

SAVE SUPER ART

THE FINAL COOPER REPORT INTO SUPERANNUATION SECTION 8.3 COLLECTABLES AND PERSONAL USE ASSETS “AN OPPRESSIVE AND LOATHSOME SERIES OF RECOMMENDATIONS”

The final Cooper Report into Superannuation was released on Monday and contained the recommendations that Self-Managed Superannuation Funds were no longer to be trusted to invest into the Australian art market and that all their artwork collections were to be sold within a five-year divestment period from the date of legislation that would support such a recommendation.

Save Super Art can only agree with one of the respondents to its campaign that this represents “an oppressive and loathsome series of recommendations” which is ill-thought, lacking evidence and if carried out would create the seeds of destruction of the Australian arts industry as we know it today. It would result in gallery closures, loss of exhibition opportunities for artists, unemployment in the ancillary art industries and the destruction of retirement savings for thousands of Australians.

This is not an emotional argument as Jeremy Cooper would like to see it but one based on fact. Despite the hundreds of emails sent to his Panel since we commenced our campaign against his wrong-headed recommendations of April 29, which came out of the blue to the Australian arts industry, Cooper has chosen not to investigate the impact of his superannuation review on our national culture and instead has decided on a far harsher course of action than first flagged.

It is important for this public debate that Save Super Art deconstructs his arguments and holds Cooper to account. When Cooper uses phrases like “prudentially regulated”, “cumulative regulatory and compliance complexities”, “logical” or “SAF” they may sound impressive but what do they really mean?

To find out I will now go through the Cooper Panel reasonings in Section 8.3 “Collectables and personal use assets”. Highlighted in bold are their key phrases.

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.

If artworks and collectables can increase in value over time why should small SMSFs be banned from that market and APRA funds not. It is obvious that Cooper has made no attempt to use evidence-based research to quantify this assertion. He could have looked at the conclusions Roger Dedman reached in his landmark 2009 study into Australian art as an investment:

Particularly in the light of the substantive increases from the beginning of this century, and the steadying of the last two years, a more positive approach to investment in art is justifiable. Carefully chosen Australian paintings, bought now at auction with the intention of holding them for at least five years, and preferably ten, can confidently be expected to produce a satisfactory rate of return when viewed purely as an investment.

As a registered valuer I support these conclusions. What has to be understood is that art can be bought and sold in two main types of market - the primary, which is the commercial gallery sector and the secondary, which is the auction house sector. Dedman is focused on the secondary market and the reason his conclusions are logical (more about Mr Cooper and logic later) is that artworks bought at auction have a history of resale and therefore investors are likely to have more confidence about their future valuations. But with the advent this year of the resale royalties legislation there will also be more history of resales in the primary market in the future. The ATO has also accepted in the recent Seacrest case the validity of purchasing artworks as a business. In other words, if a SMSF investor can demonstrate a profit motive in its artwork investment strategy what real difference is there between buying such artworks and speculative equities

However, the Panel points out that people who want to own such assets are free to do so outside the SMSF environment (either in a prudentially regulated superannuation fund or outside the superannuation system altogether).

This is inconsistent with his other statement that "the Panel recognises and supports the freedom of investment choice that SMSFs affords their members." I think Michael Levitt from Perth has expressed the reaction many have felt to this statement best:

Can anyone imagine the outcry if stocks and shares were arbitrarily banned from self-managed super funds? Yet we all know how easy it is to gamble and speculate in stocks and shares. The Cooper Panel has simply declared that certain investments are no longer "kosher" while others have been granted "most favoured status". I wonder why? Far better for the Panel to have instigated the sort of advisory services (as proposed in their recommendations for those interested in the stock market) for those interested in investing in art than to ban them from doing so altogether.

This is an oppressive and loathsome series of recommendations masquerading as a consensus document prepared by people purporting to act in the broader interest of Australians. Who actually benefits from withdrawing art from super funds? Retaining art in super funds harms absolutely no-one other than the foolish art investor; why not similarly protect the foolish stock market investor?

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.

Firstly, the regulatory complexities are not that great and are being oversold in this Report. If they are such a problem why not look at ways they could be solved. The answers are not that elusive - for example Cooper could have chosen to adopt the valuation principles used in the Cultural Gifts Program, which is a very successful art philanthropic program also overseen by the ATO. Being that as it may, if ASIC is now to oversee the regulation of SMSFs why not just develop best-practice audit guidelines for artworks and collectables. In response to Cooper's interim report of April 29 we did just that in conjunction with SPAA and it has now been presented to The Minister for Superannuation for his approval. Note that we were able to draft these guidelines in less than 2 months, imagine what could have been achieved with some consultation from Cooper!

