



Australian Government



**Submission to the Inquiry into the
Disclosure Regimes for Charities and
Not-for-Profit Organisations**

29 August 2008

OVERVIEW

The Australia Council for the Arts (Australia Council) is the Australian Government's arts funding and advisory body.

Through its comprehensive, historical and supportive relationship with the arts sector, the Australia Council has a fundamental and professional interest in advocating for the sector's wellbeing across its many frameworks, and in this instance, its reporting regimes.

The Australia Council's vision is to enrich the lives of Australians and their communities by supporting the creation and enjoyment of the arts. Its mission is to:

- Enable Australia's arts and its artists to pursue excellence
- Preserve, maintain and develop the distinctive features of Australia's culture
- Ensure all Australians have the opportunity to engage with the arts and to enjoy a rich cultural life
- Shape a future Australia in which the arts play a meaningful and vital role in everyday life.

The Australia Council's work is supported by 122 staff mostly located at its Sydney office with one based in each of Darwin, Perth and Brisbane.

The Australia Council

- **invests** in the creativity of the nation's artists and opportunities for all Australians to enjoy their work
- **supports** Australian artists and arts organisations through funding programs
- **builds** the capacity of the arts sector by providing advice and operational resources
- **researches** the arts and culture to underpin our programs and the development of arts policy
- **develops** cultural policy and advises governments on issues relating to the arts
- **facilitates** partnerships between artists, governments and business that build a stronger arts sector
- **promotes** the value of the arts and helps build new audiences at home and overseas
- **advocates** with governments and the community to increase the role of the arts in the lives of Australians.

ARTS AS PART OF THE AUSTRALIAN NOT FOR PROFIT SECTOR

The Australian not for profit (NFP) sector is a substantial sector which

- constitutes over 700,000 organisations, of which 40,976 are registered with the ATO, and approximately 30,000 of which have less than 20 employees
- employs 6.8 percent of the total Australian workforce
- accounts for 5 percent of Australia's GDP¹

¹ Data on the not-for-profit sector sourced from <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/8106.0Main+Features12006-07?OpenDocument> & <http://www.business.uts.edu.au/cacom/articles/infobriefs/nonprofit.html>

The arts sector is a relatively small part of the overall NFP sector in Australia. Using the most current 2006-7 Australian Bureau of Statistics data on NFPs that are registered with the Australian Tax Office, the arts are included in the combined culture and recreation statistics. Of all NFP employees, 9.9 percent work in culture and recreation, and as a combined sector it generated \$11,926 million income, or 16 percent of total income generated by NFPs.

For the purposes of this Inquiry, arts NFPs do not have a defining quality that sets them apart from other NFPs – essentially they manifest the diversity of formats all NFPs do: they are big or small, state-based or national, companies or incorporated associations, among other possibilities. Professor Myles McGregor-Lowndes (The Australian Centre for Philanthropy and Nonprofit Studies at the Queensland University of Technology)² commented that arts NFPs experience the same problems experienced by other NFPs, but being such a small part of it, may just not know it.

The generic needs of the charity and NFP sectors will be very well represented in this Inquiry by many excellent submissions from leading institutions specifically charged with advocacy of the wider NFP sector such as the National Roundtable of Nonprofit Organisations, Fundraising Institute of Australia and the Public Interest Law Clearing House (Vic) Inc. (specifically referred to us by the Arts Law Centre of Australia). The latter two we've had the opportunity to view, and it is clear that arts and other NFPs will benefit from the high level of thinking that such submissions are providing; the Australia Council supports their positions, and applauds their individual investment in this territory.

The Australia Council's contribution to the Inquiry is distilled from its own knowledge of the sector through close ongoing relationships and business analysis of arts organisations nationally: to put this into scale, 673 arts organisations were awarded grants by the Council in 2007/8 – the majority of which are NFPs.

SIZE AND SCOPE OF AUSTRALIA COUNCIL FUNDED ORGANISATIONS

In 2007-08, the Australia Council distributed a total of \$137.07 million in funding to arts organisations through 1169 grants:

Category	\$ distributed	No. of Grants
Arts organisations	\$55,559,056.30	1109
Major performing arts organisations	\$81,510,758.41	60
TOTAL	\$137,069,814.71	1169

NB some organisations receive several grants e.g. operational and project grants

This submission is informed by the Australia Council's knowledge of over 670 arts organisations it funds – largely NFPs. Apart from providing financial resources, the Australia Council has greatly invested in developing the professionalism and business capacity of these selected organisations, through a number of programs delivered by the Council's major performing arts board and the key organisations section which assists organisations who receive multi-year funding. These are systematically improving the performance and quality of reporting from these organisations, to requirements determined by the Australia Council - as well as other statutory bodies.

