

## Tax Matters for the Arts

### Margaret Olley

1923 - 2011

**M**argaret Olley was and continues to be a central thread in the fabric of the Australian art scene. Her artistic career is framed, literally, by art. She posed as the subject of William Dobell's winning Archibald Prize entry in 1948, some months before her first ever solo exhibition. Again in 2011, she was the subject of Ben Quilty's winning Archibald Prize portrait, in the midst of the creation of another solo exhibition, one that she did not live to complete.

Olley was born in Lismore, New South Wales, in 1923. As a child she rode a pony to school, perhaps the key ingredient to her sense of adventure, paving the way for a fiercely independent character and lifestyle as an adult. At age six, Olley discovered painting and her skills were further developed at Brisbane boarding school. Even as a young girl, her boldness moved her to forge a letter from her parents excusing her from French in favour of more art classes.

In 1942, Olley attended East Sydney Technical College. She graduated with honours and fell into Sydney's postwar bohemian art scene, developing close relationships with such artists as Donald Friend and Russell Drysdale. During her emerging years, the controversy surrounding her risqué attire in Dobell's Archibald portrait spawned more attention than her own practice. This was in spite of an upcoming solo exhibition, as well as having won a Mosman Prize. In her private life, Olley experienced unsuccessful affairs and a dependence on alcohol, a condition that



William Dobell  
*Margaret Olley, 1948*  
oil on hardboard  
114.3 x 85.7cm  
Image courtesy of New South Wales

she eventually managed to conquer. With some luck, the wheels were set in motion for her career and collectors' interest in her paintings began to grow.

With financial success, Olley began to invest. In 1965 she purchased a property in Paddington, where she spent her time painting and entertaining. She filled her home with treasures that later became the subjects of her art. As a dedicated philanthropist, Olley founded the Margaret Hannah Olley Trust in the 1990s, providing funds to the arts. She donated over \$7 million in art to the Art Gallery of NSW, including works by

Picasso and Cezanne. In 1997, Olley was declared an Australian National Treasure and appointed as a Companion of the Order of Australia in 2006. As Olley's health declined, she remained active and continued to paint. Her largest work was produced at age 84; a triptych picturing her favourite room in her Paddington home.

Margaret Olley will be remembered as a headstrong and soulful artist, not swayed by fashion or demand, but for painting still life and domestic compositions, drawn from objects and memories that were dear to her.

# The Directors and staff wish you a very happy Christmas and a safe and prosperous New Year

Please note our offices will be closed from Friday 23rd December and will reopen on Monday the 9th January 2012

## PAY ACCOUNT ONLINE

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## Important Budget Changes

How some of the important budget changes effect you

### 1. Reduction in company tax rate

the company tax rate will be reduced from 30% to 29% as follows:

- for small business companies – from 1 July 2012; and
- for all other companies – from 1 July 2013

### 2. Immediate write-off of first \$5,000 of certain motor vehicle purchases

The Federal Government will provide "small businesses" with an immediate write-off of the first \$5,000 of any motor vehicle purchased, new or used, on or after 1 July 2010.

This immediate write-off will be available to all small businesses (turnover less than \$2 million and carrying on a business) whether the legal structure be a sole proprietor, partnership, trust or company.

### 3. Higher superannuation contribution caps for over 50s

Eligible members of superannuation funds aged 50 and over with total balances of less than \$500,000 will be able to contribute up to an extra \$25,000 above the general concessional cap from 1 July 2012.

The general concessional cap is currently set at \$25,000 per year. When it increases due to inflation the higher cap will increase by the same dollar amount.

### 4. Introduction of the flood levy

For the 2011/12 year only the flood levy will apply to certain individual taxpayers, resident or non-resident, with a taxable income in excess of \$50,000 as follows:

0.5% levy on that part of the taxable income between \$50,001 and \$100,000;

0.5% levy on that part of the taxable income between \$50,001 and \$100,000 plus 1.0% levy on that part of the taxable income above \$100,000; and no levy will be payable on taxable income of \$50,000 or less or in the cases of exemption as specified by legislation relating to hardship caused by floods.

