

SUBMISSION 1

INVESTMENT IN ART BY SELF MANAGED SUPERANNUATION FUNDS

CURRENT POSITION

New regulations relating to SMFS's Investment in Art were enacted on the 30 June, 2011 without any fanfare, without any press release and without notification to any art bodies.

These regulations affect all artwork acquired after the 1 July, 2011. Whilst retaining the sole purpose test and the inhouse asset rule, the new regulations state :

That artworks [within the meaning of the income tax assessment Act 1997]

- [1] Must not be leased to a related party
- [2] Must not be stored in the private residence of a related party
- [3] The Trustees must make a decision relating to the storage of the artwork and record the reason for this decision and keep this record for 10 years.
- [4] The Trustees must insure the artwork within 7 days of acquisition in the name of the Fund.
- [5] Related parties must not "use" the artwork
- [6] The transfer of artworks to related parties, require independent valuations at market values
- [7] Artworks owned by the Funds prior to the 30 June, 2011 need not comply with the above regulations, but are subject to the previous legislation.
- [8] Clause 7 above ceases to be in force from the 1 July, 2016.

There are no explanatory notes and the new regulations [which had ignored our submissions] tend to confuse rather than clarify some of the issues.

It is interesting to note that on the 10 February, 2011, the Senate passed a motion, moved by Senator Milne, noting that :

The Senate :

a. Notes:

- [i] That the Cooper Review into Superannuation last year, recommended that private investment in art no longer be eligible investments for DIY Superannuation schemes.

- [ii] That, after a strong campaign by artists concerned that the local art market would be seriously damaged by this move, the Government promised during the 2010 election Campaign to reject that recommendation; and

b.] Calls on the Government to :

- [i] Abide by its Election promise
- [ii] **Ensure that any conditions do not act as a disincentive for DIY Superannuation Funds to invest in Australian art**

This motion was passed, accepted by all Parties and the Government acceded to ensure that new Legislation would not act as a disincentive for DIY Superannuation Funds to invest in Australian art.

Unfortunately the new regulations do act as a major disincentive.

- The inability to store works in the private residence of related parties,
 - The Insurance requirements
 - and the general uncertainty
- have created an atmosphere, that acts as a great deterrent to investment in art by Self Managed Superannuation Funds.

It appears that the Government gave undertakings to oppose the Cooper Review only as a gesture to pacify the arts community, the collectables sector and the "Save Super Art Campaign" against the Cooper Recommendations, and then failed to honour those undertakings.

These new regulations make it so onerous and difficult for Trustees of Self Managed Superannuation Funds to acquire artworks that effectively the Cooper Recommendations in relation to investment in art have succeeded to the detriment of the arts industry.