

## Tax Matters for the Arts

www.lowensteins.com.au  
DECEMBER QUARTER 2014

### Fiona Lowry



Interview with Miriam Grundy

**Congratulations on winning the 2014 Archibald Prize - what have been some of the most immediate effects from this?**

*It's strange to be inside of it having watched it from a distance for a really long time. There has been a wonderful response to the portrait of Penelope Seidler and it's great to have this recognition around this particular work.*

*The Archibald has this mythology around it that it is life changing and I have certainly been engaged with a lot more public activity and have met some really great people - but right now I'm really focused on my show at Martin Browne Contemporary in May next year.*

**What attracted you to Penelope Seidler as a subject?**

*I saw her by chance at an opening in Surry Hills and I was really struck by her, she is very beautiful and stylish but mostly she has an incredible presence. She's not someone who fades into the background.*

*I asked someone who she was and found out about her involvement in the arts, her*

*work as an architect and also being married to Harry Seidler, who was someone I admired for a long time. I'd used his book, *The Grand Tour*, in my own travels in Europe so I had engagement with the Seidler story before that encounter.*

*That was six years ago. When I came back to it and contacted her she was really interested and already had been following my work so we knew of each other and it developed from there. I think we both felt like it was a good thing to do together.*

**Art critic John McDonald describes your work as being about 'sex, death, and the great outdoors'. Do you think that is an apt description?**

*Yes, there are definitely those elements in the work and they are all ideas that I engage with in some way - I paint nude figures in the landscape engaged in ambiguous activity, sometimes in locations that have a history of violence to them.*

**The story of Black Caesar is not a narrative that has been written into the Australian colonial consciousness - how did you come across this story and what made you want to explore it in your painting?**

*It was an idea that I had for a long time after finding a 1950s book of Australian bushrangers. I'd had a fascination with outlaws and their meaning in our cultural history and the first story in this book was about John Black Caesar.*

*He was a black man from America who was a slave and ended up in England before coming to Australia as a convict. He was noted in those early records for his massive stature and also his involvement in trying to shoot*

*Pemulwuy, the Rainbow Warrior.*

*I was already intrigued by his story and then found out he had a relationship with Anne Power, a convict who came out on the *Lady Juliana*, which was the boat transporting mainly female prostitutes. They had two children and lived for a time on Norfolk Island. I was really fascinated about what it would have felt like for them against what must have been the terrifying backdrop of the Australian landscape.*

*A lot of the ideas that I work with are about love, loss and desire, set in ambiguous spaces, so this story was good material for me but the works themselves combine my own experience and imagination with these historical references.*

**Last year you painted artist Shaun Gladwell for the Archibald, which other Australian artists do you look to for inspiration?**

*I love Peter Booth and Juan Davila, both have had a great impact on me, and of course Arthur Boyd and Sidney Nolan before that. Today there are so many great artists who I admire but to name a few who I really respond to would be Julie Fragar, Ben Quilty, Louise Hearman and David Noonan.*

**What is the best financial advice that you have received so far in your career?**

*To hold on to something from each show so that you have some of your own work in your collection. Not many artists have superannuation, so that is really the best way to ensure there is something there for a later date.*

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Fiona Lowry will be exhibiting at Martin Brown Contemporary, 28 May - 21 June 2015.

## The current scene



by Evan Lowenstein

For the past 5 years we have seen a substantial decrease in sales at art galleries across the country which has resulted in a consequent reduction in artists income and a whole malaise across the arts industry.

This has been a result of several factors including no real improvement in the global financial crisis that has affected most businesses. It has had a particularly negative impact on all sectors of the arts industry, including artists, art galleries, dealers, consultants and even collectors.

In addition, Australian governments of both persuasions have shown no interest whatsoever in the problems of

the arts industry.

The previous government exacerbated the economic situation by introducing new legislation, such as The Personal Property Security Act (PPSA), introduction of Resale Royalties and major changes to the Superannuation rules and regulations which have created uncertainty, additional administrative headaches and major obstacles to the acquisition of art. The current Government have been deaf to our appeals to repeal these measures and reinvigorate the arts economy.

The introduction of the PPSA has also muddied the waters, as discussed in this Newsletter.

LAM has made numerous submissions on the critical issues affecting the arts with a view to implementing some reforms – see [www.lowensteins.com.au](http://www.lowensteins.com.au)

As a result of a mix of these factors, a number of art galleries have closed their doors, others have announced that they will close, while most have dug deep to keep their doors open.

