

25 July 2010

The Hon Julia Gillard MP
Prime Minister
Parliament House
Canberra ACT 2600

Dear Prime Minister,

Re: THE COOPER RECOMMENDATIONS ON ART AND SUPERANNUATION

The purpose of this letter Prime Minister, is to ask you to review these recommendations very carefully, and to ensure that in its current form, the recommendations are NOT implemented.

I am a member of the Australian Indigenous Art Trade Association, and am asked by the chair of the Association to advise you that this letter has the full support of the organisation, in terms of its content and the suggestions made.

Preamble:

Throughout history, successful cultures have valued and encouraged the arts. Their artworks have become their rich heritage.

In the not so very distant past, Australia has suffered from being tarred with the brush of being remote, out of the picture, and generally unsophisticated in a cultural sense. We are only now recovering from the famous 'cringe'.

We now have one of the worlds most unique, culturally significant, sought after, and respected contemporary art movements in our Indigenous art - and our non-indigenous art is a vital and important part of our relatively young country's developing identity. It is exciting. And it is important. It is even valuable. Our Government policy should reflect that.

Our current Superannuation Legislation allows for investment in art, but does not allow investment art to hang on its owner's wall where it could be enjoyed! Please consider the kind of national culture that would even conceive of, let alone enforce such a notion! So much valuable, beautiful, art -- our heritage -- but we mustn't look at it & we mustn't enjoy it. It must be wrapped up and hidden from view in the dark, or rented to someone else to enjoy. Clearly we have a long way to go.

It was hoped that we would have a progressive government again -- one which would foster the arts as an important part of our culture, and review and **reverse ridiculous legislation** such as this. The review came and went -- but it did not deliver.

Its recommendations as far as art go, are the antithesis of what we would expect from a contemporary government.

Furthermore, and without exaggeration, implementing the Art related recommendations of the Cooper Report would be a dangerous and retrograde step for any government to take.

The recommendations clearly demonstrate a lack of understanding of the arts industry, its importance to our culture, and the need for balance and equilibrium to sustain such a sensitive market.

If Government must intervene in a country's markets, it should only do so when market forces fail and problems cannot be addressed by other means. It should be done with a specific purpose in mind, a clear understanding of the market, and with appropriate finesse. It is not a job for amateurs.

Would we raise interest rates by 10% suddenly and for no apparent reason? No. But Mr Cooper wants to take over 20% of trade out of the art market, and to cut established values by over 50% by forcing sales. This is the antithesis of finesse – it is vandalism. Its effects will be far reaching.

Regrettably, Mr Cooper is not answering questions from his detractors, and so we are forced to direct these questions to you Prime Minister:

- **Why** has Mr Cooper disregarded the core **LABOUR PARTY** philosophy of **CONSULTATION** with people involved, those in the industry, those to be financially affected, and industry and labour economists knowledgeable about the arts industry?
- **Why** has Mr Cooper clearly **not properly informed himself** about the complex arena in which these determinations are to operate?
- **Why** has Mr Cooper **not done his sums**, his research and analysis, carried out due process as far as attempting to quantify the size and the nature of body of the SMSF investment in art (before he sacrifices it without reason to a five year fire sale)?
- **Why** has he **not gained advice from the art industry** about the effect of selling of an enormous body of important artwork in a short time frame onto an already GFC depressed market? – this is the equivalent of forcing stockmarket investors to sell when prices are down.
- **Why** is he **not concerned about the thousands of genuine investors losing their hard earned Superannuation funds** by being forced to sell art investments before the investment comes of age? The terms of reference clearly state that this review is to maximise value of superannuation funds to Australians. How do his recommendations do that?
- **Why** has he, if art is such a poor investment, **not applied the same rules to big business** who can still have art as an asset class in **their** superannuation funds? This inequitable and virtually criminal proposal applies only to the small SMSF owners, who in the majority of cases, take great care, and maybe even better care, to select investment art for their funds?
- **Why**, while we are on that point, has he **not investigated the buy and sell prices** that have already been achieved through superannuation art investments? Does the fact that an Emily Kame Kngwarreye painting, , achieved an auction price of over a million dollars – a gigantic leap from its purchase price, not validate its purchase via superannuation funds? Not all works sell at this level of course, but it is **very common for artworks to outperform stocks and shares** – perhaps he could have researched this also. The information is available.
- **Why** has Mr Cooper **not considered the effect on art prices** of his 5 year mandatory sell-off plan? Everyone in the industry knows that premium artworks will now be coming on the market for the next five years in a situation of **FORCED SALE**. SMSF'S either rush to sell, or wait til the last minute to sell. Whatever their strategy, prices will tumble as they do in the stockmarket when there is a sell off – it's the same principle. Big superannuation funds will have a field day as they scoop up premium artworks at a bargain price – and this will happen at the expense of ordinary Australians. Their SMSF's will simply lose dollar value... and please, what is the reason or justification for this? There is none – it will be seen as just another dumb government policy change, wreaking havoc through ignorance.
- **Why** has Mr Cooper seemingly **not even considered timing factors**: It is bad enough that the recommendations are flawed, but their negative impact will be multiplied many times, as he has clearly not taken into account that the Art industry is operationally almost on its knees at the moment.

