



Stephen Bush born 1958, *Ragwort 2009*, oil and enamel paint on canvas, signed and titled verso, 200cm by 310cm, collection of the artist  
© Stephen Bush courtesy Sutton Gallery, Melbourne (finalist 2009 Clemenger Art Award, see page 2 for more details)

## Great response to resale royalties and artwork investment allowance sessions

Lowensteins recently held information sessions in Melbourne and Sydney about these important issues.

There was general agreement that the resale royalty legislation was positive for the integrity of the art market. As the legislation is now pending it was also felt that the following concerns should somehow be heard before being passed by the Senate:

- “death duties” aspect – inherited artworks from deceased estates will be deemed to have been sold under the legislation and therefore subject to resale royalties (subject to threshold and other criteria) when next sold

- Aboriginal art sales - may suffer as these are typically sold through community art centres to private galleries and therefore attract resale royalties faster than non-Aboriginal artworks
- no maximum cap – Australian artworks may be sold in jurisdictions with no resale royalties to avoid high resale royalties as there is no cap
- administration of estates – to collect the resale royalties some deceased estates will need to be re-established. This will involve opening bank accounts, applying for a tax file number, lodging income tax returns, holding annual meetings and determining which beneficiaries will

receive the resale royalties. Will this be economic for a deceased estate with annual resale royalties of \$500 or less?

Art galleries reported a great response to the artwork investment allowance. Due to this response and with the impact of the resale royalty legislation imminent we have been asked to seek an extension to the allowance for a further 6 months for the arts industry alone. To do so we require empirical evidence that it has had an effect in increasing sales of artworks through galleries. Your assistance in this regard will strengthen our submission.

# Ah Xian presented 2009 Clemenger Art Award

Ah Xian has been awarded this year's and the final Clemenger Contemporary Art Award for the work, *Concrete forest*.

He joins a select group of winners for the triennial exhibition and award alongside Bea Maddock (1993), Richard Larter (1996), John Nixon (1999), John Mawurndjul (2003) and Judy Watson (2006).

*Concrete forest* presents thirty-six beautifully executed concrete human busts, each delicately imprinted with the foliage of different plant species.

Dr Alex Baker, Senior Curator Contemporary Art, NGV said: "Rather than employing the traditional Chinese decorative techniques such as porcelain, jade, lacquer ware, bronze and cloisonné that he is well known for, Ah Xian has made a dramatic shift in materials by using concrete to cast the busts.

"Each of the figures emanate with a stillness that suggests a transcendent 'human power' that lies behind each visage."

Since he began experimenting with porcelain in Sydney in the late 1990s, Ah Xian has continued to unite traditional Chinese materials and techniques with a contemporary sculptural practice to address issues surrounding cultural displacement, identity politics and the relationship between East and West.

The artists represented in this year's exhibition are Peter Atkins, Vivienne Binns, Stephen Bush, Domenico de Clario, Destiny Deacon, Janenne Eaton, Julie Gough, Louise Hearman, Janet Laurence, Trevor Nickolls, Dennis Nona, Scott Redford, Julie Rrap, Guan Wei and Ah Xian.

The 2009 Clemenger Contemporary Art Award will be on display at The Ian Potter Centre: NGV Australia, Federation Square until 7 February 2010.



# What is the effective tax free threshold?

It is commonly held that the tax-free threshold is taxable income of \$6,000. This figure has not changed for some years.

But what is not commonly understood is that pending increases to the low income tax offset will effectively increase the tax-free threshold (for residents) to a figure of \$16,000 from the beginning of next financial year.

One of the most important implications from these changes is that family trusts may now distribute as much as \$3,333 tax-free per minor for the 2011 financial year and beyond.

Below is a table outlining the increases to the low income tax offset and the resultant increases to the effective tax-free thresholds.

	2007-08	2008-09	2009-10	2010-11
Low income tax offset	\$ 750	\$ 1,200	\$ 1,350	\$ 1,500
Effective tax-free threshold	\$ 11,000	\$ 14,000	\$ 15,000	\$ 16,000
Maximum tax-free distribution to a minor*	\$ 1,666	\$ 2,666	\$ 3,000	\$ 3,333

\* assessed under Div 6AA of the ITAA 1936

## Company tax rate v individual tax rate - a comparison

As the personal tax rates decrease and the marginal tax thresholds rise, the income threshold at which a sole trader is better off trading through a company in order to access the corporate tax rate of 30 per cent has risen.

