



THE HON SIMON CREAN MP

Minister for Regional Australia, Regional Development and Local Government
Minister for the Arts

Reference No: B12/501

Mr Tom Lowenstein
Executive Director
Australian Artists Association
5th Floor, 574 St Kilda Road
Melbourne VIC 3004

- 9 MAY 2012

Dear Mr Lowenstein

I write in response to your open letter, dated 13 September 2011, concerning issues affecting the visual arts sector. My apologies for the delay in responding, however your letter has only recently come to my attention.

I would like to confirm that this Government is committed to a strong and resilient visual arts sector and is supporting a wide range of initiatives, including direct funding to visual artists and funding for visual arts infrastructure.

Your letter raised several additional matters, including investment in art by self managed superannuation funds, trust accounts for artists, government support for the visual arts, losses from non-commercial activities and the resale royalty scheme. I have provided a full response to these issues in the attachment to this response.

In addition, you raised concern regarding the impact of the new *Personal Property Securities Act 2009* (the Act) on artists.

Under the new Personal Property Securities (PPS) law, if an artist has a commercial consignment arrangement with a gallery or dealer they have what is now known as a 'security interest' in that art. The new PPS law applies to commercial consignments where an artist consigns art works to a gallery or dealer to be sold and where both parties trade in art in the ordinary course of business.

There has been some confusion in the visual arts sector and in the media about the process for artists to register their security interests. To resolve this confusion, the Attorney-General's Department in consultation with the Office for the Arts has developed fact sheets which have been made publicly available on the PPS Register website at:
<http://www.ppsr.gov.au/AsktheRegistrar/FactSheets/Pages/default.aspx>.

I have enclosed the two fact sheets "Artists: What you should know about the PPS Register" and "Indigenous artists and art centres: What does the new law mean for you?" and I encourage you to circulate these to your contacts, including artists.

In summary, to protect their security interest if their gallery or dealer becomes insolvent, artists should do the following:

- 1) ensure that they have a written consignment contract with their gallery or dealer that broadly describes the goods that they have consigned, for example, 'art works'; and
- 2) register their security interest on the PPS Register at: <http://www.ppsr.gov.au/Pages/ppsr.aspx>. Registration is not compulsory, but it protects artists' security interests against other creditors.

The new PPS law also applies to Indigenous artists who work in art centres when the art centre sends their art on consignment to a gallery or dealer. However the art centre can assist artists to protect their security interests by acting as their agent.

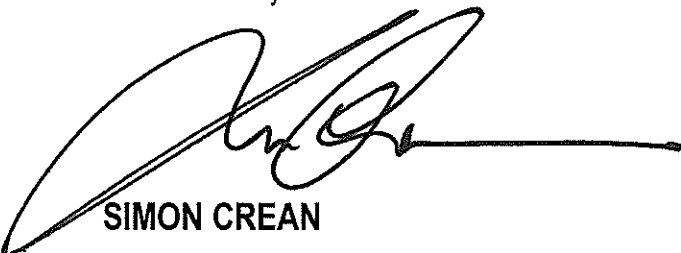
The Attorney-General's Department has assured me that a single registration can cover all consignments that an artist or Indigenous art centre makes to a particular dealer or gallery and each art work is not required to be registered individually.

Consignment arrangements in place before 30 January 2012 can be registered at no cost. Otherwise, the cost of an online registration starts at \$7.40. Registering can protect an artist's security interest in the art for seven years, 25 years or indefinitely.

You may be interested to know that the Act will be reviewed three years after its implementation, and at that time there will be an opportunity for the visual arts sector to comment and provide feedback to the Australian Government on the impact of the Act on artists.

Thank you for raising these matters with me. I am happy for you to publish my reply and attachment on your website in response to your open letter.

Yours sincerely



SIMON CREAN

Resale royalty scheme

I have read your 6 September 2011 letter to Mr Brian Johns, Director of Copyright Agency Limited (CAL), which you have published on your website. Mr Jim Alexander, CEO of CAL, has given me a copy of his response to you. In your letter to CAL you raised issues in relation to liability for payment of royalties, agency arrangements, the buyer's premium, transfer of ownership, a cap on royalties and duration of royalties after an artist's death.

These are all matters that are set out in the legislation that governs the operation of the scheme, the *Resale Royalty Right for Visual Artists Act 2009*. In mid-2013 the Government will review the resale royalty scheme and this will include an opportunity for stakeholders to comment on how the scheme has performed to date. At that time, stakeholder feedback will be taken into consideration by the Government to determine if any changes to the legislation are necessary. The Office for the Arts, which will conduct the review, is aware of the concerns that you have raised, and I encourage you to provide input once a call for submissions is announced.

In relation to the impact of the scheme, I wish to emphasise that the exclusion of the first transfer of ownership under the scheme has had the effect of phasing in the royalty, so that the market can gradually adapt its practices. It will be quite some time before the majority of resales are captured under the scheme. This is particularly important in the context of the market downturn that you have described.

As you may be aware, in response to industry concerns the Government simplified the resale royalty scheme at the end of last year. In order to reduce administrative and reporting requirements for art market professionals, resales under \$1,000 no longer need to be reported as they do not attract a royalty. This change has been widely welcomed.

