



## Australia Council for the Arts

### Submission to the Australia's Future Tax System review

The contribution of the artistic community to Australian life, when measured in cultural and social terms, is immense. Yet much of the value of this contribution is not reflected in the market prices that artists command when selling work - whether they are seeking to sell their labour ... or the works their labour produces... As a result the economic return to artists remains stubbornly low, and is not a true measure of their contribution to Australian society.<sup>1</sup>

#### 1. Introduction

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

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:

- invests in the creativity of the nation's artists and provide opportunities for all Australians to enjoy their work;
- supports Australian artists and arts organisations through the funding of 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;

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<sup>1</sup> Throsby, D and Hollister, V., *Don't Give Up Your Day Job: An Economic Study of Professional Artists in Australia*, Australia Council for the Arts, 2003, p. 79.

- 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.

In 2006/07, the Australia Council distributed \$156 million in funding to organisations and artists working in art forms such as Visual Arts, Literature, Theatre, Music, Dance and Indigenous Arts.<sup>2</sup>

The focus of the Australia Council's current business plan is a set of six strategic priorities:

- Artists' income levels
- Greater appreciation for the arts
- Business and philanthropic involvement in the arts
- Knowledge centre on the arts in Australia
- Arts content for the digital era
- National impact of the Australia Council

This submission is relevant to the following priorities: artists' income levels, business and philanthropic involvement in the arts and the national impact of the Australia Council. It builds upon analysis published in the 2002 *Report of the contemporary visual arts and craft inquiry* and the Australia Council's submission to the 2004 Board of Taxation review of the Non-Commercial Loss Provisions.

In formulating this submission, the Australia Council sought feedback from its client organisations. Key areas of comment were around improved tax deductibility for donations and non-commercial loss provisions.

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<sup>2</sup> Australia Council for the Arts, *Annual Report 2006-07*, 2007, available: [http://www.australiacouncil.gov.au/publications/annual\\_reports/annual\\_report\\_2006-07](http://www.australiacouncil.gov.au/publications/annual_reports/annual_report_2006-07)

**Our response to the review of the tax system makes nine recommendations aimed at addressing the low levels of individual artist incomes or increasing the financial viability of arts organisations.**

- Investigate international models which increase the after tax income of artists.
- Extend the exemption from the non-commercial loss provisions.
- Enhance tax concessions for private support for the arts.
- Change the FBT status for arts organisations.
- Increase the tax deductibility of the cost of attending fundraising events and examine the treatment of material benefits for donors.
- Consider the treatment of artists under the current social security system.
- Consider the treatment of Indigenous artists post the replacement of the Commonwealth Development Employment Program (CDEP).
- Clarify the income tax treatment of awards and fellowships offered by the Australia Council
- Enable charitable trusts, foundations and Prescribed Private Foundations to disburse to individual artists and non-DGR arts organisations through the Australian Cultural Fund

This submission focuses specifically on the taxation and transfer system as it pertains to artists or arts organisations. We have identified the major challenges and problems facing artists, particularly with reference to their income levels in their interaction with the taxation and transfer system. Additionally we have highlighted some existing features of the system that are beneficial to artists or arts organisations. We have recommended other reforms to the system that in some cases bring the arts into line with other sectors and in others propose reforms that will have a direct and positive impact on the low income of many artists.

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## 2. Context

### *The arts is an economic driver*

Creativity will play a critical role in building and shaping Australia's economy. Our artists and designers are amongst the best in the world and have the capacity to lead the charge into the new, technology-rich emerging industries. A future Australian economy will be driven by our ideas and our creativity, by smart design and canny management of our intellectual property.<sup>3</sup>

Creativity and cultural output are of central importance to the way the nation sees itself and to the development of a truly innovative nation.

The arts and related industries in Australia are worth an estimated \$16.9 billion. They employ 300,000 people.<sup>4</sup> Given these numbers, it is clear the arts make a considerable direct contribution to economic activity in Australia.

