

Submission to the Senate Committee on Rural and Regional Affairs and Transport concerning the Australia Council Bill 2013

Introduction

We the undersigned wish to draw to the Committee's attention the implications of the omission of critical wording from the "Functions" of the Australia Council as contained in the Australia Council Bill 2013.

We are also proposing amendments to the Bill. We believe that these amendments are necessary as the functions of the Australia Council should be enshrined in legislation and not be subject to the vagaries of the particular political or administrative leadership of the day.

The signatories to this submission are experienced professionals with extensive knowledge of the Australian arts sector and executive experience in government, community and tertiary education sectors. All signatories have worked for the Australia Council during their careers and more detail on their professional backgrounds is provided at the end of this submission.

Inconsistencies between the Australia Council Bill 2013 and other important policy and legislative instruments

1. Inconsistency between the principles contained in *Creative Australia: National Cultural Policy* and the Australia Council Bill 2013

We wish to draw your attention to some aspects of the Australia Council legislation which we feel fail to measure up to the principles set out in the *Creative Australia*.

We are concerned that without some minor amendments to the legislation the implementation of this important policy could be compromised.

2. Inconsistency between the stated "Functions" of the Australia Council in the Australia Council Bill 2013 and the Australian Sports Commission

It is inconceivable that sport would be developed in Australia without direct reference to the engagement of the community in active participation, and the Australian Sports Commission Act 1989 requires the ASC:

6 (1) (b) *to encourage increased participation and improved performance by Australians in sport*

3. Inconsistency between the Australia Council Bill 2013 and the United Nations Declaration on the Rights of Indigenous People

Article 11 of the Declaration states:

- (1) *Indigenous peoples have the right to practice and revitalise their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.*

The omission of the allocation of a significant responsibility to the Australian Government's pre-eminent arts agency for this critical area of the nation's heritage and identity is startling.

4. Inconsistency between the Australia Council Act 1975 and the Australia Council Bill 2013

The new legislation changes the functions of the Australia Council to the extent that it abandons some of the core principles on which successive Australian Governments have built their vision for an Australian culture.

Functions removed which were in the 1975 Act

1. The new Bill removes the function specified in the old Act that the Australia Council promote the general application of the arts in the community. With no mention of the community in the new Bill the Australia Council has no responsibility for arts in the community.

Creative Australia acknowledges that cultural rights have been recognised in international covenants.ⁱ However, the policy also states that our responsibilities as a nation go beyond these and that we have a responsibility to ensure that our citizens have opportunities to express their cultural identity and to 'enjoy, draw inspiration from and co-create their culture.'ⁱⁱ Our National Cultural Policy also states the need to ensure that all Australians have the opportunity to be involved with the arts as creators as well as audiences.ⁱⁱⁱ

One of the functions for the Australia Council included in the 2013 Act is to support and promote the development of markets and audiences for the arts. This is a clear shift from community engagement and the commitment in *Creative Australia* to recognise citizens as creators.

The Explanatory Memorandum accompanying the Bill states that the Bill engages the right to enjoy and benefit from culture, including the right to take part in cultural life. The Memorandum is an interpretative instrument but not a binding legislative instrument and the Bill falls short of specifying that the Australia Council should, by virtue of its functions as prescribed in legislation, encourage community participation in arts practice and the shaping of cultural identity and its expression.

Recommendation:

That the functions of the Australia Council as specified in the Australia Council Bill 2013 be amended to include the following function:

‘To encourage community participation in arts practice and the shaping of our cultural identity and its expression.’

2. The new Bill removes the function specified in the old Act that the Australia Council foster the expression of a national identity by means of the arts. With no mention of national or cultural identity in the new Bill the Australia Council will have no responsibility for identity and culture.

Creative Australia aims to ensure that ‘Australian identity and stories are not swamped in a globe awash with cultural products, that the full diversity of our society is represented.’^{iv} The new Bill does not enshrine this function into the work of Australia’s pre-eminent arts agency.

