standard form and submitting it in writing to the Code Administration Committee
- a register of signatories will be available online
- the Committee will look into any complaints that a signatory has breached the Code
- sanctions will be available for breaches of the code (including possible removal from the register as a Code signatory)

Arts Minister, Peter Garrett, congratulated the Code Administration Committee on their efforts to date, and said:

“The Code will, for the first time, provide a national set of standards for transactions between agents, artists and dealers in the Indigenous visual arts industry. The Code will ultimately help Indigenous artists negotiate fair deals for their work and give buyers greater certainty of an artwork’s origin and the way in which it was purchased. I encourage anyone interested in registering to go to the Code website”.

The following people have accepted the invitation to sit on the inaugural Committee:

Signatory positions

Cecilia Alfonso, Manager, Warlukurlangu Artists Aboriginal Corporation

Beverley Knight, Director, Alcaston Gallery

Martin Wardrop, Director, Aboriginal Art Online

Ian Plunkett, Director, Japingka Gallery

Appointed Positions -Indigenous Artists

Julie Gough

Terry Murray

Alick Tipoti

Artists Resource Organisations

John Oster, CEO, DESART

Elizabeth Tregenza, general manager, Ananguku Arts

Non-arts independent expertise

Ron Merkel, QC (Committee Chair)

Richard England, Director, Healthscope Limited. (Committee Deputy Chair)

One important area of the Aboriginal art sector not covered by the Code is the collecting institutions such as public galleries and museums. A Charter has been developed to affirm minimum ethical standards and best practice principles in the acquiring, displaying and deaccessioning of Indigenous works of art by these institutions.

While administration and enforcement are important, the Code will only become effective if both buyers and dealers are aware of the Code and support it. Central to its success, in my opinion, will be the adherence of signatories to Division 2.3 Dealing with Artworks and in particular Clause 13 Code Certificate.

If the issues of probity that have beset the Aboriginal art industry cannot be brought under control within a period of two years, it is quite conceivable that the Code will become mandatory.

For more information - www.indigenousartcode.org

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Tax Matters for the Arts has been compiled by Michael Fox with the assistance and advice of Tom Lowenstein, Evan Lowenstein, Adam Micmacher and Lyn Faulkner. Publication design by Jen Spiers.