



9 April 2013

Committee Secretary
Senate Rural and Regional Affairs and Transport Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir/Madam,

Re: Australia Council Act 2013

The Australian Society of Authors Ltd (ASA) is the peak organisation representing the professional rights and interests of Australia's literary creators. The ASA was formed in 1963 and operates under Australian corporation law. In 2013 it has a total membership of over 3,000. The ASA works to establish minimum rates of pay and conditions for writers and illustrators; publishes books, contracts, papers and information sheets for emerging and established authors; defends the commercial and legal rights of copyright creators; and responds to governments and agencies at all levels in matters such as copyright and moral rights legislation, arts funding, and cultural development.

We welcome an opportunity to comment on the proposed Australia Council Act and offer our assessment, as follows:

Functions and objectives removed

We understand that a number of previously accepted functions are removed from the 1975 Act. These are listed below, with our comments.

- To promote the general application of the arts in the community

We believe that removal of this function is a regrettable decision. The Act ought not be afraid to describe the value as well as 'use' of arts to the Australian community and its component parts. Furthermore, as the new Act does not mention community, the inference is that the Australia Council will have no responsibility for arts in the community.

- To foster the expression of a national identity by means of the arts

It is regrettable that the new Act does not mention national or cultural identity or use the word 'culture'. The inference is that, as the Australia Council will have no responsibility for Australian cultural identity, it may not concern itself with

any matters relating – such as advancing the means and resources by which our own stories and cultural meanings may be further developed and disseminated.

- To uphold and promote the rights of persons to freedom in the practice of the arts

The political and social implications of this omission are profound. In effect it implies that, as it will take no responsibility for the right of persons to *freely practice* the arts, the Australia Council will thus have no responsibility towards the protection and extension of freedom of artistic expression.

There are other absences which in our view require attention.

The historical fact of Aboriginal and Torres Strait Islander presence, and the primacy of these cultures in Australia's national and cultural identity, is given no mention in the proposed Act.

Current discussions about the Constitution indicate the general community acceptance that such primacy should be acknowledged and included by amendment. This development is of such significance that it should thus also overtly inform, or be included among the objectives, of any new legislation – in particular any law that establishes cultural agency responsibilities and the way government develops and delivers its support for Australia's overall arts activity.

While the cultures and arts of Aboriginal and Torres Strait Islanders are given some prominence in the national cultural policy, *Creative Australia*, it is insufficient that support for their on-going expression should rely only on a political 'good intentions' basis, or depend on occasional or provisional policy or legislative inputs.

New functions and objectives

Meanwhile, a number of new functions are defined to be included in the 2013 Act.

- To support Australian arts practice that is recognised for excellence

Arts practice that is recognised 'for excellence' is in essence arts practice that is already 'understood' and is validated via conventional criticism or some other means. This suggests an aversion to the kind of risk that is fundamental to new and innovative art forms yet to appear, or still developing an understanding and a following. The Act should allow for the creation of that which has, as yet, no audience and may indeed be entirely experimental.

- To support and promote the development of markets and audiences for the arts

The work of identifying and developing markets and audiences is, we believe, more properly a task for our artists and cultural producers. Should they require

assistance in this activity, it may be a function of the Australia Council to provide that assistance – by facilitating greater exposure of our arts and cultural products in overseas territories for instance – but not to determine, direct or move resources in favour of Australia Council-defined audiences or markets.

However, there is an equally important task in ensuring *access* to the arts for all Australians. Greater fairness and more opportunity to engage with the arts stand in our view as more important than ‘audience and market promotion’, as both principle and function within the Act.

- To conduct and commission research into, and publish information about the arts

We have no objections to this function, especially as it refers to an important role of the Australia Council that needs to be maintained. Without adequate knowledge and facts on the situation of our arts, artists and creative practices, it is unlikely that the Australia Council will be in a position to offer appropriate support.

- To evaluate, and publish information about, the impact of the support the Council provides

This seems a normal operational obligation, particularly for publicly-funded organisations. It is not a high-end objective and thus appears to us to be ‘taking up space’ that would be better utilised in setting out some other more important goal.

Need for an Act that acknowledges, protects and extends the rights of Australians
Federal Labor Governments have over the past four decades recognised that the right of the citizen to cultural expression and engagement should be central to a conception of why and how governments should fund the arts. This idea of a right remains current in at least one other large, Australian Government-funded cultural institution, the Australian Institute of Sport. Among the ‘Objects’ of the AIS are:

(b) to encourage increased participation and improved performance by Australians in sport; (c) to provide resources, services and facilities to enable Australians to pursue and achieve excellence in sport while also furthering their educational and vocational skills and other aspects of their personal development.

But as the new Australia Council Act makes no mention of the need to encourage ‘increased participation’, it also dramatically limits or undermines the cultural right of Australians to participate in the creation of art, and by extension also in their own culture.

The new Act does not acknowledge the already high level of participation by individual Australians in arts activities. Despite this degree of participation, the vast majority of citizens nevertheless do not presently have sufficient opportunities to engage with the output of those arts *as funded by the Australia Council*, and the proposed Act will reduce this possibility even further.

Although increased participation by individual Australians may stand as a major aim of *Creative Australia*, we cannot see how this Australia Council Act will in any meaningful way serve to advance the goals and values of the new national cultural policy.

From the point of view of encouraging more and better creative practice, there are already numerous educational, financial, social and cultural barriers that limit greater numbers of Australians from seeing themselves as 'cultural producers'. There is much work still to be done, especially via the growing digital environment, to encourage Australian to drive and create new art and advance our culture.

The ASA believes it is an abandonment of a central role of government in relation to the arts in Australia to ignore the above lacunae on the basis that they do not need to be dealt with at a 'functions' or 'objectives' level in the proposed Act. While this remains the case, there is a danger that the setting of significant purposes and principles will be defaulted to provisional Council plans and moveable operational practices. But Australian artists and citizens – and our citizens *as artists* – can have no confidence that what is presently left out of the Act may eventually be delivered via strategic planning or policy directives of the Council itself, as translated through the structures and machinery of the Council's operations.

We argue that what is required is a redrafting of the proposed Act to reinstate the kinds of functions outlined above, in order to cement a more central, and fundamentally democratic, role for government in advancing the cultural and artistic rights of Australians. Such a redrafting would also do a great deal to support the principles and policies set out in *Creative Australia*, and to provide a more capacious arts funding and participation vehicle for many of the actions that may be undertaken in its name.

Yours sincerely,

Angelo Loukakis
Executive Director