



John Aslanidis, *Sonic Network No. 8 2010*, oil and acrylic on canvas, 244cm by 305 cm. (c) John Aslanidis. Image courtesy Gallery 9, Sydney

2010 Art Market Year In Review

Two events stood out for me in reviewing the art market in 2010. The first in late April when the Australian Financial Review reported a Federal government enquiry – the Cooper Review - was about to recommend artworks be banned from self-managed super funds.

The second, nearly six months later, was an artist focus from Valerie Kabov's "Why art?" email newsletter extolling mid-career (but absent from the secondary market) geometric abstract painter John Aslanidis as a "good artist" worthy of collecting.

In many ways these events formed a pair of book-ends for 2010 in a year when it was hard to remember that the art market in Australia has always contained what may be described as a dichotomy of the money and the magic. But even in saying that 2010 was an extraordinary year.

Between Cooper and Aslanidis lay the introduction of resale royalties, the Commercial Code of Conduct for the Aboriginal art market, the first serious satellite event to accompany the Melbourne Art Fair, controversies over

fakes, forgeries and appropriations, the collapse of Smith and Hall and ongoing skirmishes in Brisbane between graffiti reduction squads and street artists!

At times this year it seemed as though the art market itself was under attack. This was particularly disappointing when the new year held such optimism following the success of the investment allowance provisions in the second half of 2009 which was partly due to the efforts of Lowensteins Arts Management and provided great assistance to many

galleries and artists and ameliorated concerns over the forthcoming resale royalty scheme.

Amongst others I thought the art investment allowance (as many in the industry called it) was worth engaging with the Federal Arts Ministry to investigate more permanent taxation incentives.

Instead several months later we were confronted by the Cooper Review, paneled mainly by the large APRA funds, recommended that art was not a valid investment class (except for APRA funds) and therefore small self-managed super funds should be prohibited from investing in the art market.

The Cooper Panel went even further by proposing to have all artworks held in self-managed super funds divested within a ten year period. Little more than two months later – in the final Cooper Report released on June 30 - this divestment period was reduced to 5 years provoking fury and allying artists and art market professionals through the Save Super Art campaign led by the Australian Artists Association, Tom Lowenstein and myself. After the event it was commented that such an alliance of interests was not previously imaginable.

It struck many in the industry as strange that during the same period the resale royalties scheme was being marketed as proof of the validity of art as an investment class (every example in the explanations section of the legislation showed investors making profits from their artwork purchases!) Jeremy Cooper was making comments to the press such as “I look at the art market and I think it’s got a long way to go before it’s legitimate” and “art collection in superannuation funds is a pastime for the rich.”

The Federal Arts Ministry remained mute during this brouhaha until mercifully in late July, a week out from the Melbourne Art Fair and in the midst of an election campaign, the Gillard Government struck out the Cooper proposals with the proviso that better guidelines for holding artworks in super funds be adopted. To cap off a plot worthy of a David Lynch film this is the only recommendation from the entire



Installation view, NotFair 2010. Image courtesy of Melissa Amore.

150 or so Cooper proposals to have been ruled out to date, even though apparently artworks and collectables comprise only 0.1% of assets held in self-managed super funds.

Providing a post-script to the Cooper debacle was the collapse of Smith and Hall, Sydney in October, which reportedly involved 800 artworks with a total value estimated in the millions. Formerly known as Galleries Direct, Smith and Hall pursued a business model with a focus on attracting self-managed super funds to invest in the art market by guaranteeing leasing income through the hiring out of artworks. In other words Smith and Hall sought to exploit the “sole purpose test” in which super funds could not display artworks in the premises of their members by having those artworks exhibited on an arms-length basis and at the same time securing a return on the investment through the rental of the artworks (which it guaranteed regardless of the actual rental being paid).

As art market commentator Jane Raffan commented: “The Smith and Hall model... appealed (sic) to ‘art lovers’ because the rewards wrap pleasure and profit together in an emotionally satisfying bundle.” The collapse of Smith and Hall following the Cooper debacle became the dead canary in the art market coalmine. With the collapse of the Ronald Coles art investment business little more than a year before these events, the Smith and Hall liquidation is yet another warning that a slavish devotion to regulation combined with fashion should never be at the expense of fundamentals like knowledge, appreciation and valuation skills.