### 5. Statutory formula reforms for car fringe benefits

Over the next four years the existing statutory fractions ranging from 7% to 26% applied when working out the taxable value of a car fringe benefit using the "statutory formula" method will be phased out and replaced with a flat rate of 20%.

Currently the statutory fraction decreases as the distance travelled by the vehicle increases, the change to these rules removes the incentive for people to drive greater distances than necessary just to access higher tax concessions.

Statutory rate (multiplied by the cost of the car to determine a person's car fringe benefit) applied to new contracts entered into after 7.30pm (AEST) on 10 May 2011:

Distance travelled during FBT year	From 10 May 2011	From 1 April 2012	From 1 April 2013	From 1 April 2014
0 – 25,000km	0.20	0.20	0.20	0.20
25,000 – 40,000km	0.14	0.17	0.20	0.20
More than 40,000km	0.10	0.13	0.17	0.20

# David Larwill

1956 - 2011

David Larwill was one of the founding members of Roar, an Expressionist and anti-establishment art collective that sprung up in the 1970s. Following a trip to Cobber Pedy this year, he tragically lost his life to lung cancer. The trip combined two of his great loves, his family, wife Fiona and children James and Henry, and the Australian outback, the landscape and culture of which inspired much of his life's work.



David Larwill  
Image courtesy Tim Olsen Gallery

Larwill was born in Ballarat in 1956 and developed his artistic talent at Prahran College of Advanced Education and the Preston Institute of Technology. He founded Roar Studios, with fellow artist and friend, Mark Schaller, in 1979.

Roar broke away from the conventional art establishment and exuded an artistic force in its own right, employing the stylistic and ideological tactics of American Abstract Expressionism. Roar was an anti-intellectual Expressionist movement, which stood in opposition to conceptualism.

In his work, Larwill explored a raw and primitive aesthetic, portraying stylized human and animal figures, set amidst stark patterns, black lines and a chaos of colour. He experimented

with unconventional media, using sand to depict the St Kilda seaside, adding strength to his pigments and texture to his surfaces. His work was deeply inspired by visits to Arnhem Land and Central Australia.

Holding exhibitions in many galleries across Australia, in his last years he was represented by Tim Olsen Gallery. Over the course of his life he was commissioned to produce many public artworks, including a mural for the Australian Centre for Contemporary Art in South Yarra, a painted tram and a painting for the Australian Football League Hall of Fame and Museum.

Examples of Larwill's work can be found in various public collections, such as the National Gallery of Australia, the

National Gallery of Victoria and New Parliament House. The acquisition of these works in such high profile institutions is a testament to the strength and power of breaking with tradition. David Larwill and the Roar movement are pinnacle examples of how art is a constantly evolving system, where with the determination and self-belief of unique individuals, society and perception can be shifted.

# Investment in Art by Self Managed Super 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.
9. 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
- c. 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 have communicated our concerns to both the Minister for the Arts The Hon. Simon Crean MP in early September (to which we have not yet had any reply) and the Minister for Financial Services and Superannuation The Hon. Bill Shorten MP in early November who indicated that he would be looking into the matter, after addressing a meeting of the West Australia branch of the Australian commercial galleries association. This was brought about as a result of an earlier seminar given by Evan Lowenstein and Sydney Art Consultant John Cruthers to the same group in mid September, where both expressed their concern at the lack of action on the part of the Government. This was subsequently reported in the WA news media.

## Dagmar Cyrulla



Dagmar Cyrulla  
*The Roses*, 2011  
oil on Linen  
144 by 108 cm

Image courtesy James Makin Gallery

Selected Finalist for the  
2011 Muswellbrook Art Prize  
- Highly Commended

# Resale Royalty Update

During its first period of operation Copyright Agency Limited (CAL) generated \$390,000 in resale royalties on 1,927 eligible resales for 320 artists.