As a result of the GFC (1); with resources stretched to the limit to accommodate the ramifications of the welcome (but time consuming and difficult to manage) Indigenous Art Commercial Code of Conduct (2); and further stretched to breaking point trying to accommodate the ill written, bureaucratic, and almost unworkable piece of Resale Royalty legislation - an artwork in itself! (3),

which applies to indigenous works from their **VERY FIRST SALE** on the market (not for Resales as it was surely meant to be), **the industry is extremely fragile.**

With an impeccable sense of timing, and clearly for the beleaguered art industry's highest good, Mr Cooper proposes, on top of all the above, to combine a reduction in sales demand (through cutting SMSF purchases entirely) with a concurrent five year panic sell-off, which will send prices of artwork crashing. Hmmm. Severely reduced demand + panic sell =, as one of the many detractors has dubbed it – a perfect storm! There will be wholesale collapse of art enterprises, and with that, the livelihoods of thousands of people.

- **Why** has Cooper **not even considered the employment prospects** of the vast number of artworkers, from artists to galleries, to all those who provide ancillary services to the industry. What will they do when the market collapses.
- **Why** does he not seem to understand that cutting 20%+ of aboriginal art sales (because that is what it amounts to) AND forcing prices down at the same time in his fire sale, will impact on thousands of our Aboriginal people – given that each artist supports between 20 and 30 people in Aboriginal communities? Perhaps white Australian artists will be able to find other jobs (although they shouldn't have to simply because of Government mismanagement, but there are no options for our Aboriginal communities. Art is their primary source of income.

THE THINKING BEHIND THE RECOMMENDATIONS IS ALSO VERY STRANGE

Strange to narrow down the diversity of asset classes, when this is generally thought a good thing. Is it the beginning of the end for SMSF's – a plan to make it so difficult and so risky that the big Superannuation funds will once again get control?

Strange at the same time to support the asset class in commercial Superannuation funds.

Strange to legislate to prevent people investing in art, when the overwhelming majority of superannuation funds, both private and corporate, have lost demonstrably more money per capita from stockmarket volatility? And when all major investment organisations include investment in art.

Strange, that the Cooper Review terms of reference require it to make people's superannuation nest eggs more robust and secure, and yet Cooper's recommendations themselves, **will cause direct and measurable loss to the very nest eggs they should be designed to protect!**

Strange to introduce policy that will impact Australia's art industry so badly in terms of both lost revenue and diminished values, that it will **directly and measurably affect the financial survival of thousands more Australians** (many who live interminably on low incomes simply to live out their passion for art). It would slash their already meagre employment prospects and have a domino effect on unemployment in the sector.

Strange that the government is not worried about its welfare bill – from the cities to the remote aboriginal art centres, incomes in the art sector will be decimated. Guess who will be picking up the tab.