Recommendation:

That the functions of the Australia Council as specified in the Australia Council Bill 2013 be amended to include the following function:

‘To provide support to the arts that reflects the diversity of Australia’

3. The new Bill removes the function specified in the old Act that the Australia Council uphold and promote the rights of persons to freedom in the practice of the arts. With no mention of the freedom of practice of the arts in the new Bill the Australia Council will have no responsibility to uphold and promote freedom of artistic expression.

It would appear from our reading of the Explanatory Memorandum that the Council’s role in upholding and promoting the rights of persons to freedom of the practice in the arts has been limited to their requirement to consider the rights of persons to freedom in the practice of the arts and then only when making decisions on eligibility for funding.

Freedom of expression is a hallmark of democracy. Unfortunately, in the absence of a Bill or Charter of Rights it is currently not protected in Australia law and unjustified censorship of artists happens all too often. This freedom is a principle which should be upheld and advocated by the Australia Council as the country’s pre-eminent arts agency and should be included as a function of the Council in the Act.

Recommendation:

That the functions of the Australia Council as specified in the Australia Council Bill 2013 be amended to include the following function:

‘To uphold and promote the rights of persons to freedom of expression in the form of art

And that Clause 11(b) of the Australia Council Bill 2013 should be amended to provide: *“the right of persons to freedom of expression in the form of art;”*

Functions not included in 1975 Act and needing inclusion in the 2013 Act

Nowhere in the 2013 Act is there any mention of Aboriginal and Torres Strait Islander culture and its primacy in Australia’s heritage and identity. This did not appear in the 1975 Act, but one might reasonably think that given the current discussions about the Constitution and the development of Australia’s understanding of the importance of the topic, a new piece of legislation establishing the responsibilities of its major arts agency would address this.

Goal One in *Creative Australia* is to ‘Recognise, respect and celebrate the centrality of Aboriginal and Torres Strait Islander cultures to the uniqueness of Australian identity’. With no acknowledgement of this in the 2013 Act the Australia Council is perhaps enabled but certainly not obliged to honour this policy goal.

Recommendation:

That the functions of the Australia Council as specified in the Australia Council Bill 2013 be amended to include the following function:

‘To recognise, respect and celebrate the centrality of Aboriginal and Torres Strait Islander cultures to the uniqueness of Australian identity.’

Why legislative obligations are imperative

Successive Australian Governments have recognised that the right of the citizen to cultural expression and engagement should be at the heart of our thinking about why and how governments fund the arts. These omissions from the new legislation

specifying the functions of the Australia Council, our country's pre-eminent arts agency, place these cultural rights at risk. Aboriginal and Torres Strait Islander culture, community engagement in and with the arts, cultural identity and freedom of expression are so fundamental to this nation that they must be enshrined in the legislation, not debated every time a government develops a new policy and every time the Australia Council develops a new Strategic Plan.

The authors support the legislation in providing more flexibility for the Australia Council to carry out its functions in ways that are appropriate at any given time. However, the combination of focussing all decision making in the hands of one board, while at the same time reducing the functions to be "enabling" only and providing no framework of responsibilities for the above mentioned critical areas will result in these topics being considered by the Australia Council only if that small group of appointed people consider them important. We argue that these topics are fundamental to arts and culture across the nation and the Australia Council should have freedom to decide how their support will be given to these areas, not whether they will support them.

In Summary

We request that the Australia Council Bill 2013 Clause 9 Functions be amended to read:

9 Functions

(1) The Council has the following functions (new functions in **bold**):

- a. **to recognise, respect and celebrate the centrality of Aboriginal and Torres Strait Islander cultures to the uniqueness of Australian identity;**
- b. **to encourage community participation in arts practice and the shaping of our cultural identity and its expression;**
- c. **to provide support to the arts that reflects the diversity of Australia;**
- d. **to uphold and promote the rights of persons to freedom of expression in the form of art;**
- e. to support Australian arts practice that is recognised for excellence;
- f. to foster excellence in Australian arts practice by supporting a diverse range of activities;
- g. to recognise and reward significant contributions made by artists and other persons to the arts in Australia;
- h. to promote the appreciation, knowledge and understanding of the arts;
- i. to support and promote the development of markets and audiences for the arts;
- j. to provide information and advice to the Commonwealth Government on matters connected with the arts or the performance of the Council's functions;

- k. to conduct and commission research into, and publish information about, the arts;
- l. to evaluate, and publish information about, the impact of the support the Council provides;
- m. to undertake any other function conferred on it by this Act or any other law of the Commonwealth;
- n. to do anything incidental or conducive to the performance of any of the above functions.