They make an even greater indirect contribution to Australia's economic well being through attracting tourists, adding to the nation's export performance and acting as an influential flagship for promoting a greater international understanding of Australia as a nation and as a desirable place to visit. In 2000/01, it is estimated that cultural tourism contributed \$8.4 billion to GDP.<sup>5</sup> In this way art and sport can be seen to be performing similar roles.

The industry cannot be successful without practitioners, who, in turn, have to be able to make a living out of their chosen profession.

### *How the arts is currently treated under the tax system*

There are a number of features of the current taxation system which are beneficial to artists and arts organisations.

For artists, these include the special professional income provisions (averaging) and favourable elements of the non-commercial loss provisions.

For arts companies they include tax exempt status, tax deductibility for donations, relatively generous fringe benefits tax rules, general exemption from the state payroll tax regimes and relief from land tax and local council rates.

These measures are important. However, there are a number of ways in which the tax system adversely affects the overall health of the sector and impacts on artists and arts organisations.

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<sup>3</sup> Department of the Prime Minister and Cabinet, *Australia 2020*, 2008, available: <http://www.australia2020.gov.au/topics/creative.cfm>.

<sup>4</sup> Australia Council for the Arts, *Annual Report 2006-07*, 2007, available: [http://www.australiacouncil.gov.au/publications/annual\\_reports/annual\\_report\\_2006-07](http://www.australiacouncil.gov.au/publications/annual_reports/annual_report_2006-07)

<sup>5</sup> Heaney, L. and Salma, U., *Economic Impact of Cultural Tourists in Australia*, Bureau of Tourism Research, 2002.

This submission argues for the maintenance or extension and refinement of some of the existing measures and the introduction of additional measures.

In particular:

- ways to enhance artists' after-tax incomes should be examined . This would increase the longevity of artists' careers and increase their creative output, both in the immediate and longer terms.
- changes to improve the financial health of arts organisations should be examined. This would increase the overall sustainability of the sector.

### *An international context*

The Arts Council of England has commissioned research comparing tax regimes for artists across a number of countries.<sup>6</sup> The research noted a number of common issues arising from the country studies which are relevant for artists in Australia.

These include:

- the often ambiguous income earning status of many artists, who can be simultaneously employed and self-employed; this makes it difficult for them to fit readily into both tax and social security systems;
- large fluctuations in income levels are common, which can lead to inequity as to the extent of the tax burden and how it is distributed between tax periods;
- that artists devote long periods of unpaid time to artistic research and their own personal development often mean that they are not recognised as 'job-less', even though they are income-less. This inhibits their ability to claim unemployment and other associated benefits;
- special measures designed to support artists are often difficult to access and are often easy to lose. Even in those few countries which have special tax exemptions in place for artists, the resulting distribution of benefits may not be optimal. The need to combine artistic work with non-artistic income earning activities often limits the extent to which artists can avail themselves of these benefits.

### *Social Security rules and concessions*

It is estimated that in 2000-01 artists made on average around \$24,000 from arts-related work and an average total income of \$37,000.<sup>7</sup> Given the relatively low levels of income

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<sup>6</sup> McAndrew, C., *Artists, taxes and benefits an international review*, Arts Council of England, 2002.

<sup>7</sup> Throsby, D and Hollister, V., *Don't Give Up Your Day Job: An Economic Study of Professional Artists in Australia*, Australia Council for the Arts, 2003.

for many artists in Australia, access to income support programs has emerged as an important issue.

Unlike some other countries, Australia does not currently have a system of income support specifically for artists. Assistance is available within the broad framework of the Newstart and Youth Allowance, and the New Enterprise Incentive Scheme but these programs are generally not designed to cater for the particular circumstances of artists.

### 3. Recommendations

The Australia Council's recommendations are aimed at providing further support for artists who either are not deriving sufficient income from their artistic activities to support themselves or who are earning just enough.

#### ***3.1 Investigate international models which increase the after tax income of artists.***

##### *The present situation*

Currently, artists' income is generally taxed at the same rate as income from other occupations. We submit that earning income from artistic endeavours involves challenges that most other occupations do not face.

