

Chamber of Arts and Culture WA Inc

10/4/2013

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

Email: rrat.sen@aph.gov.auSenate

Dear Committee

Re. AUSTRALIA COUNCIL BILL 2013

The Chamber of Arts and Culture Western Australia is the peak advocacy organisation for arts and culture in WA. The Chamber's membership includes the major visual, performing arts organisations, cultural institutions and individuals in WA.

The Chamber welcomes the initiation of the Australia Council Bill 2013 to replace the Australia Council Act 1975 and believes that to a great degree, the broad approach of the Australia Council Bill 2013 will enable the Council to fulfill its obligations to the people of Australia effectively. The Chamber also endorses the recently released National Cultural Policy *Creative Australia*, which is seen to form a clear and positive path forward.

We do, however, have a number of concerns and comments about the proposed Australia Council Bill 2013 that we would like to articulate under the following areas:

- DEFINITIONS
- FUNCTIONS

DEFINITIONS

We suggest widening the definition of the arts in the preamble:

"arts means the creation or performance of works of interpretative expression through any medium." We believe that the definition should be wider than this to include specific reference to cultural expression. We would also contend that not all art work is necessarily interpretative.

FUNCTIONS

We understand that open-ended definitions can be useful, but we respectfully suggest that there are several key areas that need to be made explicit for fear that they may be unintentionally excluded from the work of the Council.

Chamber of Arts and Culture WA Inc

For this reason we wish to draw your attention to some issues that we believe need to be addressed in order to future-proof the Australia Council Bill 2013, as it may well outlast policy statements.

We are concerned, for instance, that certain elements of this Bill risks creating a perception of an Australia Council that is serving itself and its sector rather than serving Australia and its people. We believe that this could be addressed by amendments and additions to the stated functions of the Council laid out in Section 9. For instance:

- ‘We fully support function c): *to recognise and reward significant contributions made by artists and other persons to the arts in Australia.* We would observe, however, that there is no equivalent function to recognise the contributions made by arts and culture to the lives of Australians and social capital of Australia.
- Function d): *to promote the appreciation, knowledge and understanding of 1 the arts;* is, of course, laudable, but reveals a peculiarly paternalistic attitude to engagement with the arts given that there is no equivalent function to encourage cultural expression and/or engagement in artistic practice by all Australians. The subliminal message is one of ‘teaching’ people to understand what they do not know i.e. ‘what is good for them’, rather than encouraging a broader and more egalitarian approach to cultural and artistic practice.
- Function e): *to support and promote the development of markets and audiences for the arts;* is, again, something we support wholeheartedly, but for completeness we would like to see an equivalent function that promotes community engagement and participation – surely a desirable function for an effective Australia Council?

Chamber of Arts and Culture WA Inc

With these comments in mind, we would make the following observations and suggestions regarding the functions of the Australia Council:

1. Arts in the Community

The Australia Council Bill 2013 removes the function specified in the 1975 Act that the Australia Council promotes the general application of the arts in the community. With no mention of the community in the new Bill, it could be unintentionally read that the Australia Council has no responsibility for arts in the community.

The National Cultural Policy, *Creative Australia* acknowledges that cultural rights have been recognised in international covenants.¹ 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.'² 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.'³

The 2012 Review into the Australia Council correctly identified some duplications and linkages in functions between certain Australian Government Arts Portfolio Agencies, and recommended the merging of some programs and activities. For example, the Australian Business Arts Foundation and ArtSupport have recently become Creative Partnerships Australia.

Other programs of the Office of the Arts and the Australia Council may continue to be streamlined which may see further ones become the responsibility of the Australia Council.

Given that many of the current programs of the Office of the Arts are developed to provide access, equity, community engagement, creative participation as well as audience participation; we believe there is a considerable risk if the Australia Council Bill 2013 neglects to give weight to the importance and value of arts by and in the general community. Whilst the Australia Council currently addresses access and equity through its Cultural Engagement Framework, should it have no legislative responsibility for the delivery of community participation and access, this critical area of activity would be at risk.