Because of the above it seems the Cooper Report has created uncertainty and mayhem in terms of super fund compliance. The Smart Investor magazine reported in September, a month after the recommendations were overturned, that “key recommendations for the DIY sector” include a “ban on collectables and personal use assets”. It has become clear that the arts industry has to engage further

with the associations whose members prepare and audit super fund financial statements and provide financial advice to super fund members - and demonstrate that it can enforce the fundamentals behind providing sound advice in artwork acquisition.

One of the major challenges in terms of this engagement will be convincing such associations that the art industry has minimum standards of professional behavior. This will be no easy task if the public continue to hear horror stories concerning fakes and forgeries. Significantly the case of *Blackman v Gant*, heard in the Victorian Supreme Court this year has provided important precedents for holding art market professionals to account.

Prominent artists Charles Blackman and Robert Dickerson took Melbourne art dealer Peter Gant to court over an alleged breach of Section 9 of the Fair Trading Act (Victoria) – in essence the complaint was that Gant had knowingly engaged

in deceptive behavior by selling works purportedly by the artists that he knew were in fact fakes. Justice Vickery could not rule that Gant had prior knowledge the artworks were not right but he ordered an injunction to prevent the dealer from selling them and ordered they be delivered back to the artists. In mid-July the artists celebrated the return of the fake artworks by burning them in a ritual ceremony held at Dickerson Gallery, Sydney.

This is a landmark case for the industry with attributed works being ruled as fakes and those fake works being destroyed. For art market professionals providing a valuation now implies ascertaining the authenticity of an artwork. Hence a valuer is now legally liable for that work's authenticity. Breaches of the fair trading act now carry serious legal ramifications. Breaches of an artist's moral rights and copyright is a breach of the law and also has serious implications.

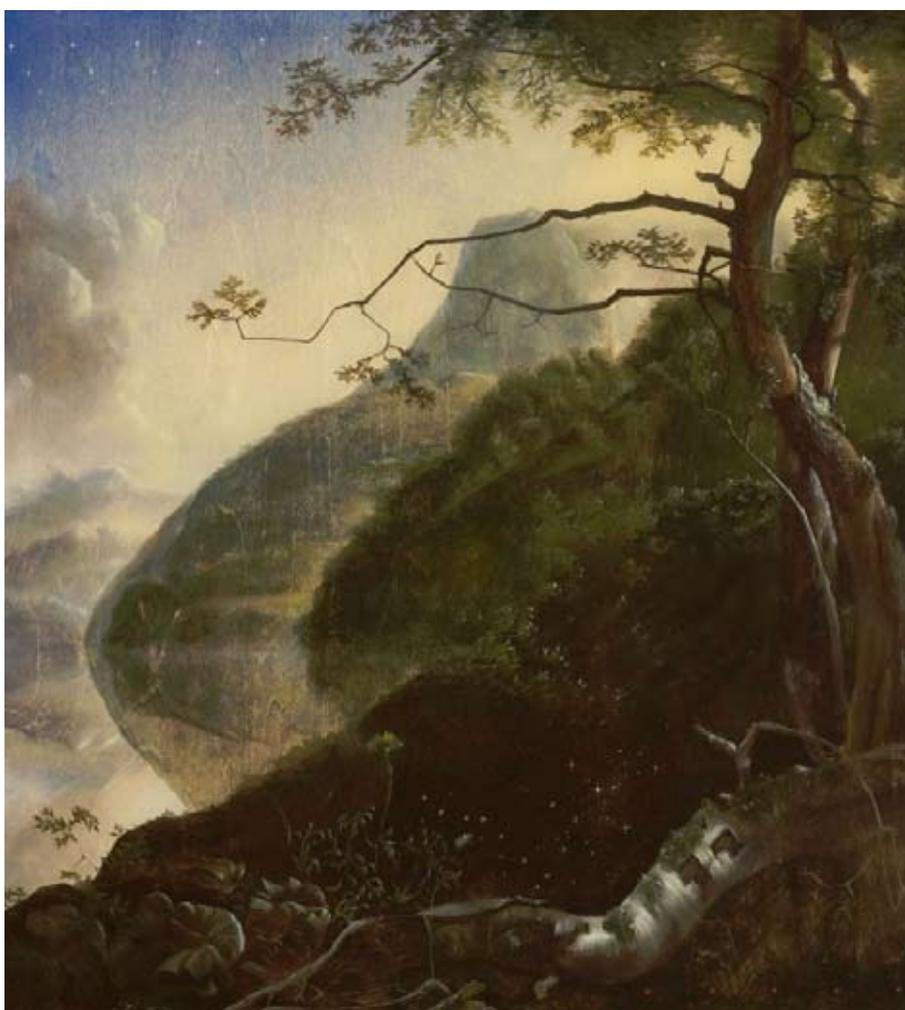
Confusing this situation in the public mind this year was the Wynne Prize awarded