There is also a generational change that is taking place in the art market. Perhaps, it is time to re-examine the old fashioned model of gallery art openings to attract buyers. Although it is pleasant for an artist to have their friends celebrate at an opening, the old system of hanging paintings on the gallery wall, sending out invitations and supplying drinks to colleagues is not a guarantee of sales.

There are people out there with money, so galleries just need to be innovative in the way they go about attracting older traditional buyers back, as well as attracting new buyers. Some artists have included smaller, less expensive items in exhibitions which have gone part of the way to generate sales.

Despite the general negativity amongst galleries, some artists have had sell-out shows and some galleries have adopted a more innovative approach.

Many galleries regularly participate at the major Art Fairs in Melbourne and Sydney. A number of galleries have participated at international art fairs like the Hong Kong Art Fair and they have established overseas connections with significant success.

Artists themselves also need to adapt to the digital world. Many artists are now starting to bypass the traditional gallery system and rely on online sales and extensive use of the internet. Some galleries also make great use of the web and social media and can now boast that quite a high percentage of their sales are from online enquiries.

If the art world reacts positively in this challenging climate in the same way as they did during our Save Super Art Campaign, I can see a light at the end of the tunnel and a concerted effort by all members of the arts community to remain positive. This will shut out the pessimism that threatens to engulf it.

## Sydney launch of Charles Blackman exhibition

Charles Blackman exhibition at The Intercontinental Hotel Sydney and launch event of The Blackman Studio.

Charles Blackman (born 12 August 1928) is an Australian painter, noted for the Schoolgirl and Alice in Wonderland series of the 1950s.

He was a member of the Antipodeans, a group of Melbourne painters that also included Arthur Boyd, David Boyd, John Brack, Robert Dickerson, John Perceval and Clifton Pugh. His work is associated with dreamlike images tinged with mystery and foreboding. In 1960 he lived in London after winning the Helena Rubenstein Scholarship, settling in Sydney upon his return six years later. In 1970 he moved to Paris, when awarded the atelier studio in the Cité des Artes. He lived there for a year at the same time as John Coburn, and subsequently returned often, as Paris was an eternal source of inspiration.

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Felix Blackman,  
Bertie Blackman & Tom



Tim Storrer, Charles Blackman & Tom  
© Photos by Paul Green



Tom, Jorg Bockeler, Sylvia,  
Adam Micmacher & Evan

# Personal Properties Securities Act (PPSA) and the professional artist



by Daren Armstrong  
Partner, Banki Haddock Fiora, Sydney

The Personal Property Securities Act 2009, or the PPSA, is Commonwealth legislation that came into operation in February 2012. Broadly, the PPSA covers agreements and arrangements under which an asset (other than land and some statutory rights) is used to secure the payment of money or the performance of an obligation. This is of relevance to the commercial artist in a number of important ways. Its key points are discussed below.

## Key points

- a. The Personal Properties Securities Register (the PPSR) acts as a public notice board across Australia for all security interests created in personal property. The PPSA and the register replaced a number of disparate State and Territory registration schemes for particular types of goods, such as motor vehicles, and introduced a registration scheme in many cases where none had existed before.
- b. A PPSA security interest generally arises where an asset is used to secure a payment or the performance of an obligation. Registering your security interest (and thereby giving public notice across Australia of your interest) on the PPSR can help you to protect it.

- c. If you don't register your security interest in personal property, such as an artwork, jewellery or a sculpture, and the person in whose possession it becomes insolvent, you could lose your interest in the property, even though you are the owner.
- d. If you hold an unregistered security interest in an item, and the person with whom you have an agreement defaults in his or her agreement with you, you could lose your interest in favour of secured parties who have registered their interest ahead of you.
- e. If you are a commercial artist and leave your artworks on consignment with your gallery or dealer, you should strongly consider registering your interest on the PPSR. This type of arrangement generally creates a registrable security interest in the works.
- f. Similarly, if you sell your artworks on retention of title terms (for example, you deliver paintings to a client on delayed payment terms, and provide that title does not pass until payment in full), a registrable PPSA security interest will be created, which can be lost if not registered.
- g. Commercial leases of artworks for a period of more than 12 months are also considered to be security interests registrable under the PPSA.
- h. Some reversion of rights agreements also create registrable PPSA security interests (for example, where an artist transfers copyright in his or her works for reproduction on condition that royalties are paid and, if not, the copyright reverts to the artist).

You do not need to register your security interest as an owner against auction houses where you put your works to auction.

## How do I register?

All commercial artists should register as secured parties to protect their interests in artworks they commercially entrust to others. Registration is quite straightforward and relatively inexpensive. You should register your security interests against all your major galleries, dealers and clients. You can do this on an enduring once-only basis or for a shorter period. Registration

can be effected over the internet. Assistance is available if required.

