

Tax Matters for the arts

www.lowensteins.com.au
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Failure of government to support the Arts

by Tom Lowenstein

As a background, superannuation is a form of retirement savings which has existed in Australia for many years. The aim of superannuation is to provide for retirement and various regulations were put in place to safeguard investments in super funds.

It is only within the last fifteen to twenty years, with the growth and development of the Australian art market, that art became

acknowledged as a viable investment. Lowensteins Arts Management was instrumental in art being recognized as such. Prior to that, financial advisors and even the Australian Tax Office's (ATO) attitude against artworks in super funds was based on their assessment that art was not an income-producing asset and was therefore not a legitimate investment class.

In 2003 the ATO came out with a statement that prohibited members of the Self-Managed Superannuation Fund (SMSF) from displaying artworks owned by the fund on their walls arguing that this would breach the 'Sole Purpose Test'. The rules of the SMSF specify that members

cannot benefit from the superannuation funds assets before their retirement. The government felt that displaying artwork at member's homes would violate this rule because it would provide benefit to the members.

We made representations to the ATO which resulted in allowing art to be stored in the private home of members provided it was not displayed and thus did not provide a benefit to them.

In 2010 the Cooper Report recommended that SMSFs should be barred from acquiring artworks altogether; and that any artworks already owned by the funds should be disposed of over the period of ten years. The publication of the Report



*Night Watch, 1993, by Gary Shead
oil on board, 94.0 x 125.0 cm*

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led to a major campaign organised by our firm under the banner of Save Super Art where numerous submissions were made by us, artists, galleries and collectors, citing that it would have a negative effect on the already depressed art market due to the Global Financial Crisis.

We thought that we were successful in convincing the then opposition parties (Liberals and the Greens) and eventually the Labor government. It was our understanding following the extensive correspondence and meetings held with politicians of various parties that the recommendations of the Cooper Report as to the acquisition of art by SMSFs would not be legislated. True to their word, the Labor party did not introduce legislation to prohibit the SMSF from acquiring works of art. However, they introduced regulations that affected the storage and insurance costs which effectively made the acquisition of artworks by SMSFs not feasible.

The regulations regarding the SMSF's ability to invest in works of art has already created a great uncertainty in the art market. Our research indicates that sales in the primary art market have greatly decreased. Approximately 30% of commercial galleries have closed or merged. Some of our most senior established artists have reported a 46% decrease in their income between 2008 and 2012 financial years, while the mid-career artists have reported a 41% decrease over the same period.

The secondary art market has also shown a substantial decline in turnover, from \$175 million in 2007 to just under \$100 million in 2014 (a 40% decrease).

During the same period, the average income of Indigenous art centres has halved and the Aboriginal secondary art market has experienced an 80% fall from \$28 million to \$5.6 million.

We have provided these figures to government and highlighted the effect on all ancillary industries, including framers, specialist art carriers, writers, curators, art installation specialists and so forth who have experienced a sharp decline in their income levels.

This situation will be exacerbated by the additional requirements of all SMSFs to comply with new regulations by 30 June 2016 in relation of artworks acquired prior to the introduction of the regulation. Effectively, this is retrospective legislation and surprisingly only refers to and affects SMSFs and not industry Funds or APRA Funds.

It is estimated that SMSFs have invested between \$600 million and \$800 million in art and, in order to comply, they will need to divest themselves of these investments. Australian auction sales for the past 2 years were just over \$100 million per annum, a number of superannuation funds have already shed themselves of these artworks. Trying to dispose of \$600m to \$800m in such a short period of time would destroy the Australian art market and depress artists' prices which would undermine the viability of the commercial art sector for decades to come.