to Melbourne artist Sam Leach for his work "Proposal for landscaped cosmos", a painting that bears more than a passing resemblance to a work by seventeenth-century Dutch artist Adam Pynacker. According to Leach it was a deliberate act of appropriation, paying homage to a landscape that brought back memories of his Adelaide Hills childhood. According to others it was a deliberate act of copying and the resulting media frenzy gave the Art Gallery of New South Wales trustees pause to reconsider their decision to award the prize to the artist.

In my opinion there would have been no story if the prize had not carried a \$25,000 purse. Ultimately the story illustrated the willingness of the Australian mainstream media to go on a culture-bashing expedition to sell papers and airtime; which has been made easier for them to do through the lack of serious government support for the visual arts industry. Sam Leach was more circumspect about the affair, telling ABC Radio "...in a funny way it's encouraging to know that painting inspires a lot of passion in people." Quite so!

Leach had more reason to celebrate in August with the launch of NotFair, a satellite event to the Melbourne Art Fair he curated with fellow artist Tony Lloyd and arts writer Ashley Crawford. Held in a sparse converted warehouse (provided courtesy of Jeremy Kibel who relocated Block Projects to the building after the event) Ali Harper, editor of Art Market Report, commented that it "resembled more of an art space than a fair". In fairness – pardon the pun - NotFair garnered a respectable amount of media coverage and high hopes for an expanded Mark II in 2012 that might see it compared favourably to international satellite fairs such as Pulse, Scope, Bridge, Volta and Liste.

The resale royalty scheme has now been operational for 6 months. According to Copyright Agency Limited (CAL), the administrators of the scheme, there have been 335 eligible resales in this period and \$47,000 has been paid or is now payable to artists. If these royalties have been paid at the full 5% rate this means \$940,000 in resales have been reported to CAL during



Sam Leach, *Proposal for landscaped cosmos* 2010, Winner, Wynne Prize, Art Gallery of New South Wales

this period. To put this figure in context it is equivalent to about 2% of the turnover of the Australian secondary market.

Feedback from the art market about the resale royalty scheme is consistently negative, particularly the requirement to report all resales regardless of whether any royalties are payable. There is a general consensus that not enough has been done in terms of an education campaign – which has actually been picked up by The Greens with their policy of implementing a \$5 million arts industry assistance scheme at the expense of removing the first sale exemption under the legislation. ie every eligible sale of an artwork in the country would carry a 5% resale royalty levy under this proposal.

At the time of writing it also appears that no treaties have been entered into with jurisdictions that also have resale royalty schemes. This may have the consequence of creating inadvertent exemptions for the sale of Australian artworks overseas. It is hard to blame CAL for these disappointments – based on the above statistics they would have earned \$4,700 in fees from their administration of the scheme in its first 6 months!

One of the other interesting statistics from CAL is that 82% of the reported resales since June have been for Aboriginal artworks. This is a worrying set of numbers when you consider that as opposed to the overall art market the equivalent of more than 10% of the turnover of the secondary market for Aboriginal artworks is being reported already. This completes a sorry year in which it appears the Aboriginal art market may be in some sort of decline despite the introduction of the resale royalties scheme as well as the Commercial Code of Conduct.