You will need to have your gallery or dealer acknowledge in writing that they have taken your paintings on consignment or title retention terms. A simple delivery receipt acknowledging this will do the trick.

## What should I now do?

The PPSA represents a major change in our laws on an owner's ability to enforce its ownership rights in a commercial context over personal property, such as artworks. Artworks can be very valuable items. Tracking and recording their whereabouts and auditing and reporting on stocks held has not historically been a central concern of the Australian art scene. It is all the more important now to do this. Your livelihood may depend on it.

## About

Banki Haddock Fiora is one of Australia's leading commercial law firms specialising in intellectual property. Daren is a senior commercial partner in the firm, and a co-contributor with Lowensteins Arts Management to the Commonwealth Government's 2013 review into the resale royalty scheme for artworks. He co-wrote the Australian Copyright Council's Information Sheet on the PPSA and copyright, on which this article draws. More information on this topic may be found at the Council's website, [www.copyright.org.au](http://www.copyright.org.au).

## How to register

Please contact Evan Lowenstein on 03 9529 3800 or [evan@lowensteins.com.au](mailto:evan@lowensteins.com.au)

We offer a service of registration on line and can navigate you through the complex maze that is the PPSR on-line register.

# Be prepared for a visit to your accountant



by Adam Micmacher

We've come to understand that a visit to the accountant is now ranked close to that of a visit to the dentist. But it doesn't need to be!

To help make the visit more enjoyable and relaxing, but more importantly, to help you get more out of the time you spend with us, here is a small list of things to consider in achieving this outcome

Making appointments can be done in a few ways:

1. **By phone** - Please be assured that when making an appointment with us, you will be given the earliest time available.
2. **By email** - We get a number of enquiries via email and we find this to be quite a good way to communicate with us as well. You should email us

at [receptionmelb@lowensteins.com.au](mailto:receptionmelb@lowensteins.com.au)

3. **On our website** - [www.lowensteins.com.au](http://www.lowensteins.com.au), we have a yellow New Client Enquiry button

This can be used to give us your details and a list of requirements.

## Preparing for the meeting:

It is important for the you, the client, to be as prepared as possible for your meeting time.

As we charge on a time basis, the longer it takes to prepare the return, the more the cost to you.

So, naturally, the more you can prepare the better it is for you!

With advances in technology and interaction with the ATO's portal, we are now able to download any details of most Payment Summaries, interest earned on bank accounts, dividends received and distributions from managed funds investments. It is never the most comprehensive list, but at least it serves to make things easier for you, so you do not have to scurry around hunting for missing statements. The ATO Portal report also gives us some details about HELP debt and private health cover as well.

To help us further, it would be appreciated if you can bring a summary of any statements of income, details of ABN or other freelance income in addition to a summary of expenses prepared on an excel spreadsheet or any other electronic medium.

If you are registered for GST, then of course the GST collected and paid must also be detailed

We feel that it would be of benefit if you can email these files to us prior to the meeting in order to go over your summaries with you at the meeting

