THE COOPER REPORT AND ITS IMPACT ON THE ARTS

The Minister for the Arts, Peter Garrett during yesterday morning session, made a statement that he would continue to argue very strongly for measures which will ensure sustainability of the visual arts industry.

At a subsequent meeting with Michael Fox, Evan Lowenstein and myself, he gave an undertaking that he would arrange a meeting between us and The Minister for Superannuation,, Chris Bowen who effectively was running the Cooper Report, and that he would also be speaking with him to convey the art industry's concerns, about the debacle of the Cooper Report into Superannuation and its recommendations.

I would like to make it clear that despite these undertakings, there remains a policy gulf between the Opposition – which has stated its intent to strike out Cooper – and the Government – which has continued to sit on the fence despite the ongoing damage to the arts industry.

Over the past month, I have stated on a number of occasions, that during my 40 year involvement in the arts, I have not encountered an issue which has united the artworld and arts community to such an extent as the recommendations of the Cooper Report.

Artists, art gallery directors, auction houses, dealers, collectors and members of the arts community, reacted initially with surprise and disbelief, which turned to anger and outrage. They have all banded together under the umbrella of "Save Super Art" to voice their opposition to these recommendations.

Hundreds of emails have been received expressing their concern and disappointment at the action, or perhaps the lack of it from the Government.

However, for the purpose of my address today, I would like to take out the emotional elements from this debate and to concentrate on the facts or the lack of it in the Cooper Report.

However, it is difficult not to become emotional and even angry, when statements are made by members of the Cooper Panel, such as the following :

Jeremy Cooper : “I look at the art market and think it has got a long way to go before its completely legitimate”

Or

“investors gamble on emerging artists with their funds, because with their funds they will take a risk that they will not take with their wallet”

“Conceptually it’s difficult to grasp the proposition that a SMSF is acquiring artworks for investment purposes”

“If you want to buy paintings then do it outside your superannuation fund, it’s not connected with retirement”

“There are a heap of problems with artworks – is it actually a genuine painting? How much is it worth? Am I going to be able to sell it?”

And to clinch his position :

“art collection in Superannuation funds is a pastime for the rich”

A fellow Cooper panellist, Meg Heffron is quoted as saying :

“the Panel’s brief was to examine the Superannuation industry rather than other industries in it”

Although she does admit that
“ you do have people with arts experience who are doing better with their art than I am doing with my shares” and she admits that the Panel had not consulted with anybody who had lost money on art,

And anecdotal evidence suggest gallery owners in particular encourage people who can't otherwise afford art to set up a DIY scheme to fund the purchase.
I question the motivation of Jeremy Cooper and Meg Heffron in making these unsubstantiated statements and their apparent preconceived and ill-founded ideas.

After that tirade, perhaps we can get back to a less emotional discussion on the Cooper Recommendations.

Their recommendations in relation to art comes down to three specific areas :

A. The acquisition of collectables and personal use assets by Self Managed Superannuation Fund Trustees be prohibited.

B. Self Managed Superannuation Funds that own collectables or personal use assets be provided a five year [5] transition period, in which to convert to a SAF or alternatively dispose of those assets.

C. APRA regulated Funds be exempt from these changes.

It is interesting to note that in their preliminary report, issued on the 29 April, 2010, the Panel recommended that Self Managed Superannuation Funds

that own collectables and personal use assets, be provided a transitional period of 10 years in which to dispose of those assets.

I managed to speak briefly to Jeremy Cooper by phone as a result of intervention by a friend and I also provided him with a 5 page memorandum setting out the concerns of the arts industry and the disastrous repercussions of his recommendations.
I received no acknowledgement or reply except when the final recommendations were tabled the Panel's had cut the ten [10] year period to five [5] years, – as if to say – "this will show you who is in charge"
Their justification for this was to remove the uncertainty in the industry,
This is tantamount to a doctor telling a patient " you have probably 2 to 3 years to live but here is a cyanide pill, take it .It will remove the uncertainty.

Our main issues with the Cooper Report recommendations are the following :

1. To lump paintings in with jewellery, antiques, stamp collections, wine, exotic cars, race horses, boats and golf club memberships, is an indication that the Cooper Panel has not recognised the importance and significance of the arts, as an industry.

   Art is not just traded, it is actually created. This generates economic activity, produces an income cycle that benefits the whole arts community and encompasses a growing number of associated businesses who all contribute to economic development

   This process applies even more strongly in the case of indigenous art communities, where in many instances, art is the prime source of the community's income and livelihood.

2. The Panel's statements are contradictory :

   They state :

   1. The Panel recognises and supports the freedom of investment choice.
   2. The Panel believes that there are certain types of assets that should generally not be regarded as investments that build retirement savings, such as paintings.
   3. The Panel accepts that some of these types of assets may appreciate in value over time and that investors with the appropriate specialist knowledge can profit out of them.
   4. Self Managed Superannuation Funds should not be allowed to acquire art, yet APRA regulated funds should be exempted from these changes.

   I find it difficult to reconcile these statements.

If it is accepted that artworks and collectables can appreciate in value and can be acquired by APRA funds, what justification is there in prohibiting Self Managed Superannuation Funds from exactly these same type of investments ?