The break-even point where the effective marginal rate of an individual equals 30 per cent will increase from \$121,500 in the 2007 financial year to \$172,150 in the 2011 financial year. The table right plots these increases.

Of course there are other considerations when deciding whether to incorporate (or for that matter to de-register a company) including legal risk, business expansion and the like but the effective marginal taxation rate comparison is now a much more important factor to take into account.

Income year	Income threshold where EMTR = 30%
2007	\$121,500
2008	\$129,000
2009	\$140,000
2010	\$156,870
2011	\$172,150

# Some people are real stories

According to curator Djon Mundine the paintings of Vincent Serico came out of two deep wells— the history of Aboriginal people and their aspirations to live their daily lives as honest free people, and the history of the Australian nation, its origins, legacy, and responsibility.

“Vincent’s capturing of ‘the catastrophic event’ of contact follows a tradition of translating oral history into visible images... The artist’s central attribute is to make the art ‘sing’ in a positive winning stroke, rather than creating a resigned memorial”, Mundine says.

For Vincent Serico 2007 was set to be the highlight of his life and career as a painter. Sadly it was to be his twilight. A survey of his work and catalogue had just been exhibited and a major work Canarvon Collision (Big Map) had been accepted into the Telstra NATSIAA Art Awards in Darwin. The work ultimately was Highly Commended in the Painting Prize and subsequently acquired by the Queensland Art Gallery. Vincent travelled back from Darwin full of new ideas and enthusiasm but tragically he wasn’t able to

pick up a brush again. A silent, lingering cancer had taken control of his declining health and within 6 months he had passed away.

Vincent left behind a virtual encyclopedia of images and stories gathered from his life, work and experiences inside the heart of Aboriginal Queensland. Growing up in Cherbourg he later lived and worked in numerous Aboriginal missions and communities including Palm Island, Yarrabah, Doomadgee, Mornington Island before finally settling in Toowoomba. His spirit and vision crossed all of these tribal boundaries and over the generations of conflict and cultural collision.

During his final months, Michael Eather made a pledge to Vincent to keep his images and ideas alive. FireWorks Gallery fast-tracked print and publishing projects that had been under discussion for many years.

Some People Are Stories Limited Edition Bound Artist Print Folio was launched in June 2009 and consists of 22 images with collected stories and quotes. Published by Fireworks Gallery with the assistance of QIAMEA, proceeds from the sale of the folio will benefit the Estate of Vincent Serico.

For more details visit [www.fireworksgallery.com.au](http://www.fireworksgallery.com.au)



Vincent Serico 1946-2007  
*Technology* 1994  
Acrylic on linen  
Signed and dated verso  
135 by 125cm  
City of Ipswich Collection

# Commercial Code of Conduct introduced for Aboriginal Art Industry

The Federal Government has now tabled a Commercial Code of Conduct to be developed for a two-year self-regulatory period. A mandatory Code will be introduced within two years if the problems of unethical and unscrupulous behaviour that have beset the Aboriginal art industry cannot be brought under control.

Signing up to the Code is voluntary, however in making that commitment signatories are agreeing to comply with provisions of the Code. Persons or entities operating in the Indigenous Art Industry (dealers, agents, art galleries, auction houses, art centres, wholesalers and retailers) may apply to the Code Administration Committee to become a signatory to the Code.

The Office of the Minister for the Arts confirmed to Lowensteins that part of the funding to create the Code is to be allocated to a website which will publicise

the names of the signatories. This website should be online by the end of the year.

A cursory reading of the Code may give an appearance that sanctions for any breaches will be ineffective as they do not contain specific economic penalties; however there will be significant implications for the Aboriginal art industry as a whole if these measures are unsuccessful.

Sales of Aboriginal artworks on the secondary market have declined markedly over the last two years. It is hoped that the Code will prevent further declines by providing a reassurance to consumers that they are buying and selling unique works of art authenticated by people who have the welfare of Indigenous Australians at heart.

Central to the success of the Code will be the adherence of signatories to Division 2.3 Dealings with Artworks and in particular Clause 13 Code Certificate. This is reproduced below without the explanatory note.