Suggest wording to include:

A key role of the Australia Council is to invest in community involvement, participation and access as artists and participants in the development of Australian culture.

¹ United Nations Convention on the Protection and Promotion of Diversity of Cultural Expression

² Creative Australia page 29

³ Creative Australia pages 31 and 43

2. Aboriginal and Torres Strait Islanders

Neither the proposed 2013 Bill nor the 1975 Act acknowledges the role of Aboriginal and Torres Strait Islanders artists and cultural expression.

Goal One in *Creative Australia* is to 'Recognise, respect and celebrate the centrality of Aboriginal and Torres Strait Islander cultures and to the uniqueness of Australian identity'.⁴ With no acknowledgement of this in the 2013 Bill the Australia Council is not compelled to uphold this policy goal. Given the conversations about constitutional recognition of Aboriginal people, it seems an opportune time to consider this in the 2013 Act.

Suggest wording to include:

That the Australia Council upholds and promotes the National Aboriginal and Torres Strait Islander Arts Policy and supports Indigenous artists to fully realize their creative aims.

3. State, Territory and Local Governments

The 2013 Bill removes the function specified in the 1975 Act 5(a) (ix) 'to encourage the support of the arts by the States, local governing bodies and other persons and organizations'. With no mention of relationships between state and local government, the Australia Council will have no responsibility for working with these partners.

A significant proportion of arts organisations and arts bodies rely on matching State and Territory funding to function effectively. Initiatives developed and pursued by the Australia Council in the past including the Visual Arts and Craft Strategy have supported this approach and were further supported by an MOU through the (now lapsed) Cultural Ministers Council. The newly developed National Arts and Culture Accord has the potential to deliver further benefits to the people of Australia.

As local government authorities take an increasingly high profile role throughout Australia in terms of development and funding of galleries, museums and programs of cultural enrichment, it becomes more important that this role is given weight within the new Bill.

Creative Australia refers to the 'dependency on partnerships – across agencies, with state and territory and local governments.'⁵ The roles of States, Territories and Local Governments are critical to a holistic approach and to achieving better value for investment.

⁴ Creative Australia page 6

⁵ Creative Australia page 33

Chamber of Arts and Culture WA Inc

Relieving the Australia Council of a fundamental responsibility to work effectively and fairly with these partners presents a significant risk to the diversity and breadth of our cultural fabric.

The Chamber recommends that the wording of the 1975 legislation in relation to this point requires updating and inclusion into the 2013 Bill and

Suggests wording to include:

To encourage and create effective partnerships with the States, Territories and Local Government bodies

4. Freedom of Artistic Expression and Powers of the Minister

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.

Whilst the Bill 2013 provides for the Council to 'take into account' the right of persons to freedom in the practice of the arts (section 11), there is concern that this is not one of the foremost roles of the Australia Council. Furthermore, this right could be eroded and challenged under section 12 Ministerial directions, where the Minister may "give directions to the Board in relation to the performance of functions, and the exercise of powers".

This may well be an unintentional ambiguity on the part of government. Assuming this is the case, we urge a rewording and a repositioning of the right to the freedom of artistic and cultural expression as a central and core tenant of the Australia Council Bill 2013. The WA Chamber of Culture advocates for the "positive right to artistic expression subject to limits which are just and proportional, and which do not unfairly impede on the creation of legitimate art works."

<http://www.artslaw.com.au/news/entry/freedom-of-expression-censorship/>

Suggest that the following line is reinstated into section 9 (1) Functions:

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

In conclusion, the Chamber believes that these small alterations will deliver a robust and thoughtful Bill that will serve the Australian people and the Australia Council well for the forthcoming period. Incorporating some clear principles contained in *Creative Australia* policy into the legislative framework will achieve that.

Yours sincerely

Warwick Hemsley
Chair