



Editorial

By Tom Lowenstein

Last month I wrote to the Minister for the Arts, the Honourable Simon Crean MP, enclosing a list of problems facing the visual arts and pointing out the substantial down-turn in the art market and suggesting a few short term remedies.

A copy of the letter and the various Submissions are on our website <http://www.lowensteinsarts.com.au/>

Without doubt the main concern voiced by me was the impact of the new regulations introduced as from the 1 July, 2011, which relate to Investment in Art by Self Managed Superannuation Funds.

You may recall that the Save Super Art Campaign, which attracted a great deal of interest and which we considered a success, resulted in the Government giving us an undertaking, that it would oppose the Cooper recommendations and would introduce certain safeguards to enable Superannuation Funds to continue to acquire art as an investment.

It was also interesting to note, that on the 10 February, 2011, the Senate passed a motion, moved by Senator Milne, which called on the Government to abide by its election promise and to ensure that any regulations do not act as a disincentive for D.I.Y. Superannuation Funds to invest in Australian art. This motion was passed and accepted by all Political parties.

However, when we examine the new regulations which were enacted on the 30 June, 2011, it becomes quite obvious that the Government gave undertakings



Bruce Armstrong
Barry 2011
image courtesy Lorne Sculpture 2011

Barry is a new work by Bruce Armstrong which is currently being exhibited on the Sculpture Trail at the 2011 Lorne Sculpture festival. The work is somewhat smaller than Armstrong's iconic 25 metre high eagle, which overlooks the city of Melbourne, but is described by the artist as being a portrait of his cat "staring out to sea". The sculpture festival runs until 6 November 2011.

to oppose the Cooper Report, only as a gesture to pacify the arts community and the Save Super Art Campaign.

It is quite obvious that the new regulations are a "disincentive for Self Managed Superannuation Funds" to invest in art, especially the requirement that the works must not be stored in the private residence of related parties.

Previously the Australian Taxation Office had accepted that art could be stored in the private residence of members, provided the works were not displayed.

The introduction of the new regulation relating to storage, tends to indicate that there is a concern that the Trustees of Self Managed Superannuation Funds could not be relied upon to tell the truth and consequently strict regulations have to be imposed, even though the cost of doing so can, in many instances, make the investment in art not viable.

When you also look at the new regulations

relating to:

- arranging insurance on new acquisitions within 7 days
- the administration requirements of storage decisions and reasons for these decision by the Trustees
- coupled by the need to account for and administer separately artworks acquired, prior to 30 June, 2011, and those acquired under the new regulation
- and lack of definitions

has made the position untenable.

With these current regulations, in my view, there is no Financial Advisor or Accountant who would recommend the acquisition of art by Self Managed Superannuation Funds.

It appears, that the assurances by the Government amounted to no more than "lip service" and unless there is a

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Ken Unsworth
As I crossed the Bridge of Dreams, Cockatoo Island
 image courtesy The Daily Telegraph

re-think by the Government, the Copper recommendations have been achieved via the “back door”.

*The installation of Ken Unsworth’s *As I crossed the Bridge of Dreams* was filmed at a private venue prior to the show’s opening, replete with dancers, musicians and a live audience. The remnants of this performance was open to the public from 13th to 28th August on Sydney’s Cockatoo Island.

The Benefit of Trust Accounts in the Commercial Gallery System

An art gallery is distinguished from other businesses through its ability to take artwork on consignment and rely on income from exhibition sales to cover their expenses. In these uncertain times, however, it is known that some galleries do not pay their artists on time.

From a deep fall in the early 1990s and a steady rise over the past 15 years, the art market is proving to show unstable tendencies in the current day. With the Global Financial Crisis, the Cooper Review and Resale Royalties, artists and gallerists have fallen on uncertain times.

Without the artist’s consent there is no legal, financial or moral framework for galleries to make delayed payments to artists. Artists are therefore put in the undesired position of needing to broach the issue with their gallery, not to mention financial distress.