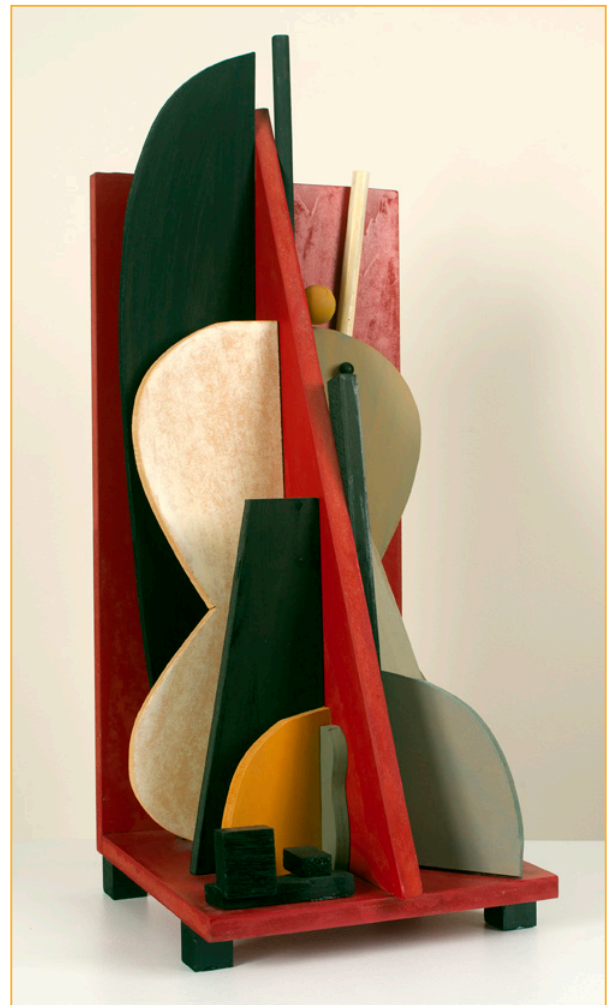
We have prepared submissions which were presented to all ministers connected in even the slightest way to the arts, finance and superannuation and we were led to believe by all members of parliament that we approached that they were sympathetic to our cause. We were given what we thought was an understanding that the regulations introduced in 2010 would be abolished.

Regrettably, all our efforts appear to have been futile. We have now been advised by the Department for the Minister for the Arts, as well as the office of the Assistant Treasurer, that they have asked for

submissions for a White Paper on taxation followed by period of consultation, which will be released to the public and then considered by the government, but not before the next election.

We continue to actively pursue the following goals:

- The repeal of the Superannuation Industry (supervision) Amendment Regulations 2011 (no 2) referred to as "New Regulations" which were introduced as effective from 1st July 2011. If due to time factors or technical necessity the repeal of the legislation cannot be effected immediately, we would at least request a deferral of the compliance deadline.
- Redefine the 'Sole Purpose Test' because the current narrow interpretation by the ATO is not in line with international opinion. We would be ridiculed by the international art world if it was revealed that in effect, a SMSF could acquire a work of art, but members of the fund would be prohibited from viewing the work, as the "pleasure of looking at it" would convey a "benefit".



Suite Espagnole, 1992, by Robert Jacks
painted timber, 80.0 x 30.0 x 30.0 cm

Sofie Laguna

by Fiona Gruber

Sofie Laguna says she has no real idea where her fascination with the child's viewpoint comes from but it is the common thread in her writing; alongside a long list of publications for children of all ages, her two forays into adult fiction are tales viewed from a child's perspective.

The *Eye of the Sheep* which won this year's Miles Franklin Literary Award is narrated by six year old Jimmy Flick, a child with learning problems. Her previous novel, *One Foot Wrong* (a debut which was long-listed for the Miles Franklin in 2009) features another child narrator, Hester, the imprisoned daughter of religious fundamentalists.

"Maybe we all have an age at which we're stuck", says Laguna. She says an incident at drama school was revelatory;

"At the Victorian College of the Arts the Dean, David Latham, gave us an exercise where we had to write and act out a scene and I created and played a small child; he said he'd never seen me more fully emerged as an actor", she says.

So it's no surprise when Laguna reveals that she went on to work with Salamanca Theatre Company, which specialised in theatre-in-education.

What about the harrowing events in both her adult books?

"I like pushing my characters to extremes", she says, "I like testing them and raising the stakes in life and death



Sofie Laguna,

Photo by Edwina Kearmey

situations." But in all her writing, she explains, the ideas just well up from the subconscious.