² Personal communication 27 August 2008

These systems are rationalised in a harmonised reporting framework that streamlines state arts agency and Australia Council reporting into one common format. The Australia Council's reporting framework includes both qualitative and quantitative measures which may differ from those of the wider NFP sector, in that they specifically measure artistic and social impacts.

Historically, some art forms have had the benefit of formal inquiries that brought reforms, such as the 2002 *Report of the Contemporary Visual Arts and Craft Inquiry* (The Myer Report) which resulted in greater resourcing of that sector and the alignment of local, state and federal funding and reporting arrangements, streamlining previously disparate reporting systems into a common format. Similarly, the major performing arts companies of the Australia Council were subject to a review (The Nugent Report) resulting in a new three-year funding and accountability regime in 2000, and quarterly reporting against agreed outcomes. They have more recently adopted governance principles based on Government ASX model for listed companies.

An analysis of the legal structure and size of the Australia Council's 146 key organisations (small-medium multi-year funded organisations, all NFPs) and 29 major performing arts companies (all NFPs) reveals a diversity of operating formats:

Legal structures and size of key organisations

Table 1: Size and structure as % of all key organisations 2006

Income	Company	Incorporated Association	Aboriginal Corp	Other	Total
less than \$500,000	10%	27%	1%	1%	39%
between \$501,000 and \$999,000	14%	18%	3%	0%	36%
more than \$1000,000	14%	3%	6%	2%	25%
Overall breakdown	38%	49%	10%	3%	100%

Table 2: Key organisations legal structure at December 2006

State	Company	Incorporated Association	Aboriginal Corporation	Other	Total	% Company
ACT	2	5	-	-	7	29%
Qld	7	9	2	-	18	39%
NSW	26	7	1	-	34	76%
NT	-	8	5	-	13	0%
SA	3	13	2	3	21	14%
Tas.	5	3	-	-	8	63%
Vic.	9	17	2	1	29	31%
WA	4	9	3	-	16	25%
Total	56	71	15	4	146	38%

From the above, it can be surmised that:

- 75 percent of key organisations have a turnover below \$1 million.
- 38 percent of key organisations are companies limited by guarantee under national jurisdiction, and 49 percent are Incorporated Associations bound by state/territory laws.

Legal structures and size of major performing arts companies

Table 3: Size and structure as % of all MPA organisations 2007

Income	Company	Incorporated Association	Aboriginal Corp	Statutory Authority	Other	Total
less than \$5,000,000	14%	7%	0%	3%	0%	24%
between \$5,000,000 & \$20 000,000	48%	0%	0%	7%	3%	59%
more than \$20,000,000	17%	0%	0%	0%	0%	17%
Overall breakdown	79%	7%	0%	10%	3%	100%

Table 4: MPA organisations legal structure at December 2007

State	Company	Incorporated Association	Aboriginal Corp	Statutory Authority	Other	Total	% Company
ACT	0	0	0	0	0	0	0%
Qld	3	0	0	1	0	4	75%
NSW	11	0	0	0	0	11	100%
NT	0	0	0	0	0	0	0%
SA	1	0	0	2	0	3	33%
Tas.	1	0	0	0	0	1	100%
Vic.	5	0	0	0	1	6	83%
WA	2	2	0	0	0	4	50%
Total	23	2	0	3	1	29	79%
%	79	8	0	10	3	100	

Of the major performing arts companies:

- 79 percent are companies limited by guarantee, bound by national laws.
- Ten percent are statutory authorities e.g. the State Theatre Company of South Australia . It is worth noting that these organisations have experienced disadvantage in eligibility for philanthropic grants from prescribed private funds (PPFs). Victoria and NSW have legally amended this situation, the other states/territories are yet to do so.

RELEVANT HISTORY

The Australia Council made a detailed submission in 2001 to the Senate Inquiry into the Definition of Charities and Related Organisations, supporting the inclusion of arts and cultural organisations in any new definition of charity, and defending the maintenance of their concessional tax treatments. (Refer to Appendix 2). The Australia Council maintains its position on these matters.

A further comment has been recently received addressing this territory, proposing government independence in the definition of charitable status – this is to safeguard areas of advocacy that may not have the support of specific governments e.g. birth control, tax reform etc).

CONSULTATION

Further to the Australia Council's knowledge of the organisations invited responses from all State and Territory Arts Ministries, arts peak bodies (peak bodies representing the different art forms nationally) and selected industry experts to the provided Background Paper. A full list of these is provided in Appendix 1. Responses have been integrated into this submission, and several organisations (e.g. The Australian Major Performing Arts Group and Arts Access Australia) are also independently presenting their own.