Today, various galleries have been forced into liquidation, resulting in the owing of significant monies to artists. In order to avoid these unfortunate situations, it has been recommended that galleries open Trust Accounts, similar to those operated by solicitors and estate agents, to protect their artists.

We have made approaches to the Federal Government and to State Governments, asking them to legislate some form of trust accounts, as self-regulation does not appear to be

working. In this regard we note that for more than a decade the Australian Commercial Galleries Association (ACGA) have recommended that its members maintain trust accounts however it is unclear whether such trust accounts have been established or maintained.



As Modern as Tomorrow opens at the State Library of Victoria in February 2012 and features an important selection of émigré photographers whose international eye captured Melbourne in the mid-20th century via a new visual language. Artists include Maggie Diaz and Wolfgang Sievers.

Maggie Diaz
 Peter James
 3AW, 1964
 image courtesy
 The State Library of Victoria



Philip Hunter
Block No. 4, 2011
gouache and ink
38.5 by 28.5cm,

image courtesy Block Projects

Anything that discourages the buying of artwork is stupid

Colin Lanceley, July 2010

One year ago the former Federal Arts Minister, Peter Garrett, unwittingly provided support for self-managed superannuation fund (SMSF) investment in the arts, at a talk at Melbourne University.

Referring to an image of an Eubena Nampitjin painting which had been left on screen by the previous speaker, Garrett remarked on the beauty of the work as well as the importance of investing in the Aboriginal art market.

Unknown to Garrett, that particular artwork belonged to an SMSF collection at a time the Government was proposing to prohibit such future acquisitions.

Less than a month later during the 2010 election campaign this proposal was abandoned following a concerted campaign against it by the Save Super Art campaign led by Tom Lowenstein and run by the author.

Instead of banning SMSF investment in the arts, the Gillard administration pledged to introduce new regulations by

30 June 2011 and indeed that is what was delivered via the Superannuation Industry (Supervision) Amendment Regulations 2011 (No.2) legislated on that day.

These new laws are certainly more onerous than the previous regulations, however, they do not represent “the arts end of superannuation”, as a certain academic described it in April this year.

So what are the new regulations and what are the most important aspects of the changes? In the absence of an official education campaign to inform the art market about these new laws I make the following comments:

1. The new regulations do not apply to collections held at 30 June 2011 for another five years. In other words, collectors may rely on the previous regulations concerning SMSF artworks acquired on or before 30 June 2011 until 30 June 2016. If these artworks are still held on 1 July 2016 without complying

with the new regulations, the SMSF will find itself in breach and this will have consequences for all of its investments.

2. “Related party transactions” are now outlawed. A good example of a related party transaction is where SMSF artworks are displayed and leased to a company or individual associated with the SMSF. Under the new regulations, these arrangements will not be allowed. Further, the definition of private residence has been expanded to include land used for private purpose and buildings on that land, such as a garage or shed.
3. These provisions also capture same-sex couples through legislation that was passed in 2008, which amended the definition of a “spouse”. A spouse is now defined as “another individual who, although not legally married to an individual,

lives with them on a genuine domestic basis as a couple”.

4. The “in-house asset” rule has been scrapped. As it applies to artworks, the old regulations allowed an SMSF to hold five per cent of its total asset value in the form of art in the private residence of a trustee or member. (Of course this became a political hot-potato due to the perception that wealthy collectors were enjoying SMSF-financed artworks in their own homes while the less fortunate could not. It also led to a position adopted by the ATO but never tested in a court room that the mere enjoyment of such artworks was some form of pre-retirement benefit!)
5. There are new requirements for storage. Effectively, collectors should note that storage solutions

should be at hand even before the decision is made to buy a new artwork. There will need to be a written record of the decision relating to storing the artwork and this record must be kept for at least ten years after the decision is made.