Of all artists to receive a resale royalty 61% are Aboriginal, which is not surprising when half of all eligible resales are being reported by Aboriginal galleries and dealers.

1. According to CAL 60% by value and 65% by volume is being generated by the auction houses; however auction houses and art dealers represent only 30% of the total number of art market professionals reporting eligible resales.
2. This indicates CAL has managed to cover most of the art industry where resales would be expected to occur. It also indicates that half of the eligible resales being reported are from Aboriginal galleries and dealers, which have little choice but to participate due to their Code of Conduct obligations, which requires them to purchase artworks from Community Art Centres before on-selling them to their clients.

It is expected the number of auction house resales reported will grow in the future with artworks acquired post 8 June 2010 more likely to come up for sale and travelling auction houses being streamlined into their system, particularly those that specialise in limited edition prints up to a value of \$10,000.

There have only been 51 eligible resales where the artist has opted out of receiving a royalty. Three of these instances occurred through artist agencies and the other 48 related to a charity event where the artists chose to donate their royalty to a charity.

The highest resale royalty generated to date is \$40,000 – indicating that this related to an artwork sale of \$800,000 – however this transaction was the exception and not the norm. (To put it another way this one resale out of a total of 1,927 comprised more than 10% of the value of all the royalties reported).

There were only another four instances of artists generating resale royalties in excess of \$5,000 during the initial period of the scheme.

According to CAL, at 31 August 2011, of the 205 artists who have received resale royalties:

- 119 (58%) received between \$50 and \$300;
- 81 (40%) received between \$301 and \$5,000; and
- 5 (2%) received in excess of \$5,000.

Another way of looking at these statistics is that with 4,000 artists and their estates registered with CAL only 2% of eligible artists have so far received any resale royalties. This is consistent with figures obtained from comparable resale royalty schemes overseas, such as Great Britain (albeit with a higher threshold).

It is currently not possible to examine the individual artist results on the CAL database to carry out a greater analysis of individual artist resales. While it is understandable these results not be made available to the general public for privacy reasons, it is inevitable that pressure will be brought to make the CAL database more available to art researchers and qualified art valuers in the same way that they are able to access similar art databases. With the appropriate safeguards this could only aid the transparency of the art market and create a greater chance of a willing buyer-willing seller scenario. (Instead of the all-too-familiar “wary buyer-willing seller” situation).

Despite the above reservations from an operation point of view the scheme has run remarkably well in its initial period and the Government should feel vindicated in its decision to appoint CAL as the collecting body early last year. CAL is well advanced in producing a Guide to the artists’ resale royalty scheme which will assist art market professionals with their obligations in the future.

The work of CAL’s art market professional advisory panel should also be acknowledged in the

operational success of the scheme. In particular a new reporting system was devised for low-value resales based on feedback from the panel and their input was invaluable in tailoring communications to the art market. The panel currently comprises Philip Bacon, John Keats, Beverley Knight, John Oster as well as Lowensteins Arts Management.

However, there are a number of matters that we have raised with the management of CAL to make the scheme more functional, in particular agency arrangements. In the meantime, it should be noted that we have prepared standard agreements between commercial galleries and artists and between art market professionals and collectors to ensure resale royalties are not payable when the transaction is an agency arrangement.

## Dennis Beaubois



Dennis Beaubois

*Currency*, 2011

Two sections of uncirculated \$100 Australian banknotes

Image courtesy The Australian

*Currency* by Dennis Beaubois, described as “two sections of uncirculated \$100 Australian banknotes”, was sold at auction by Deutscher and Hackett in August 2011 for \$21,000, including buyers premium. It is unclear whether *Currency* is defined as an artwork under the Resale Royalties Act, as it does not meet any of the 21 separate categories prescribed by the legislation.

# David Band

1959 - 2011

David Band's artistic career began with a packet of crayons and a drawing pad as a child. By the time he finished school there was no other option but to study art. In his adult life, Band's career oscillated between fine art gallery exhibitions and high-end commercial graphic and interior design. His family, wife, Fiona Mahon, and son, Alfie, were the highlight of his weekend's activities. Band passed away peacefully in April this year, in the wake of an assortment of projects making up his innovative and highly successful career.