INQUIRY AREAS

We address two main areas of this Inquiry's focus:

1. TRANSPARENCY

Generally donations make up a small proportion of the total income and activity of arts organisations. As such, disclosure of the use of donated funds has not emerged as a major issue for arts organisations.

Artsupport Australia, an initiative of the Australia Council of the Arts to grow cultural philanthropy, has facilitated over \$20 million of philanthropic income for the NFP arts sector nationally since it was established in 2003. Philanthropic grants to arts and cultural organisations from prescribed private funds (PPFs) increased 4000 percent in 2007 on 2006 figures³. While this may be an extreme rise, underpinned by several major one-off grants in that year (e.g. a \$10 million gift to the Museum of Contemporary Art) the trend for future philanthropic growth is expected to remain positive.

The number of arts and cultural organisations with Deductible Gift Recipient (DGR) status (as listed on the Government's Register of Cultural Organisations (ROCO)⁴) has vastly grown, increasing from 773 in 2001 to over 1100 presently⁵. Having DGR enables registrants to provide donors with a tax deduction, and is certainly a measure of increased fundraising activity in the sector. This activity is closely monitored by ROCO, and registrants are legally bound to report all donations received on a six-monthly basis.

The major performing arts companies for instance have reported an increase in philanthropic income of 44 percent in 2007 compared to the previous year's records. The major performing arts board has also observed that many of its larger companies are registering separate entities (gift funds or foundations) for the purposes of fundraising, which is making it harder for the Australia Council to monitor their fundraising income, though reporting would still take place to other bodies.

It is important to note that the majority of arts organisations that the Australia Council funds and represents, are incorporated associations with limited staffing and resources. For these organisations, fundraising is not their core activity, though a welcome strategy for increasing income for their ongoing development.

³ QUT CPNS Current issues sheet 2008/6

http://www.bus.qut.edu.au/research/cpns/documents/2008_6_PPFs_Final_Web.pdf

⁴ http://www.arts.gov.au/tax_incentives/register_of_cultural_organisations

⁵ Quoted by Linda Mallory, ROCO section, Department of Environment, Water, Heritage and the Arts 27 August 2008

Given this environment, the Australia Council would have no objections to the introduction of requirements for disclosure-as long as this did not represent an additional administrative burden for arts organisations.

A single national disclosure regime should be considered in the context of any additional administrative burden, and consideration given to whether disclosure requirements could be incorporated into existing financial reporting requirements.

2. ACCOUNTABILITY

The Australia Council recognises the incompatibility of state and territory legislation in regards to NFP legal structures, in particular the treatment of incorporated associations. Some states and territories have more stringent reporting requirements than others. This has led to the Australia Council requesting financial reporting from our companies in accordance with the requirements for a public company under the *Corporations Act* – thus meaning that some organisations face greater reporting requirements for their funding than they do to comply with state legislation.

The Australia Council agrees that there is a need for regulatory reform of the NFP sector and believes the objective should be a single national regulating body for the NFP sector.

Steve Miller⁶ a highly regarded Sydney based accountant who has worked closely with arts organisations for more than 25 years has fully endorsed this view, proposing that this body could incorporate all the many disparate services currently required by NFPs, and provide support for new NFPs within one entity. Such a body make a valuable contribution to the sector, to help ease the burden of any new reporting requirements to arise out of this Inquiry.

The regulator should aim to consolidate existing state and territory legislation under a single national act. This does not necessarily mean a single legal structure for NFPs. Instead, the body should clearly identify compliance and accounting standards for subsets of organisations, based on annual turnover.

Standardising financial reporting for NFPs would be a welcome step, and may enable funding bodies such as the Australia Council to align its information and acquittal needs with any adopted standard, thus reducing workload for our clients.

The Australia Council agrees with Social Ventures Australia in its call for greater depth of information in annual reports of NFPs – which in itself would well serve the organisations to provide the information sought by social investors – whether corporate or philanthropic. This category of information is a natural extension of the reporting regime the Australia Council requires of its grant recipients, and we believe would not be onerous.

⁶ Personal communication 27 August 2008

ADDITIONAL COMMENTS

A response from Manager of the Aboriginal and Torres Strait Islander arts division of the Australia Council, commented that in the face of change many very small community-based organisations may find it is no longer financially viable to operate as an independent entity (as was the case with changes to the insurance industry).

It is then suggested that a new legal infrastructure be considered that would make it easier for small Indigenous groups to be auspiced by larger NFPs-who will respect and adhere to Indigenous cultural protocols.