Currently it is not well understood that Aboriginal artworks bought on the primary market (galleries, artists and their dealers) may be almost impossible to sell on the secondary market (at auction) if they do not meet minimum requirements specified for their resale which Clause 13 seeks to redress.

We are making submission to the Office of the Minister for the Arts that it should be mandatory for all persons or entities operating in the Aboriginal arts industry to display publicly and prominently Clause 13 to the Code. We also believe that a copy of Clause 13 should be compulsorily attached to tax invoices for the purchase of Aboriginal art.

It might then become clear whether the issues of probity that created the Code are endemic or more simply a case of 'buyer beware'.

## 13 Code Certificate

### The First Dealer

1 The First Dealer is a dealer who:

- (a) purchases artwork directly from an artist; or
- (b) is an agent for the artist.

2 The First Dealer may only supply that artwork to another dealer or person if it is accompanied by a code certificate at the time of supply.

3 A code certificate must:

- (a) state that it is a 'Indigenous Australian Art Commercial Code of Conduct Certificate'
- (b) name the artist or artists who created the artwork
- (c) identify where and when the artwork was created
- (d) provide a description of the size and medium of the artwork and any other characteristics necessary to identify the artwork
- (e) provide the name, location and contact person or association that is identifying the work
- (f) include an authorising signature from a person representing the person or association that is identifying the work;
- (g) name the First Dealer and state that they are a signatory to the code.

4 A code certificate is not required to accompany an artwork for the purposes of clause 13(2) if:

- (a) that artwork is sold by the dealer for less than \$250 or any other amount specified by the Code Administration Committee
- (b) the artist or artist's representative informs the dealer that they do not want a code certificate to be created for that artwork and the dealer obtains evidence from the artist to this effect.

### Subsequent dealers

5 If a dealer:

- (a) did not purchase the artwork directly from an artist; and
- (b) is not an agent for the artist;

then that dealer can only supply or display a code certificate if it is a code certificate that was created by the First Dealer and meets the requirements of clause 13(3).

# Same-sex reforms

In 2008 the Federal Government introduced reforms to remove discrimination against same-sex couples and their children so that they may have the same entitlements as opposite-sex de facto couples.

These legislative changes took effect from the beginning of this financial year. In particular they effect the following areas:

- taxation;
- superannuation;
- aged care and veterans' affairs;
- social security, family assistance and child support;
- pharmaceuticals benefits scheme and medicare; and
- immigration and citizenship.

In some cases this will actually impose additional burdens or reduce entitlements that same-sex couples had previously received. For example, where two individuals who are a same-sex couple both have equity in a dwelling that is their main residence, they must now choose one of the dwellings as the main residence of both of them or nominate different dwellings.

Below are some of the changes to taxation and superannuation from these reforms.

## **Effects of reforms on taxation**

The former definition of 'spouse' included a person who, although not legally married to the person, lives with the person on a genuine domestic basis as the husband or wife. The definition did not include a person who lives separately and apart from the taxpayer on a permanent basis.

The new definition of 'spouse' as amended by the Same-Sex Relationships (Equal

Treatment in Commonwealth Laws – General Law Reform) Act 2008 and with effect from 1 July 2009 includes:

- another individual (whether of the same sex or a different sex) with whom the individual is in a relationship that is registered under a State or Territory law as a kind of relationship prescribed for the purposes of the Acts Interpretation Act 1901; and
- another individual who, although not legally married to the individual, lives with them on a genuine domestic basis as a *couple*. (emphasis added)

There are a wide range of areas that will be affected by this new definition of spouse - the main residence exemption, small business entity exemptions, small business CGT concessions, family trust elections, various tax offsets (most particularly the dependant spouse offset) and the meaning of 'associate' (most particularly with regard to company tax law).

## **Effect of reforms on superannuation**

The legislation removes discrimination in the superannuation industry by providing same-sex couples and their children with the same treatment as that which applies to opposite-sex de facto couples and their children.

It ensures that same-sex partners and their children are treated as dependants for the purposes of taxation of superannuation death benefits by allowing death benefits to be conferred on same-sex partners and the children of same-sex relationships.