We would be pleased to meet with the Committee to explain this request further.

Yours respectfully,

Anne Dunn AM

Andrea Hull AO

Deborah Mills

ⁱ United Nations Convention on the Protection and Promotion of Diversity of Cultural Expression

ⁱⁱ Creative Nation page 29

ⁱⁱⁱ Creative Australia pages 31 and page 43

^{iv} Creative Australia page 43

Professional Backgrounds of Signatories

Anne Dunn AM was Deputy Chair of the Australia Council and Chair of the Community Cultural Development Board. She has extensive experience in the arts and cultural development across Australia and has conducted many national consultations on arts matters. She chaired the Community Partnerships Scoping Study for the Australia Council in 2006.

Ms Dunn had a career as a public servant in South Australia and the Northern Territory for 23 years, holding the positions of Commissioner - Public Service Board, Director - Department of Local Government and Chief Executive Officer of the Departments of Arts & Cultural Heritage and Family & Community Services.

Following a period as the CEO of the City of Port Phillip Ms Dunn returned to her consulting practice, working in the areas of chairing, facilitation, mediation, community consultation and organisational development.

She works extensively in the fields of the arts, rural and regional issues, local government and public sector planning. Anne worked on the National Indigenous Women's Leadership Program from its inception. She has chaired the Australian Government's Regional Women's Advisory Council, been a Director on the Board of the Australian Rural Leadership Foundation and currently chairs the Health Performance Council for the South Australian Government.

Professor Andrea Hull AO has had a distinguished career in the arts and cultural policy-making for over three decades, as a CEO and non executive Board member. Renowned for her conceptual and leadership strengths she has led organisations to considerable national and international acclaim. As a CEO she led the Victorian College of the Arts, and the WA Department for the Arts, and as a Director she founded the Divisions of Policy and Planning and then Strategic Development for the Australia Council. Prior to this she was the Director of the Community Arts Board.

She now has a non executive and portfolio career and is a Board member of the National Museum of Australia, the National Gallery of Victoria, the Florey Neuroscience Institute, the Melbourne Prize, the Abbotsford Convent Foundation and the Breast Cancer Network of Australia. She is also an executive coach and a cultural tour leader. Previous Boards include part time Commissioner of the Commonwealth Tertiary Education Commission, the Victorian Arts Centre, the Australian Korea Foundation, the Australian Japan Foundation, the WA Art Gallery, the WA Symphony Orchestra, the WA Museum and the WA Health Promotion Foundation. Her consultancy practice, Cultural Dynamics, focuses on diagnostic problem solving for organisations engaged in cultural activities at both a core and related level.

Deborah Mills has a diverse background in community and cultural development spanning 30 years, the last 25 at Director/CEO level; Deborah has a strong record in management and policy development in the public and not-for-profit sectors as well as commercial environments. Deborah's professional policy and research background spans cultural, social, health, social justice and environmental concerns. She has worked in Federal, State and local government jurisdictions as well as for the not-for-profit and commercial sectors.

Deborah is a Master of Arts in Cultural and Media Policy, a Company Director, a Fellow of the Institute of Company Directors (FAICD), an experienced facilitator and a qualified mediator (LEADR).

Deborah is the co-author (with Dr Paul Brown) of *Art and Wellbeing: a guide*, (Australia Council for the Arts, 2004) and has written extensively on cultural policy.

Deborah's thirteen years at the Australia Council (1980 – 1993) culminated in her Directorship of the Community Cultural Development Board (CCDB) for five years. This was followed by an Executive appointment to local government and an appointment as CEO of a not-for-profit organisation.

For the last ten years Deborah has worked as a freelance consultant in policy, organisational and leadership development. For the last three years she has led the Arts and Health Foundation's (AHF) campaign for a national arts and health policy. This work informed the decision of the Australian Government's Standing Council on Health in November 2011 to develop a national arts and health framework.