The latter voluntary scheme, like resale royalties, is suffering from a serious lack of informed debate as to its merits in the market; tellingly none of the major auction houses have signed up to the Code since it became open for business nine months ago. It has not even succeeded in informing the general public about the significance of Code Certificates in the trade of Aboriginal work. What will happen to the Code when it is reviewed in 2012



Printmaker Paul Smith and his wife sent this image to the Facebook page of the Save Super Art website at the height of the campaign in July following the release of the final Cooper Report on June 30

is anyone's guess based on its lukewarm reception in its first year of operation.

The above discussion reveals why I was so delighted to receive Valerie Kabov's review of John Aslanidis in October – here was a critic willing to give a wrap to an artist for his skills regardless of the fact that none of his works have yet to appear on the secondary market. It is worthwhile reproducing key parts of the introduction to her article.

Good artist. There are not that many but more than you would imagine and rarely are they the people who court the limelight. They work hard at their practice and their careers more of following their vision rather than their ego. These artists may or may not have public acclaim and may or may not be market favourites but they always have the respect of their peers and colleagues. John Aslanidis – good artist. Really good artist. (Why Art? October 2010 newsletter)

Before signing off for the year I have included a non-exhaustive list of prominent artists and art market professionals who passed away in 2010. The past year also saw the closure of galleries such as Hogarth in Sydney, Alison Kelly in Melbourne and Bundarra Gallery in Port Douglas, prominent in the promotion of Aboriginal art; as well as Kaliman Gallery and Harris Courtin, both of Sydney and Dickerson Gallery, Melbourne. Thanks to the National Gallery of Australia and Susan McCulloch in compiling this information.

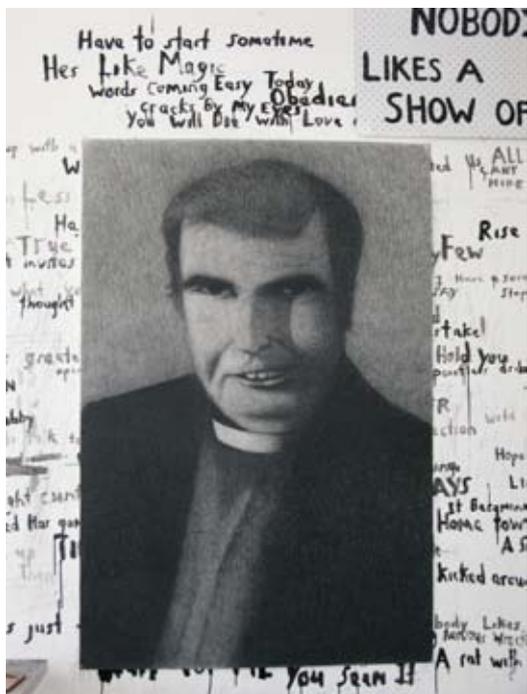
Michael Fox

December 2010

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Richard Lewer wins MPRG National Works on Paper Prize



Richard Lewer, *Father Keane* 2009, Charcoal on museum rag board, 150cm by 100cm

Artist Richard Lewer has been especially commended by MPRG director and judge Jane Alexander in being awarded the 2010 National Works on Paper prize from a short-listed filed that included Vernon Ah Kee, Eugene Carchesio, Prudence Flint, Richard Larter, Lindy Lee and Judy Watson.

“For the first time in the 40-year history of the MPRG’s National Works on Paper prize and exhibition there is a specific curatorial theme of portraiture and identity”, she said. “We know from the artist that the work is a homage to the revered Father Keane, but the intensity of the menacing gaze and the slightly lop-sided grin exposing a ‘mean set of chompers’ are unsettling.”

The artist remembers the priest as a stern but fair man who emigrated from Ireland to New Zealand in the 1970s. “The priesthood has always intrigued me”, Lewer explained. “Its seemingly solitary life is perhaps not unlike an artist with faith being the fundamental part of both our existence. Priesthood is also about extremes, an idea commonly explored in my work, the priest and his dogma requires intense skill, discipline and training.”