They do need to be shaped, however:

"I need to know what happens at the end before I can begin", she says, but her structure is not too formal with "ten roughish plot steps" sketched out and a first draft that is completed as quickly as possible, before the polishing work begins. Laguna's own childhood in Sydney was a comfortable one with an excellent education, she says. Her Polish radiologist father and Dutch artist mother were both extroverts who filled her head with European fairy tales.

She initially studied law before deciding acting was her calling, and alongside drama school, subsequently did a course in professional writing at Melbourne's RMIT.

As the mother of five-year-old Sonny

and infant Milo, Laguna, 47, is an expert at snatching time; while other mothers at play centres chat over coffee about sleep deprivation, she can be found in a corner tapping away on her lap-top. It can get lonely, she admits.

She's thrilled with the \$60,000 prize but has little time to enjoy the perks of fame and is hard at work on another novel for adults and another picture book.

Laguna has also written the screenplay for *One Foot Wrong* and, she says, there is strong interest in a film version of *The Eye of the Sheep* "although no contracts are signed".

Despite putting him in challenging situations, Laguna says she couldn't have written her latest novel if she hadn't felt delight in her child protagonist. Jimmy, she says, is sharply individual, "a moving, playful character. I couldn't have done this if I hadn't loved him."

Insurance for artists

Lowensteins Arts Management has finalised an agreement with AON Insurance and BARTA & Partner, underwritten by Lloyds of London, to create a specialised policy for artists and their needs. It is our view that these premiums are very competitive and enable artists to insure their studio contents at realistic prices.

A number of artists, galleries, and private collectors have recently switched Fine

Art Insurance policies to AON Insurance / BARTA & Partner, making substantial savings on premiums.

The limits and rates agreed by the insurer are:

- For works in progress / completed works to the total value of \$250,000 – a base premium of \$650 plus charges.
- For works in progress / completed works to the total value of \$500,000 – a base premium of \$850 plus charges.
- For works in progress / completed works to the total value of \$1,000,000

– a base premium of \$1,400 plus charges.

Please note that the above premiums also include studio contents and transit at \$25,000 and private collection limit at \$100,000.

The insurer can also assist artists who have higher value art collections. To give you a rough indication, the premium will be around 0.1%-0.2% of the total value of the insured artworks. In other words, to insure artworks in your personal collection with a total value of \$1,000,000, the base premium will be somewhere between \$1,000 and \$2,000 plus charges.

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A percentage of commissions received from these insurance policies will be apportioned for the benefit of the Australian Artists Association.

Bambi Blumberg, of Bambi Blumberg Art+ and Amy Wadsworth, of AON Australia, who are Sydney-based, provide specialised services to our national clients. They will be pleased to discuss insurance policies with you.

Ms Bambi Blumberg is a highly experienced arts professional with an extensive background in benefactor relations, donor development, fundraising initiatives, corporate sponsorships, and VIP relations. For many years she

conceived and managed inspiring visual arts programs, unique events, and highly successful art tours during her tenure at the Art Gallery of New South Wales. She represents the leading global company, Art Basel, as VIP Relations Manager for Australian and New Zealand clients. She is the representative for Barta & Partner for Australian and New Zealand clients.

Contact bambi@bbart.com.au
m: 0412299629.

Ms Amy Wadsworth has over ten years experience in client management and has been with AON for over five years working on the fine arts portfolio. Amy has a personal interest in art and works with

art collectors, galleries, art consultants, exhibitors, and many other professionals within the arts industry. She offers specialised fine arts policies across Australia and has extensive experience within the arts sector. She has a passion for client management and ensures the highest level of exceptional service at all times.

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Eugene Barilo von Reisberg is our Melbourne office liaison to answer any queries you may have.

Contact eugene@lowensteins.com.au or (03) 9529 3800.

Artists Estates: Update on wills



by Tom Lowenstein

Over the past few years I have been confronted with numerous problems in my capacity as executor, mediator, and/or advisor to deceased estates.