Government encouragement to the visual arts

In your letter you have mentioned that the visual arts market is currently depressed and you have suggested that the Government could stimulate the market by providing funds to artists that are in effect acquisitions.

Like other art markets, the visual arts market is affected by many factors such as the high Australian dollar, the global financial climate and supply versus demand, including the number of auctions and commercial exhibitions. The market for arts and craft in Australia and overseas is also dependent upon the continued supply of the art itself, the cultivation of new generations of artists and the level of financial and professional support available for artists to engage in the market.

The Australian Government supports a range of visual arts initiatives to strengthen the sector. Each year the Australia Council, the Australian Government's principal arts funding body, provides around \$11.5 million to individual artists and key organisations.

The Australian Government, in partnership with state and territory governments, also provides support through the Visual Arts and Craft Strategy (VACS). In December 2011, I announced the renewal of the \$55.3 million VACS package across 2012-15. The Government has committed \$27.7 million to the package, with state and territory governments matching funding.

The new VACS package will support over 80 contemporary visual arts and craft organisations and will provide nearly \$10 million to individual artists, artist run initiatives and projects, \$2.3 million for touring exhibitions and \$3 million to Indigenous artists.

You have suggested that uncertainty around the resale royalty scheme may have contributed to a downturn in trade. However, in just under two years of operation the scheme is already generating significant financial returns for artists.

I am pleased to report that at 31 March 2012, there were 3,590 qualifying resales of artwork which will deliver \$600,000 in royalties to more than 393 artists. Copyright Agency Limited (CAL) reports that the volume of resales to date is consistent with pre-scheme estimates and that 100 per cent of the top 50 dealers in the secondary art market are reporting to the scheme.

Regarding your proposal for two year fellowships for mid-career visual artists, I commend your work around the *Lowenstein Sharp Arts 21 Fellowships* and acknowledge a most impressive list of past recipients. You may be interested to hear of the *Creative Australia Fellowship Program*, a major new initiative to support the professional development of outstanding artists working across the sector and across Australia. Over five years between 2011-12 to 2015-16, the Australia Council will award 10 two-year fellowships for established artists (each valued at \$100,000) and 13 two-year fellowships for early career artists (each valued at \$60,000).

Lastly, I am pleased to note that Artbank has sustained its role as a major buyer of Australian contemporary art through the economic downturn and subsequent years. Artbank continues to provide a high level of practical support to artists and the art market as a whole through its purchase of works by both emerging and mid career artists.

Artbank's revenues are self generated through its art rental scheme and, although affected by the economic downturn, it has actively maintained its purchasing budget at pre-GFC levels, and is on track to spend \$1 million on acquisitions this financial year. This supports both the artists and the commercial gallery system. Further, Artbank spends over \$100,000 per annum on conservation and framing, directly contributing to these vital ancillary industries.

Artists and galleries trust accounts

It is concerning to hear that some artists are experiencing delays in receiving payments or are missing out on the proceeds of sales. However, I note that the operation of trust accounts is ordinarily regulated by state and territory laws.

There is, of course, an option for galleries to adopt the use of trust accounts as accepted industry best practice. Perhaps this is something you may wish to pursue with other industry representatives and organisations, including the Australian Commercial Galleries Association, the National Association for Visual Artists and the Australian Indigenous Art Trade Association.

Artists can also protect their interests in the proceeds from the sale of work by registering on the Personal Property Securities Register. When artists register their security interests they will secure a priority interest in any proceeds from the sale of their work.

Losses from non-commercial activities

Your letter suggests that the income requirements in relation to losses from non-commercial activities are having a negative impact on some artists. As this is a technical matter in relation to the *Income Tax Assessment Act 1997*, I referred your queries to the Treasury which has advised me that the non-commercial losses rules were introduced to improve the integrity, fairness and equity of the tax system.

Under the Act individuals, including artists, can apply non-commercial losses against their other income where they can meet one of the four objective tests you have outlined, or at the Commissioner of Taxation's discretion where an individual can demonstrate that the business is commercial in nature despite having made a loss in a particular year, or where there are exceptional circumstances. For more information, you might like to contact the Australian Taxation Office on 13 28 66.

I note that you are concerned that the \$40,000 limit for other income has not been indexed since 2000. Given the current fiscal situation there are unlikely to be further concessions in the short term. However, I believe that the current system does benefit artists by allowing deductions for genuine losses.

Investment in art by Self Managed Superannuation Funds (SMSFs)

You have described the changes to investment in SMSFs as a major obstacle to any recovery in the arts market.

As your letter notes, on 30 July 2010, the Government announced that SMSFs would be allowed to continue to invest in collectables (such as artworks) and personal use assets, provided that those assets were held in accordance with tighter legislative standards, introduced from 1 July 2011.

The primary purpose of the new legislative standards is to ensure that such assets do not give rise to personal benefits and are held for the sole purpose of providing ongoing retirement benefits.

Responsibility for this legislation lies with the Hon Bill Shorten MP, Minister for Financial Services and Superannuation. Therefore I have referred your submission on investment in art by SMSFs to Minister Shorten.