For more information:

<http://mprg.mornpen.vic.gov.au/nwop/exhibition/2010/awards/awards.asp>

In memoriam 2010

Jimmy Baker	Artist
Tom Bass	Sculptor
Peter Blizzard	Sculptor
Eva Breuer	Art gallery director
John Bulun Bulun	Artist
Jeff Carter	Photographer
Pamela Challis	Artist
Lindsay Churchland	Artist
Mari Funaki	Jeweller
Jacky Giles	Artist
Shaw Hendry	Artist
Weaver Jack	Artist
Greeny Purvis Kemarre	Artist
Jasper Legge	Art gallery director
Cath McCullough	Sales manager, Art Almanac
Janice McCullough	Founding editor, Art Almanac
Anne Newell	Artist
Vic O'Connor	Painter
John Armstrong Ogburn	Artist
Don Peebles	Painter
Shane Pickett	Artist
June Walkutjukurr Richards	Artist
Tom Risley	Artist
Wingu Tingima	Artist
Beryl Whiteley	Benefactor

Employee v Contractor – Factors to Consider

Many artworkers perform services entered into under contract that might better be described as an employer-employee relationship. Below are a number of factors that the Courts will consider in working out the true nature of such services for contract. Bear in mind this is a general overview. If you feel your situation may better be described as being an employee rather than a contractor please contact our office for more information.

Key indicators	Independent contractor	Common law employee
Level of control	High level of discretion & flexibility as to how work is to be performed	Payer has right to direct manner in which work is performed and tasks are performed at request of payer
Integration	Carrying on business in own right	Working in payer's business
Results	Contracted to produce given result and payment made on performance	Personally engaged to work in payer's business and generally paid an hourly, unit or award rate
Delegation	Unlimited power and may delegate to others	No inherent right to delegate tasks
Risk	Bears commercial risk and responsibility for poor work	Little or no risk arising from injury or defect in carrying out work
Assets/expenses	Provides own equipment and incurs own expenses	Work generally performed on payer's premises using supplied equipment
Leave entitlements	Generally not included	Annual leave and other benefits/allowances
Hours of work	Generally sets own hours	Standard or set hours
Appointment	Services advertised to public	Payer recruits the worker
Termination	On non-performance of conditions of contract	Payer reserves right of dismissal

The new paid parental leave scheme

Australia's first national Government-funded Paid Parental Leave (PPL) scheme will commence in less than 2 weeks on 1 January 2011. Below is an overview of the PPL scheme from the point of view of a parent as well as an employer.

The Parent's Perspective

- The primary carer of a child born or adopted on or after 1 January 2011 will be entitled to receive the national minimum wage – currently \$569.90 per week gross – for up to 18 weeks.
- PPL payments will be assessable for income tax purposes.
- Eligibility for PPL depends on the primary carer passing 3 tests:
 - a. Residency test
 - b. Work test
 - c. Income test
- Self-employed, part-time and casual workers may also be eligible – however there will be no pro-rata entitlements.
- PPL can be taken before, during or after any paid maternity leave or other employer-funded leave entitlements such as annual leave, long service leave etc.
- Other than a case of a multiple birth recipients of PPL will not be able to claim the baby bonus
- Other family allowance entitlements will be affected – recipients of PPL for example will not be able to receive Family Tax Benefit Part B whilst being paid their PPL

The Employer's Perspective

- Employers will receive funding from the Family Assistance Office (FAO) to make PPL payments to eligible employees
- Payments received from the FAO will be assessable for income tax purposes and PPL payments to eligible employees will be deductible
- Participation will be optional for employers between 1 January 2011 and 30 June 2011 and compulsory from 1 July 2011
- Superannuation is not payable on PPL payments however tax will have to be deducted before making payment to eligible employees
- Leave entitlements to employees will not be affected by PPL
- Payroll tax and workers compensation insurance will not be affected – however this aspect of the legislation has yet to be finalised

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