It's all very **strange**. Why is the Government so determined to not make a statement about this? Does the Government via Cooper, hope to cut back the assets of the wealthy? If so, its attempts are poorly aimed. You need to update your thinking – **It will affect the very ordinary Australians, black and white, that your party historically and ethically is supposed to support.**

SO WHAT SHOULD COOPER HAVE DONE – OR NOW BE SENT BACK TO DO?

IF he believes there are problems with art as an asset class in SMSFs, the problems can be rectified in a more mature and market friendly manner as follows:

1. Assess whether there is a real (or merely perceived) problem here, via **research and consultation** with knowledgeable and involved parties;
2. Conduct **professional level analysis** of the current situation and identify any areas where improvement is demonstrably needed and is unable to be achieved through legitimate market operations;
3. In **consultation with expertise** in the field, identify **strategies to remedy** any issues identified (NOT via 'throwing the baby out with the bathwater' strategies as he proposes now, but through developing appropriate guidelines to remedy any problems);
4. **Conduct feasibility testing** to ensure there are not major or unforeseen negative effects, prior to putting forward any recommendations;
5. Simply **make fine tuning adjustments to the Superannuation guidelines where needed** in order to improve the scheme.

In taking these steps, Mr Cooper should be mindful that his recommendations should be for the public good, and not as they are now, to the demonstrable detriment, of all legitimate parties, and he should take care that he is:

1. **Not to advantage big business** over individuals (SMSF's);
2. **Not to** directly and significantly **reduce the personal superannuation resources of everyday Australians;**
3. **Not to dishonour existing government policy** and undertakings without an extremely serious and demonstrable need to do so;
4. **Not to knowingly and directly create adverse effects on related industry structures and employment prospects;**
5. **Not to disadvantage one asset class against another** (art vs stocks and shares), in a way that is **disproportionate to the potential returns** involved. Note that art is already limited to 5% of SMSF funds. Isn't this disproportionate enough?
6. **Not to make any recommendations at all until he has a clear understanding of the implications and has demonstrable and absolute justification for the recommendation;**
7. **Not to ignore the voices of stakeholders in this arena, those who will be affected by his recommendations, and those who can bring a greater foresight and understanding to his findings.**

Even if Mr Cooper **was** not aware of the many ways in which his recommendations are flawed and potentially injurious to many parties, **he should now be required, in the terms of reference, to accept and consider representations now made to him on the matter, and if he still ignores such advice, he should be required to justify his reasons for so doing, on factual evidence, before any recommendation is accepted.**

Prime Minister, I do hope you will consider the fact that your government will be most seriously judged by the outcome of this issue. The timing is not good for you either.

Much of your ground support has come from supporters of the Arts. Many of us have been long term Labour supporters, believing that Labour Parties bring a more balanced approach to the frequently differing needs of business and the individual.

The Cooper Report, if accepted in its current form, will be the last of many straws for your supporters in the arts industry, and perhaps the final completion of a steady disillusionment with the Australian Labour Party's recent performance in the industry. If this review is implemented as it stands, I can assure you that very many people in the arts and associated industries, will not support your party again.

We ask you to look for logic, substance, and reasonableness in the arts related recommendations of Mr Cooper's review. We ask that you consider the wide ranging consequences should the 'art investment sell off' and 'reduction in art market participation' jointly begin their domino effect.

We ask you also, if a wilful, misguided and uncalled for reversal of (trusted) government policy, which reduces the superannuation assets of thousands of its people as a result, is consistent with Labour Party philosophy and policy as you see it.

Finally, we hope you will find that Mr Cooper should be sent back to the drawing board on this one – perhaps he could start with the points listed above.

Yours sincerely,

Kate Owen
Director



Kate Owen Gallery & Studio

kate@kateowengallery.com

680 Darling Street, Rozelle (Sydney) NSW Australia 2039

T (02) 9555 5283 (+612 9555 5283) M +61 400 508050

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