## The meeting:

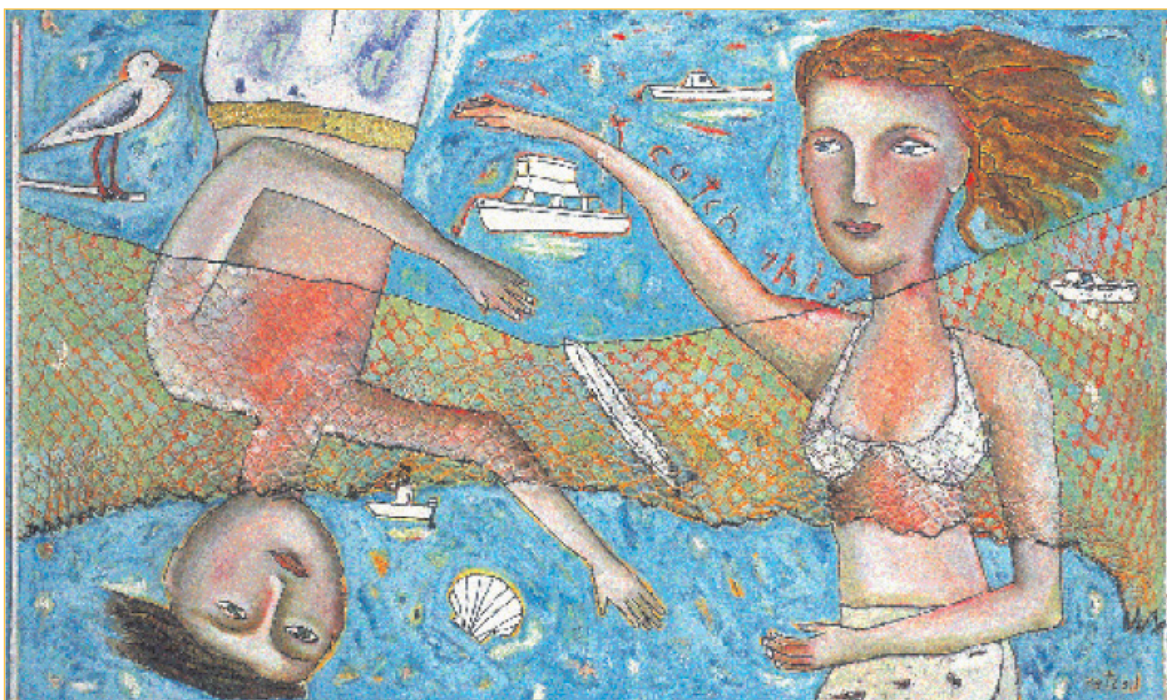
We want to talk with you and make sure that we are covering your concerns. There are many complicated taxation issues, and we know that they will bypass many of you (thankfully), but if necessary, you should feel comfortable to discuss these matters with us.

Some examples of these items for consideration are:

- Property sales and acquisitions
- Structuring issues
- Estate planning
- Overseas tax issues
- Superannuation
- Inheritance
- Gifting of artworks

In the case that we may be unable to give you an immediate answer at the meeting, we will endeavour to find the correct answer within a reasonable time frame.

In the event that you have a number of complicated issues to go through, you should feel free to email a brief summary of them prior to the meeting.



*Catch this 2003; hand stitching and oil on canvas; 92.0 x 152.0 by Kerrie Lester*

# US tax ruling supports artists as professionals

An interesting tax case came across my desk the other day and it involves the US Court's deciding what constitutes artists carrying on business.

It is very interesting because Australia decided this issue some 9-10 years ago and it is now well established tax office practice.

LAMS had a leading role in the formulation of the Australian ruling and it is curious to note that the US has only just caught up.



© 2014 Susan Crile

## Background:

The Internal Revenue Service in the US took acclaimed US artist, Susan Crile – who is an artist and a tenured professor of studio art at Hunter College - to court, claiming that she had underpaid her tax from 2004-2005 and 2007-2009 by an estimated USD 80,000. Under US tax law there are two live issues in this case:

1. Whether an artist who earns their regular income from teaching is a 'hobbyist' or can be considered as a 'professional artist' (s183).

2. Whether Crile's expenses were ordinary and necessary expenses incurred in carrying on a business (s 162 (a)).

It is interesting to note that these issues are still alive in Australia and similar issues occur.

In October 2014 Judge Lauber of the US tax court ruled on the hobbyist issue concluding that Crile:

'... has met her burden of proving that in

carrying on her activity as an artist, she had an actual and honest objective of making a profit... within the meaning of section 162(a), engaged... in the "trade or business" of being an artist.

However, US commentator, Tony Nitti, who says he has 'reviewed the facts of this case closely', flags that 'the likely reason the taxpayer's losses attracted the attention of the Service is because they were rather large... the taxpayer deducted everything ...' ('Artists Rejoice! Tax Court Concludes Painter's Activity Isn't A Hobby', [www.forbes.com](http://www.forbes.com), 2014.)

Once the section 162 matter has been heard in the US, we will report on the court's decision

on what it considers to be 'ordinary and necessary expenses'.

I think the takeout lesson here is that even though these events took place in different countries, the issues are very similar and all professional artists are invited to contact one of our Partners for tailored advice.

# Travel expenses - per diems

by Evan Lowenstein

## Background

Over the past 8 months or so the ATO has been focussing its attention on taxpayers claiming travel expenses in relation to their per diems. This has resulted in a fair amount of ATO audit activity which has led LAM to develop some guidelines as to the correct treatment of claiming Travel expenses.

The issue revolves around the receipt of a travel allowance or a 'per diem' as it is also known and the subsequent offsetting tax claim where there is a claim based on the number of days away multiplied by the Commissioner's reasonable daily rates as published each year.

## Previous treatment

For example: A taxpayer receiving an allowance of say, \$1000 for 20 days away has received a \$50 dollar a day allowance.

