

## Day 82 of the Cooper Debacle - Section 55 and Black Boxes

The Save Super Art campaign met with Minister for the Arts, Peter Garrett on Thursday, at roughly the same time that the BP oil well was capped in the Gulf of Mexico by underwater robot-controlled submersibles 5,000 feet beneath the surface of the ocean.

Unfortunately for the Australian arts industry there was no such breakthrough with the Arts Minister in the Cooper debacle which has been ongoing since the Deepwater Horizon oil rig explosion on the other side of the world.

Now that the Federal election has been called for 21 August this leaves a policy gulf between the incumbent Gillard government and the traditionally arts-averse Coalition. John McDonald picked up this theme in his ABC Online column on Friday - "The Labor Party is no friend to the arts":

<http://www.abc.net.au/unleashed/stories/s2955455.htm>

Tom Lowenstein today met with the policy advisors for the Minister for Superannuation, Chris Bowen. He warned that Cooper's recommendation to divest SMSFs of their artwork collections over a five-year period could breach Section 55 of the Constitution as the loss in value caused by their forced sale would represent a tax-like measure. This was reported in The Australian on Saturday :

<http://www.theaustralian.com.au/news/nation/at-galleries-to-fight-super-reform-plan/story-e6frg6nf-1225892996787>

As Cooper disregarded the valid concerns of the arts industry in his rush to produce his Final Report deadline of 30 June it would be grossly irresponsible of the Gillard Government to legislate his recommendations. This is particularly because Cooper has no understanding of the value of the artwork and other collectable collections held in SMSFs around the country.

The real problem is what I will describe as the Cooper black box.

It is "assumed" that artworks and other collectables constitute 0.1% of the total assets held by SMSFs – in other words about half a billion dollars. But what would be the consequences if this figure is wrong, the total value of these collections is many times higher and they were forced to be divested over the manifestly inadequate five-year period?

To explain – there is an asset class that holds 3.0% of the total assets held by SMSFs – this asset class is known as "other".\* In other words there is a black box of SMSF assets worth about \$12 billion. As an accountant I am aware that it is common practice for artworks and collectables to be reported as "other" when SMSF taxation returns are prepared. What is not known is how much of the "other" assets in SMSFs are represented by artworks and collectables.

This fact alone should give the Gillard government pause to investigate the real facts and consequences of the Cooper recommendations. Constitutional expert George Williams was reported as saying the Section 55 argument was “an arguable position but not a strong one”; however in making those comments he would not be aware that many more people could be affected than is commonly thought.

Tom Lowenstein closed the Melbourne Symposium on Friday afternoon by stating that if one good thing came out of the Cooper debacle it would be that the arts no longer will be treated as a form of political road-kill when it came to matters of finance.

With the Federal election now called let us hope that the debacle will end sooner rather than later. In the meantime please continue to send your emails to [www.savesuperart.org.au](http://www.savesuperart.org.au).

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Save Super Art

[www.savesuperart.org.au](http://www.savesuperart.org.au)

\* Source: "A Statistical Summary of Self-Managed Superannuation Funds"  
[www.SuperSystemReview.gov.au](http://www.SuperSystemReview.gov.au) - this document in fact was produced by the Cooper Panel