6. There are new requirements for insurance. Collectors will need to have ready access to art insurance because the SMSF has no more than seven days to insure new artwork acquisitions and failure to do so will result in the SMSF being in breach of the new regulations. Insurance firms will have certain expectations concerning the way artworks are stored. For example, the building would have to be secure and weatherproofed, artworks must be professionally

stored and they would likely insist a monitored alarm system linked to a security service be put in place.

7. Artworks may only be transferred out of the SMSF at a value determined by a qualified independent valuer.
8. The new regulations also apply to jewellery, antiques, coins, manuscripts and certain other collectables with the proviso that such collectables cannot be used by related parties of the SMSF.

In summary, SMSF artwork investment is still alive, albeit a more conservative strategy may now be warranted.

Submission from Tom Lowenstein to Simon Crean Government Encouragement to the Visual Arts

As I have previously mentioned the art market has been depressed for the past two years and the last year has been catastrophic especially for a number of established mid-career artists. Galleries have reported that the majority of the exhibitions have achieved sales of less than 25% and numerous exhibitions were without any sales at all

The reasons for the depressed art market, both primary and secondary is due to the following factors :

1. The Cooper Report [relating to Self Managed Superannuation Funds Investment in Art] its subsequent public debate and Super Art Campaign. Despite acknowledgement by the Government, the Opposition and The Greens that these recommendations would be greatly destructive to the arts industry new Legislation [which ignored the concerns of the art community] only made matters worse, by introducing regulations which make acquisition of art by SMSF's too confusing and too onerous.
2. Resale Royalties Legislation This has left a severe impact on the secondary art market and especially indigenous art.
3. The Global Financial Crisis



Shaun Gladwell
Pacific Undertow Sequence (Bondi), 2010,
video still, single-channel high definition digital video, 11 minutes, 21 seconds, 16-9 ratio, stereo sound,
colour, lot no. 35,
The Estate of Ann Lewis AO, Mossgreen Auctions, 7 November 2011,
image courtesy Mossgreen

The sale of works from The Estate of Ann Lewis AO will be auctioned by Mossgreen at the Art Gallery of New South Wales, Sydney on Monday 7 November 2011.

4. The high Australian dollar which has had an adverse effect on exports of indigenous art, as well as an increase in overseas art being acquired by Australian collectors
5. A malaise of negative feeling

throughout the economy and especially in the arts industry, where the uncertainty and confusion in relation to the Resale Royalties and Superannuation investment in art has had a considerable impact.

I have been involved in the arts industry for the past 40 years as an Accountant to artists, galleries, dealers, academics etc., and consider that I have a good understanding of the art market in both the primary and the secondary areas.

My view is that the art market is so depressed that it requires a kick start by the Government and I would suggest that this assistance should be directed at mid-career artists, who are having a very hard time.

My suggestion is based on a joint venture which my former Accounting practice, Lowenstein Sharp instigated with the help of the Victorian Government in 1996 and under the auspices of the Museum of Modern Art at Heide, known as the Lowenstein Sharp Arts 21 Fellowship.

This scheme was based on mid career artists being invited to submit projects that they wish to undertake and the selected artist was awarded a \$50,000 Fellowship to pursue those activities.

As a requirement that on completion of the project that they would liaise with the Museum of Modern Art at Heide and provide them with a major work to their collection in appreciation of the Fellowship and Heide's involvement.

As a matter of interest, the five winners of the Lowenstein Sharp Arts 21 Fellowships were :

Aida Tomescu
Imants Tillers
Mike Parr
Akio Makigawa
Fiona Hall

each of these people have more than adequately repaid the confidence that the selecting committee had in their selection for the Fellowship.

Specifically, my suggestion is the following :

100 mid-career artists be selected and given a two year Fellowship of \$50,000 per annum on the following basis :

Application criteria

1. An exhibiting history of 20 years
2. Net sales of the past year under \$100,000
OR
3. Net income [disregarding Cultural Gifts] of less than \$20,000
4. Present a proposal for a project or activity to be undertaken over the next two years

It is suggested that the Selection Committee should consist of two Directors or Curators of State or Regional Galleries, two Senior artists and two Collectors or Art critics or Art Administrators.