David Band  
*Joy II* 2010  
oil and acrylic on canvas  
152 x 130cm

Image courtesy [www.davidband.com.au](http://www.davidband.com.au)

Born in Glasgow, Scotland, in 1959, Band studied at the Glasgow School of Art and then moved to London to attend the Royal College of Art. Before his journey to Australia in 1986, he designed album covers for Spandau Ballet, undertook drawing commissions for Vanity Fair and held his first solo exhibition at Brentford Watermans Art Centre, London. His first Melbourne solo show occurred soon after he arrived and he also took up a lecturing position at RMIT. He exhibited with Australian Galleries for a large part of his career and held a solo exhibition in New York's McGarth Gallery. In his later years, he began to exhibit with Block Projects, where he showed his most recent works. In Australia, he produced numerous

commissions, including 10 paintings for Paul Kelly's *Wanted Man* album, a four by thirty metre mural at Crown Casino and 700 hand coloured etchings for Bates Smart's Crown Metropole Hotel, in collaboration with Fraser Taylor. In addition to his fine art career, Band fed his images into the commercial design world and, together with his wife, formed Mahon&Band. The artist in him enjoyed the isolation of being in the studio, but interacting with clients suited his social character. His philosophy on both his fine art and commercial projects was to stay true to the art, but to treat it as a career. He was never complacent about his art or designs, constantly seeking to challenge his direction. His designs had been well received throughout his

career, affording him such projects as Bistro Guillaume, Rockpool and Icebergs.

Ross A. Waterman described Band as having a profound talent to create beauty, with a deep relationship to colour, shape, line and texture. These elements exemplify the abstractions found in Band's art and design career over the course of his life, embedding in them a timeless quality, which will continue to be appreciated for years to come.

## Mini Budget November 2011

The Labor Government has announced a further series of budget measures in an attempt to bring their own books of account back in to surplus. Maybe all they need is a good accountant!

There were no significant tax measures announced. As such it appears that most of the predicted savings will come from the reduction in certain benefits, the deferral of some Government initiatives and increasing the demand on government departments to cut costs

In summary, the main points were:

Resetting the baby bonus from \$5,437 to \$5,000 from 1st September 2012. There will also be a pause on indexing this amount

For families receiving Family Tax Benefit Part A it will be compulsory to maintain full immunisation for children

The ATO will examine ways to reform the Living Away From Home Allowance for temporary residents and require greater documentation

A deferral of the "standard work related expenses deduction" proposed in the May budget. This has now been deferred until the year starting 1st July 2013

Increased charges for certain visas

Looking for Government departments to cut expenditure by a further 2.5%

Given the continuing uncertainty in the world economy it will be interesting to see whether the Government can achieve its target of returning the budget to surplus, the proof will be in the eating of the pudding as we proceed towards the May 2012 Budget.

## Robert Baines 35 years of practice

Internationally renowned jeweller and goldsmith Robert Baines recently held a major survey exhibition at Glen Eira City Council, A Visible Likeness, Robert Baines Survey Exhibition 1969 – 2011

As one of Australia's most iconic jewellery practitioners, the exhibition presented a selection from over 35 years of practice, highlighting great technical skill and artistic innovation.



Robert Baines  
*Bracelet from Saaremaa (?)* 2004  
gold, plastic, metal car  
0.5 by 4.7 by 6.2 cm,  
Banyule Art Collection  
Image courtesy Glen Eira City Council

## Lisa Roet Award congratulations



Lisa Roet  
*The Mark of No Human Hand* 2011  
hard-ground etching  
135 x 102 cm  
Image courtesy Karen Woodbury Gallery

Lisa Roet was awarded the Winner of the non-acquisitive prize for the Fremantle Arts Centre Award 2011, for an etching produced at the Australian Print Workshop as part of a Collie Print Trust Printmaking Fellowship earlier this year. We send our congratulations to Lisa Roet.

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