Secondly, saying that the sector is "not directly prudentially regulated" is a cheap shot and just what does that mean anyway? Does he want galleries and auction houses to pay licence fees to APRA so artworks can be sold to the public, and if so why is it then OK for APRA funds to continue to buy artworks from these non-licenced dealers? The fact of the matter is that regardless of the occasional sensational press coverage of the arts industry it has far fewer Storm Financial and Opes Primes crises in its midst than the regulated equities markets.

And are we that far out of the GFC for people not to remember all the money lost on the world share markets by all those prudentially-regulated operators in all those prudentially-regulated industry/retail super funds? And is the share market that stable now anyway?

The resale royalty scheme, which only began on 9 June will also provide the sort of regulation to the art market in the future that Cooper supposedly desires. It is very convenient of him to make these comments now when in the future the RR scheme will provide greater transparency and consistency of reporting; mop up market inefficiencies by making it difficult for non-compliant dealers to operate and thus sell to the public; and bring more certainty to art valuations.

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

What evidence does Cooper have to assert this? I provide the following quote from Mark and Karen Kestigian of Kallista in Victoria:

when a time limit is set - to 2015 - to sell our collection, what do you think will happen to art market sales? Being pushed into selling collections investors will be in a "fire sale" market place. Whilst this might be a small sector in comparison to the overall population - it is still worth millions and this tax review will without a doubt "kill" the art market and effectively the super fund investor will be the loser. Our art investment which we stridently researched and collected and followed the tax guidelines - not to hang or derive any pleasure from the paintings - will be devalued and we are the losers.

If logic is the guiding principle for Cooper to make his glib one-liner could he please disprove the logic of their statement? He should know because he uses the term that logic can be proved either by deductive reason (evidence-based) or inductive reasoning (experience).

Cooper and his Panel have shown neither form of logical reasoning as they have not bothered to look into the numbers and it is quite clear they have no idea how the Australian art market works!

Further, Cooper does not take into account the flow-on effect this would cause to the greater Australian fine art market - people such as book publishers, art carriers, foundry workers, picture framers and the like. I enclose the following sent to Save Super Art from Paul Smith, a master printmaker:

Dear Mr Cooper, Government Ministers and Opposition Spokespeople I run an art studio eStudio Editions that collaborates with artists to produce limited edition prints. Well known artists such as Euan Macleod, Arthur Boyd, Adam Cullen and many more. I am not supported in any way through grants or govt funding.

I have spent 25 years building this business to a world standard of master printmaking.

If you go through with this recommendation it will destroy my business. We ware already receiving emails from investors trying to divest their portfolios which is flooding the market place. Art is a very sensitive and fragile industry and on top of the economic crisis this proposal is most unfair. Why is this government turning against the arts?

All my working life I have devoted time and energy to the visual arts and now I may have to look to working in another industry all together, its criminal to squander our australian talent and pull any support out from under us.

Members who believe that collectables are appropriate investments could continue to invest in them by converting their SMSF to a SAF and operating under a prudentially regulated framework. New collectables investors would simply establish a SAF instead of an SMSF.

This is a furphy and an attempt to provide indemnity for the irresponsible recommendations of the Panel.

If Small APRA Funds (SAF) are such a good idea why are they being avoided by SMSFs with artwork collections now? Probably because their fees are unacceptably high, the trustees of SMSFs would have to surrender control of all their investments (not just artworks) to the SAF trustee and in any event the SAF would in all likelihood not invest in artworks because the art industry is not "prudentially regulated".

I have received a list of anticipated fees that a SMSF would have to pay if they choose the SAF option advocated by Cooper and it is clear that these costs would make the decision to hold artworks in a SAF uneconomic.

Finally, what is the point of all of the above when the amount of artworks and collectables held in SMSFs represents only 0.1% of their total assets nationally and the majority of investors have specialised knowledge that enable them to make prudent decisions. On the flip side SMSFs have come to play an important role in the Australian art market, represent a material component of annual sales and have current collection values of somewhere in the vicinity of half a billion dollars.

The Cooper Panel chose not to take these factors into account in a single-minded determination to deliver the Final Report to a predetermined deadline of 30 June.

Heaven forbid but they may even have decided to increase the damage their recommendations would bring to the arts sector by reducing the divestment period from 10 years to 5 in return for respondents to Save Super Art bringing to their attention unfamiliar facts that they refused to investigate. This may sound like conspiracy theory but their explanation of the arts industry not being "severely or even materially affected" in the Final Report and the public statements made by members of the Panel just do not stand up to scrutiny.

If this is true it constitutes a breach of the most basic tenets of public policy principle and demands a Federal Government parliamentary enquiry into the processes undertaken into both their initial recommendations and the circumstances surrounding delivery of their Final Report.

Michael Fox

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