Lowensteins Arts Management Pty Ltd.

We are a firm of CPA's that is based in both Melbourne and Sydney and have an extensive clientele of around 3000 clients involved in all aspects of the creative sector.

We have extensive history of lobbying for tax changes for the arts sector and submit these separate submissions with a view of recommending changes to the existing laws that will stimulate demand and also try and redress some of the damage wrought by the pandemic.

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.

We wish to emphasise that the additional hardship involved in the Covid-19 pandemic has only made the reform of this more urgent.
Many many artists are struggling here and the release of these strict regulations would have an immediate impact on stimulating demand in the visual arts sector.

SUBMISSION 2

LOSSES FROM NON-COMMERCIAL ACTIVITIES

In June 2000, the Government introduced "integrity measures" [Legislation dealing with losses from non commercial activities] which are having serious consequences for some artists.

Again we emphasise the fact that during the pandemic the visual artists have suffered alongside so many others in the arts sector and we feel that reform of this stifling tax measure be enacted that will bring some financial relief to those most affected.

This Legislation precluded artists from claiming losses from such business activity, unless he or she met one of four criteria :

- Assessable income had to exceed $20,000
- A profit had to be made in 3 out of 5 years
- Assets utilized in the business have to exceed $100,000
- Utilized real estate had to exceed $500,000

Subsequent amendments to the Legislation enabled artists with income from other sources of less than $40,000 to offset their art business losses against this other income.

Without a doubt this has been a great assistance to low income earners, however it is a major problem for artists who receive income in excess of $40,000 and are precluded from deducting the losses from their art related activities.

As these rules were enacted back in 2000,annual income of $40,000 wasn't such a bad salary but now, 20 years later , it is a very meagre salary and at a minimum warrants increasing to a much higher figure.

My understanding of the background for the integrity measures was to stop hobby farmers from rorting the tax system, yet it is likely that many of these taxpayers would be able to meet at least one of the criteria, whereas, there are many struggling artists who are unable to meet any of the four criteria.

For a struggling artist to achieve sales of $20,000 every year, is extremely difficult, if not impossible and even many established artists are not guaranteed successful sales from each exhibition.

Similarly, it is unlikely that young artists will show a profit in three out of five years and to my knowledge, very few could claim to utilize $100,000 in assets or $500,000 in real estate in their business.

In 2005 a Ruling was issued by the Taxation Office, after lengthy consultation with a number of arts organisations and individuals [including myself] which set the criteria, to define whether an artist is "carrying on a business as a professional artist."

It seems a travesty of justice, if an artist meets the criteria to determine that he or she is carrying on business a professional artist, that these artists have then to meet the additional criteria mentioned above.

There is no justification in putting additional conditions on artists' ability to claim legitimate business expenses, once they have established that they are carrying on business, as a professional artist.

The limit of $40,000 of other income, which an artist can earn, was set in 2000 and has not been indexed, despite the fact that the cost of living figures have increased by some 35%.

A large proportion of artists who are affected by these regulations, are artists who, in order to earn additional income, have taken on teaching roles at tertiary educational institutions. Ironically, in order to be appointed to such a position, the applicant must be a "practising artist". However, if he/she earns a salary of more than $40,000 they must meet the above-mentioned criteria, or their losses from art are quarantined.

The current economic situation of the pandemic can only add to the difficulties that artists experience in their desire to eke out a living from their profession.

This Legislation affects those artists who are struggling to make ends meet and who can least afford to forego the tax deduction on the losses from their art related activities.

In fact this Legislation has the effect of penalising artists for their lack of financial success, which I am sure is not the intention of the Legislators.

It is suggested that the Legislation be amended to exclude artists who are deemed to be "carrying on a business" and in the meantime ensure that the limit of $40,000 is indexed to the CPI.

We estimate that the cost of implementing the above proposal will be between $2 – 4 Million.