Although, I must admit the Cooper Report, specifically allows individuals to buy art in their own name, from their own resources.

Its OK Sarcasm isn't emotion

3. The Cooper Review stated that the principal concern is that the cumulative regulatory and compliance complexities, outweigh the potential benefits of allowing such a liberal investment venue to a sector that is not directly prudentially regulated.

It is our view that these regulatory and compliance complexities have been dealt with by guidelines established by the Australian Taxation Office and which are being followed by Superannuation Fund Trustees and their Auditors.

If the Panel was of the view that some areas of compliance needed tightening up, this could be done by further regulations without undermining an industry that is heavily dependent on Superannuation Funds.

In our letter to Jeremy Cooper, we pointed out that the review Panel gave no consideration to the impact that these recommendations would have to the future of artists and especially indigenous arts communities.

We pointed out that if implemented, these recommendations would result in the removal of a large reservoir of funds from the arts arena which would have the unintended consequences of damaging an industry which was still learning to cope with the global economic crisis and the recently introduced Resale Royalties.

From information provided by Auction Houses, Art Galleries and Dealers, we estimated that over the past few years, Self Managed Superannuation Funds have spent approximately $100 Million per annum on the acquisition of artwork in the primary art market.

To remove a pool of funds of this magnitude would be disastrous and would send economic reverberations throughout the industry and impact on the livelihood of artists and their associated industries, such as Art Galleries, Art Dealers and Consultants, art material producers and distributors, framers, art couriers and freighters, writer, academics etc.

The effect of this would be felt more in indigenous art centres and their communities, where in many instances art is the major, if not only industry and where a significant proportion of these sales have been to Superannuation funds.

The reply by the Cooper Panel was :

The Panel does not accept as logic that the art and numismatic industries would be severely, or even materially affected by the proposed changes.

I find it difficult to comprehend, how an Inquiry could completely ignore the repercussions of their proposal on people's lives and livelihoods and come out with a statement that is based on logic, without any proof and ignoring the facts and evidence which we had provided to them which in itself is illogical.

I find it even more difficult to comprehend how a Government can possibly Commission a review without instructing them to look at the consequences of their recommendations. Whilst on the one hand the Government is handing out "stimulus" payments, how can it stand by and watch an industry being brought to its knees ?

The question that comes to mind is :

Is there perhaps an another Agenda behind these recommendations and if so, who is driving it ?

Lets look at a few facts.

Fact No. 1

Over the past seven years, the number of Self Managed Superannuation Funds have grown from 250,000 to over 400,000, an average of 2,100 new Self Managed Superannuation Funds are set up each month.

During this seven year period , these fund assets have grown from $100 Billion to over $400 Billion and it is becoming the largest and fastest growing Superannuation sector in our economy.

Fact No. 2

Over the last 8 – 10 years, the Self Managed Superannuation Funds have out performed the APRA funds and industry funds by upto 6% per annum and have survived the financial crisis in a better condition than many of the larger funds.

Fact No. 3

At present the Self Managed Superannuation Funds represent approximately 32% of the total funds invested and with the proposal of increasing members contributions from 9% to 12% it is expected that funds in Superannuation funds overall will total $5 Trillion in 25 years and the popularity of Self Managed Superannuation Funds could signal danger signs for the larger APRA funds and industry funds.

Fact No. 4

The recommendations by the Cooper Review to limit the investment abilities of SMSF's by restricting their ability to invest in art and collectables will probably make Self Managed Superannuation Funds less attractive for retirees.
However with the Cooper Panel's blessing they can convert their SMSF's to Small APRA Funds. operating under a prudentially regulated framework. This means they resign as trustees , appoint independent trustees, approved by the Regulator.
These trustees will decide the investment strategy and will charge the Fund Professional fees for their services.
Then if the trustees so decide, they can even buy art and collectables, naturally of their own choosing.

Lets face it

The basic reason most retirees set up their own SMSF's is that it gives them control over their future, and these recommendations are the first step in removing these controls

This paternalistic and self-serving attitude goes against the whole concept of freedom of choice and the ability of retirees to manage their own affairs.

The question that puzzles me is that, whilst most of the Cooper Report on Superannuation appears to be well researched and logically argued and generally well received, why have arts and collectables been singled out for such treatment.

There are only 2 statements in the report on which the panel have based their recommendations.

1. that certain types of assets such as art should not be regarded as investments that build investment savings

This argument was rebutted by us with evidence and even acknowledged by the panel that Art has and can be a good investment.

2. The principal concern is that the cumulative regulatory and compliance complexities outweigh the potential benefits of allowing such a liberal investment menu to a sector that is not directly prudentially regulated.

In other words the Panel suspects, that is they have no proof, but suspect that there may perhaps be some people out there who might abuse the system, and their solution is lets not tighten some of the areas that could be abused but do away with the whole system, irrespective of the consequences.

Regrettably to me this whole process makes no sense and anything that makes no sense I view with suspicion

So is there another Agenda or have I become a bit paranoid

Irrespective of all of this, it is hoped that whichever Party is in Government after the election realises the contribution that art makes to culture , our daily lives and economy and will reject the Cooper recommendations in relation to Art.

Thank you

TOM LOWENSTEIN

CONVENOR

SAVE SUPER ART