Many of the problems arose from homemade wills and/or from wills prepared without the lawyers consulting the client's accountant. In some instances, it was impossible to carry out the wishes of the deceased due to technical or legal reasons. Problems arose:

- when properties left to beneficiaries were not actually owned by the deceased but instead belonged to a company and/or
- where the assets left in the will no longer existed or had already been gifted during the deceased's lifetime.

When preparing a will the most important aspect to consider is that both your accountant and your solicitor are consulted; and that they are fully aware of your assets and their location. Ideally you should meet with your accountant and solicitor as a part of the preliminary discussion to ensure that they communicate with each other and are fully informed of your circumstances. In the first instance you should consult your accountant and obtain a comprehensive list of your assets and liabilities, including the date that the assets were acquired because there could be possible Capital Gains Tax implications.

You should also ask your accountant to prepare a chart of your business structure and provide your solicitor with copies of

Trust Deeds and company documentation, to establish in how the control of these entities is exercised.

It is also necessary for you to prepare a comprehensive list of your beneficiaries, including children by previous marriages or others who could claim to be your dependents.

In case of artists where a large part of their estate is in the form of artworks, special considerations need to be addressed.

If you would like to find out more regarding the financial implications of making a will and estate planning contact us for further information.



The Crowd, 1978, by Peter Booth
ink on paper, 665.0 x 102.0 cm

Evan's corner



by Evan Lowenstein

As IT and records management systems change and individuals

want to do more online, the ATO is changing to meet clients' expectations and concurrently looking for ways to help us as your agents keep an eye on your affairs.

From late March 2015, individuals with a 'myGov' account started to receive some of their ATO correspondence to their myGov Inbox. Any mail received by our clients via your myGov Inbox will no longer be sent to us in paper form, for example notice of assessment for these clients.

It is therefore important that you forward any electronic correspondence received directly from the ATO or address any queries to us here at LAM.

ATO Scammers

In the past few months a number of our clients, as well as other taxpayers generally, have been contacted by supposed criminal gangs and scammers pretending to be official ATO officers.

In one particularly concerning episode, one of our clients was sent a SMS from someone purporting to be an ATO officer, stating that they were found guilty of tax evasion. When the client contacted this number, they were told that they were behind in tax payments and were asked to provide the scammer with their credit card details to rectify this supposed situation.

These occurrences have been quite a nightmare for our clients and, of course, the ATO has been informed of these scams.

The ATO has taken action by listing these scams on the website scamwatch.gov.au where scams can be reported and further action will be taken by the ATO and other government agencies.

We strongly advise our clients never to give out their personal, banking or tax information to anyone who calls without checking their bona fides or, if you have any concerns at all about the legitimacy of the caller, please contact us.

Storage space rental

In order to assist clients and friends of our firm we have taken storage facilities in Oakleigh in excess of our requirements.

This would be attractive to Trustees of Self-Managed Superannuation Funds and complies with the storage requirements of the regulations.

The following spaces are available: Carrels for the upright storage of artworks:

- Single carrels: 145 cm high x 20 cm wide x 135 cm deep

- A total of 38 carrels available
Shelves for upright storage of smaller works / small

sculptures / ceramics and/or flat storage of unframed works:

- Single shelf: 40 cm high x 190 cm wide x 70 cm deep
- A total of 3 shelves is currently available

Storage of sculpture and other 3D objects – by negotiation.

The storage space is fully secured and alarmed.

Access to the space is by arrangement with either Tom Lowenstein, Evan Lowenstein, or Eugene Barilo von Reisberg. 24 hour notice is preferred, but same day access can also be arranged.

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Important

Readers should not act solely on the basis of the material contained in this newsletter. Items herein are general comments only and do not constitute or convey advice. Changes in legislation may occur quickly. We therefore recommend that formal advice be sought from one of our offices before acting in any of the areas covered in this newsletter.

Tell us your news

Please send us your news of upcoming exhibitions, workshops & opportunities. Space permitting we will publish your news in our next edition.

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In our next issue

Estates: Power of Attorney

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