***In some cases same-sex reforms will actually impose additional burdens or reduce entitlements that same-sex couples had previously received***

# Katherine Boland awarded Heysen Prize 2009



Congratulations are due to Katherine Boland, who was recently awarded the Heysen Prize for Interpretation of Place from a field of 56 finalists including Mostyn Bramley-Moore, Jason Cordero and Sarah Tomasetti.

According to judge Susan McCullough "...the work that stood out for me is Katherine Boland's *Across the Bay to Williamstown*. At first seeming almost coolly rational in its long perspectives and strong structure, this work speaks of both the universality of the horizon and this artist's regular and ongoing

engagement with it. It was no surprise to read in her statement that horizons of many varied countries have been of both long fascination and perhaps the anchor which keeps her artistically and - one may surmise - emotionally grounded. Her use of material – scraped paint over board – is also noteworthy – adding as it does a quality of tactility, a sense of light and shade and a depth to what may have been, if painted in more conventional fashion as oil or acrylic on canvas, a far more flat and less interesting work."

The Heysen Prize can be viewed at the Hahndorf Academy, South Australia until 1 November.

For more details visit [www.hahndorfacademy.org.au](http://www.hahndorfacademy.org.au).

Katherine Boland born 1957  
*Across the Bay to Williamstown 2009*  
Wood stains, liming solution, varnish, oil and blowtorch on inscribed timber panel.  
Oil on canvas  
Signed and titled verso  
120cm by 150cm

# Publisher's Cup Cricket Art Prize 2009

If it is October then the sound of leather on willow can't be far away and what better way to celebrate the national summer pastime than with a new art award offering \$23,000 in prizemoney.

First prize has been awarded to Jane Kellahan for her painting *White Wickets*, the Highly Commended Award has gone to Adam Hill's *Unfair Dismissal* and the People's Choice Award is still being voted on. We have reproduced 3 of the 32 finalists below.

The exhibition can be seen at the Sydney Cricket Ground until 24 October before travelling to Mackay for 7 weeks. It will then be on show at the Melbourne Cricket Ground for the Boxing Day Test before concluding at the Bradman Museum, Bowral in February.

For more details visit [www.publisherscup.org.au](http://www.publisherscup.org.au)



Lewis Miller born 1959  
*The Obscure Art of Cricket 2007-2009*  
Oil on Belgian linen  
Signed and dated lower right  
122cm by 102 cm



Merryn Trevethan born 1976  
*The Collapse 2009*  
Acrylic on linen  
Signed and titled verso  
137cm by 167 cm



Grant Stevens born 1976  
*Singles 2009*  
Acrylic on canvas  
Signed and titled verso  
61cm by 107cm



# Lowensteins Arts Management

## Melbourne

Level 5 / 574 St Kilda Road  
Melbourne VIC 3004

T + 613 9529 3800  
F + 613 9525 1616

lam@lowensteinsarts.com.au

<b>Tom Lowenstein</b>	<b>Partner</b>
<b>Evan Lowenstein</b>	<b>Partner</b>
Lyn Faulkner	Senior Accountant
Cheree Tucker	Senior Accountant
Michael Fox	Senior Accountant
Cheryl Johnson	Administration Manager

## Sydney

Suite 601 / 3 Waverley Street  
Bondi Junction NSW 2022  
PO Box 651 Bondi Junction NSW 1355

T + 612 9389 2400  
F + 612 9389 6506

lams@lowensteinsarts.com

<b>Adam Micmacher</b>	<b>Partner</b>
<b>Michael Zillig</b>	<b>Partner</b>
Henry Raiz	Senior Accountant
Paulette Bryant	Office Manager

## Do we have your correct email address?

Tax Matters for the Arts is distributed by email only. If you are changing your email address or know of anyone who would like to receive these newsletters please contact our offices and we will update our records accordingly.

### IMPORTANT

This is not advice. Readers should not act solely on the basis of the material contained in this newsletter. Items herein are general comments only and do not constitute or convey advice per se. Changes in legislation may occur quickly. We therefore recommend that formal advice be sought before acting in any of the areas covered in this letter.

**Lowensteins**  
ARTS MANAGEMENT

Tax Matters for the Arts has been compiled by Michael Fox with the assistance and advice of Tom Lowenstein, Evan Lowenstein, Adam Micmacher and Cheree Tucker. Publication design by Jen Spiers, Brisbane.