Under previous understandings they could then claim up to the reasonable amount in their returns (currently specified as \$118.85 per day for capital cities in Australia) without having to show receipts.

## What this means now

You are no longer entitled to an automatic deduction of the reasonable daily rate for travel.

You must show some proof of spending on travel and this can consist of some bank statement withdrawals, credit card vouchers and diary notes.

1.	You must be in receipt of a bona fide travel allowance which is defined as a payment made by your Employer to cover the costs of you being away overnight ( or longer).
2.	This must be specified on your Payment Summary
3.	You must be able to show evidence of you incurring the travel expenses and some form of proof as to how you arrived at the figure.
4.	Accommodation costs always have to be substantiated

LAM has prepared a diary and some notes about how to fairly calculate these daily expenses. Please go to our website/email us at [evan@lowensteins.com.au](mailto:evan@lowensteins.com.au) and we will send them out to you.

## Art loans for Sydney Buyers

City of Sydney has approved \$60,000 from the City Life budget as one-off seeding funding to 10 Group which also runs Art Month to pilot an interest free art purchasing scheme, subject to 10 Group being granted a credit licence by ASIC.

The City of Sydney announced:

'Under the program, you'll be able to apply for an interest-free loan to purchase artwork between \$750 and \$20,000 in a participating gallery in and around the City of Sydney area.

The approval process can be completed within minutes and the buyer can take the artwork home on the same day. The scheme is based on similar, highly-successful models operating in the UK, Netherlands and Tasmania.

Designed to support commercial galleries and help artists to build sustainable small businesses, these successful programs have seen locals and visitors take up the opportunity to buy art in droves. Tasmania's COLLECT Art Purchase Scheme includes 17 participating galleries across the state. Over the past six years, it has had almost no defaults on the 1,893 loans issued, valued at \$5.6 million.

### Storage Space Rental

In order to assist clients and friends of our firm we have taken storage facilities in Oakleigh in excess of our requirements.

This would be attractive to Trustees of Self Managed Superannuation Funds and complies with the storage requirements of the regulations.

The following spaces are available:

Carrels for the upright storage of artworks:

- Single carrels: 145 cm high x 20 cm wide x 135 cm deep
- A total of 38 carrels available

Shelves for upright storage of smaller works

In the UK, a quarter of the purchases using the Own Art scheme were by people with an income of £25,000 a year (\$AU44,900) or less, and over a quarter were first-time buyers. For many, this was the impetus to buy art for the first time.

These models operate in several ways. Some are fully operated by government entities, others through public/private partnerships.' <http://www.creativecitysydney.com.au/blog/interest-free-loan-scheme-purchase-art/>

According to Council, over 25 galleries support the scheme in principle. However, Stella Downer, Chair of the NSW Australian Galleries Association submitted an objection to the estimated 10% fee to administer the program .because the burden will be on the gallery/artist.

10 Group expects to launch the scheme in late 2014.

Sources:

<http://www.cityofsydney.nsw.gov.au/council/about-council/meetings/calendar-and-business-papers-2014/2014/october/cultural-and-community-committee>

[http://www.cityofsydney.nsw.gov.au/\\_data/assets/pdf\\_file/0009/216747/141027\\_CCC\\_ITEM03\\_ATTACHMENTA.PDF](http://www.cityofsydney.nsw.gov.au/_data/assets/pdf_file/0009/216747/141027_CCC_ITEM03_ATTACHMENTA.PDF)

For an update read our next issue.

/ small sculptures / ceramics and / or flat storage of unframed works:

- Single shelf: 40 cm high x 190 cm wide x 70 cm deep
- A total of 3 shelves is currently available

Storage of sculpture and other 3D objects – by negotiation.

The storage space is fully secured and alarmed.

Access to the space is by arrangement with either Tom Lowenstein, Evan Lowenstein, or Eugene Barilo von Reisberg. 24 hour notice is preferred, but same day access can also be arranged.'

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#### Important

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. Changes in legislation may occur quickly. We therefore recommend that formal advice be sought from one of our offices before acting in any of the areas covered in this newsletter.

#### Tell us your news

Please send us your news of upcoming exhibitions, workshops & opportunities. Space permitting we will publish your news in our next edition.

Next Edition Deadline : 15 February for March 2015 issue

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## In our Next Issue

Kickstarters and GST: Have you raised funds for your arts project via crowdsourcing?

Please email us your experience for publication in 2015.

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**The Directors & Staff of Lowensteins  
wish all our friends & clients  
a happy, safe & prosperous  
festive season**

**Lowensteins Arts Management will be closed from 23rd  
December 2014 until the 5th January 2015**