It has been suggested that on completion of the project or at the end of two years, that the artist would have an exhibition and in his/her commercial gallery.

The Government either via Artbank or their National or State Galleries or Regional Galleries will have the first choice of acquiring \$100,000 worth of work which would be an effective acquittal of the \$100,000 Fellowship which they had received.

This type of project would not only provide a stimulus for a 100 needy artists but would also provide State and Regional Galleries with a collection of work which otherwise they would not have received.

Although there is an initial cost outlay, it is an investment into the future.

Personal Properties Securities Register

A new piece of legislation relating to artists' works on consignment in galleries has been uncovered, likely to further exacerbate financial issues for artists.

Under current law, if an artist leaves work on consignment at a gallery, should the gallery go under, that artwork remains the property of the artist. This legality would be recognised by a Liquidator and therefore be returned to the artist before liquidation takes place.

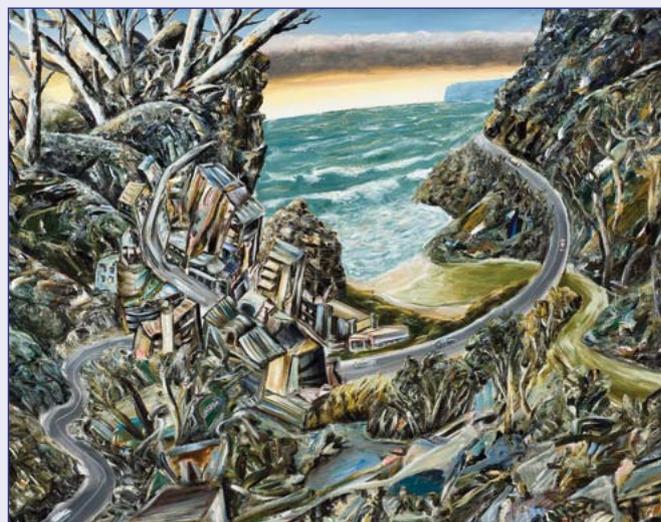
The Personal Property Securities Act 2009, which comes into effect in January 2012, states that should a gallery need to appoint a Liquidator, the artworks under consignment will not be recognised as the property of the artist and can therefore be sold by the Liquidator, with proceeds going to the creditors.

In order to avoid this occurrence, an artist will need to register their securities, such as artwork left with the gallery, with the Personal Property Securities Register (PPSR). In this case, registered work would remain the property of and be returned to the artist. Registration will

require certain fees, the amount of which has not yet been disclosed.

This piece of legislation has had very little publicity. However, we implore you to stay up to date with any advances, in order to protect yourself from any potential complications arising from your consignment agreements.

We will keep you informed on any new information or alternative measures. Please note that Lowenstein's Arts Management has drawn up standard gallery/artist agreements and will be incorporating the PPSR into these agreements once the legislation comes into effect.



Jan Senberg's
Coastal settlement, 2008
acrylic on linen
169 by 216 cm

image courtesy Deakin University
Art Gallery

Jan Senberg's *Geelong Re-Imagined and Observed*, recently shown at Deakin University Art Gallery, continued the artist's longstanding relationship with Victoria's West Coast and exhibited works recently acquired by the gallery.

Indigenous Art Code

The Indigenous Art Code is still a voluntary set of guidelines, yet many galleries are feeling the pressure to sign. The code was designed to address ethical breaches occurring in the Indigenous art market, brought to the public's attention by The Australian newspaper in 2007.

The fundamental aims of the code seek to ensure fair trade practices between galleries, buyers and Indigenous artists, through the establishment of commercial standards, benchmarks for ethical behaviour and greater certainty for buyers. While the code was initially ordained for two years on a voluntary basis, it would become law if practices in the industry did not improve.

Emily Rhor, of Short Street Gallery in Western Australia, tells of the pressure she felt from John Oster, the code's chief executive. She was encouraged to sign the code, under the proviso

that it was likely to become mandatory practice. Ms Rhor is reluctant to sign the code as it only applies to Indigenous artists and she is already committed to an alternative code which relates to commercial gallery practices in general, encompassing all artists in her stable. In this case, the signing of multiple codes could hinder current processes, due to duplication.

Mr Oster, who advocates the code as an important step for equity in the Indigenous art industry that will ensure a unified and high level of professional practice, also maintains that he has negotiated the code in a respectful manner without coercive methods.

At present, the code has 115 signatories, but the government would like to see this figure rise. Arts Minister Simon Crean has announced that \$25,000 will be allocated to a marketing budget to raise awareness about the code.



David Bromley in his Byron Bay studio
image courtesy Northern Star

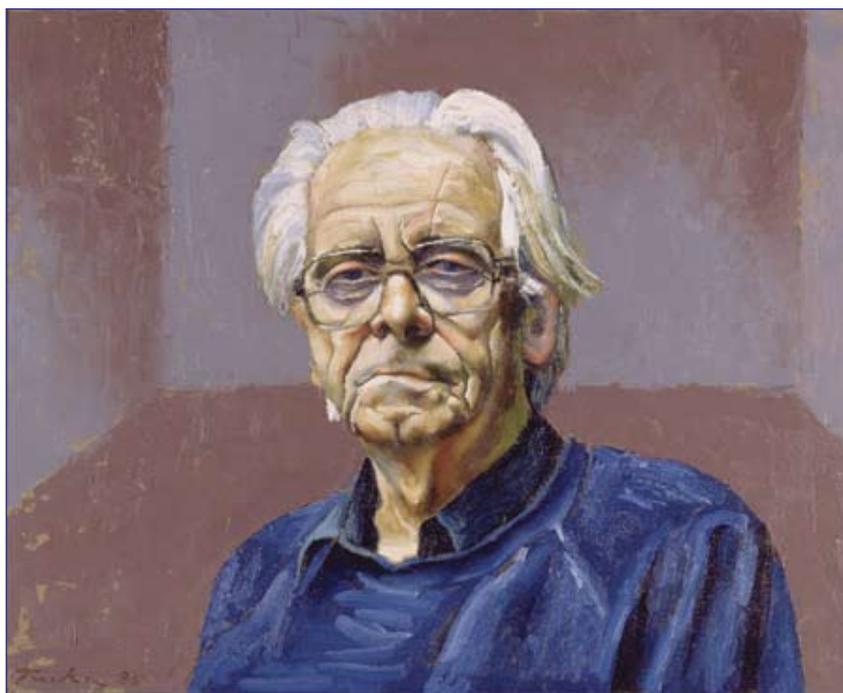
David Bromley has decamped from the Melbourne art scene and moved to Byron Bay full time. An auction of his lifetime collection of objects and art will be conducted by Leonard Joel on November 26th in Daylesford and November 27th in South Yarra, this year.

Bernard Smith 1916 - 2011

Bernard Smith is known for writing on Australia's cultural development and as a critic of art and society. He wrote for over 70 years on contemporary socio-politics and cultural change, contributing to the definition of the ever-evolving Australian cultural identity.

Smith entered Sydney's intellectual scene in the late 30s as both a painter and a Marxist critic. He wrote a revision of the cultural development of Australia in *Place, Taste and Tradition* (1945), cementing his career as a writer. In his second book and masterpiece, *European Vision and the South Pacific* (1960), he looked at how Australia transcended its colonial roots and grew into a modern society. The book contextualised Australian history, deemed Smith as an authority on the voyages of Captain Cook and was applauded on an international scale.

Born in a small worker's cottage in Sydney in 1916, Smith was adopted by Charles Smith and Rose Anne Tierney. As an illegitimate child, he learnt the hard lessons of abandonment and distance. He later acknowledged that children in this position fall into one of two categories, self-pity or feeling an



Albert Tucker
Bernard Smith, 1985
oil on canvas laid on cardboard
60.5 by 76cm

image courtesy National Portrait Gallery

innate distance from society. Smith fell into the latter category, equipping him with an objective and critical eye and the skills to live as a witness to, rather than a participant of, society.

Trained as a primary school teacher, Smith became an education officer at the NSW Art Gallery. He married Kate Challis in 1941 and won the British Council scholarship in 1948, leading him to the Courtauld and Warburg institutes

at the University of London. His intellectual path was thus confirmed. Returning to Australia in 1951, Smith became a senior lecturer of fine arts at the University of Melbourne. Together with Joseph Burke and Ursula Hoff, he established the study of art history as a legitimate academic discipline in Australia.

Smith formed the Antipodean movement in 1959, comprising of seven emerging

figurative painters. Dividing the art community, the group managed to put the Australian identity on the world map and launched Smith's voice as a commentator on international contemporary art politics. Smith also wrote as an art critic for *The Age* and following his survey exhibition, *Australian Painting*, in 1962, he was appointed the founding chair of Sydney's Power Institute of Fine Arts.

Bernard Smith retired officially in 1977 but continued to lecture, mentor and write on topics at the forefront of his career, from colonialism to post-colonialism and of course art and modernism. At age 94 he has sadly passed away. His life's work, which he continued up until the end, shaped the Australian cultural identity. His theories will be read and taught well into the future, as will his legacy, as the father of Australian art history.

Joy Warren 1921 - 2011

Joy Warren ended her career as a teacher and a potter, a far cry from where she began. She has left behind a beautiful collection of treasured ceramics, the springboard upon which the craft community in Australia was developed and the inspiration that in life it is never too late to begin your passion.

Warren arrived in Australia after high school and went straight into the workforce. In her 50s she returned to study and graduated with honours at the University of Sydney. She went on to lecture in Art History for 17 years at the College of Fine Art, University of NSW and the Sydney College of the Arts.

She undertook a PhD in her 70s at the University of Wollongong. Her thesis sought to trace the sources of art imagery across time and space and challenged the perception of decorative and applied art as a marginalised art form, arguing for their place in art historical discourse.

Born on the island of Walney, England, at age 17 she arrived in Australia just before the onset of war. She worked in advertising and due to her good writing skills and inquiring mind she quickly worked her way up the ranks. She married artist Guy Warren and the two travelled to Italy and England. She landed a job with Guinness and revolutionised the brand's image, making it fit for sophisticated young women like herself. She developed a campaign based on her own experience with the drink, where by if you stick with it, you will begin to like it.

When she returned to Australia, Warren took up studies in ceramics at East Sydney Tech, now the National Art



Joy Warren
3 small porcelain bowls
image courtesy Stella Downer Fine Art

School. She developed a firm position in the crafts movement and was awarded the Craft Board grant to research the history of Australian ceramics. She became the editor of a new craft journal, *Craft Australia*, and was a member of various craft organisations. Warren published numerous books on craft, most notably, *Crafts of Australia*, which was reproduced in three languages and went on to accompany an Australian craft exhibition in Toronto.

Solander Gallery was established by Warren in 1974, as one of the first commercial art galleries in Canberra, exhibiting work by contemporary Indigenous and non-Indigenous Australian artists.

Warren held many exhibitions over the course of her life, including a solo

exhibition at New England Regional Art Museum in 1994 and a group show at Stella Downer Fine Art in 2009. Her work can be found in numerous public and private collections such as the National Gallery of Australia and the National Gallery of Victoria.

Warren's artwork is described as poetic thrown ceramic vessels, imbuing a beautiful delicacy. Her work exhibits a handmade and simple aesthetic, where understated glazed tones give each work a unique and contemplative gesture. Her personal contribution to the world of craft is much less delicate and understated. She will be remembered for her vigorous influence in the crafts community of Australia and fighting for its position as a serious art form.

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