Income levels for artists and arts practitioners are low compared to other qualified professionals. On average, an artist's income from all sources is around 14% less than that of other full-time occupations.<sup>8</sup>

As artists are generally self employed individuals, they do not have access to the hard-won statutory benefits which flow to those who are employed (such as employer funded superannuation and leave entitlements).

It is difficult for artists to earn a sustainable income from their artistic work, forcing them to undertake secondary work, often in unrelated fields.

This has a detrimental effect on the quality of their artistic work by robbing the artist of the time to devote to their work and making the artistic product harder to sell. A further effect is that artists are often unable to recoup the costs of research and development required to create their product.

##### *Recommendations*

- The Special Professional Income (averaging) provisions contained in Division 405 of the ITAA 1997 provide some relief from the high tax rates which can apply to the fluctuating incomes that artists and others covered by these provisions may earn in certain years. We recommend that these provisions be continued.
- We recommend that schemes which lower the tax payable on income earned from artistic work should be investigated. Such schemes exist internationally where income from artistic work is, in certain circumstances, tax exempt.<sup>9</sup> In particular, the scheme operating in Quebec warrants consideration, as it targets support for lower income artists and has a self-imposed cost ceiling. We have provided further detail in an extract from the McAndrew report at Appendix 1.

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<sup>8</sup> Throsby, D and Hollister, V., *Don't Give Up Your Day Job: An Economic Study of Professional Artists in Australia*, Australia Council for the Arts, 2003.

<sup>9</sup> McAndrew, C., *Artists, taxes and benefits an international review*, Arts Council of England, 2002.

### *Effect of adopting the recommendations*

We estimate that low income artists pay very little tax and that very little revenue would be lost in providing worthwhile support to such artists. At the same time the important role of artists and creativity in the economy would be given recognition.

The Quebec scheme in particular would assist artists (such as writers) for whom the non-commercial losses provisions provide little benefit because their practice incurs minimal input costs.

### **3.2 Extend the exemption from the non-commercial loss provisions.**

#### *The present situation*

The non-commercial loss provisions contained in Division 35 of the ITAA 1997 prevent, inter alia, tax losses from non-commercial activities that are carried on as a business, from being offset against income from other sources. The loss is carried forward and offset against income derived from the same activity in future years.

In determining whether a business activity results in a commercial as opposed to a non-commercial loss, four tests must be considered.

- If the activities derive assessable income of at least \$20,000; or
- If the activities made a profit in three of the past five years; or
- If the activities use real property with a cost base of at least \$500,000; or
- If the activities used other assets, including trading stock, with a value of at least \$100,000.

Any resulting loss will be able to be offset against income derived from other sources.

Where none of the above is satisfied, there is a special provision for activities carried on by an individual which comprise a professional arts business. Where income earned from other activities is less than \$40,000, the loss from the artistic activities which do not satisfy any of the above commerciality tests, can be offset against other income to the extent of \$40,000 in the year it is derived.

Many artists, particularly those who are in their start-up years, will not satisfy any of these commerciality tests.<sup>10</sup> Many such artists are forced into other income earning activities from which they derive income of at least \$40,000. In this case the losses from the arts business are not able to be offset against the other income.

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<sup>10</sup> Department of Communication, IT and the Arts, *Report of the contemporary visual arts and craft inquiry*, 2002.



### *Recommendation*

- We recommend the removal of the \$40,000 limit where a professional arts business is carried on. This matter was fully explored in the submission by the Australia Council submission to the 2004 Board of Taxation post-implementation review of the Non-Commercial Loss Provisions (copy available upon request).
- If this is not achievable, we recommend that the \$40,000 threshold is at least indexed to restore it to its real value at the time it was introduced. We note that this threshold has not changed since its introduction in 2000/2001. Had indexation been applied at the rate of CPI, the cap would now be \$49,207.

(A further alternative would be to allow losses up to a particular level (say \$49,207) to be offset against other income, regardless of the level of that other income.)

### *Effect of adopting the recommendations*

The after tax income of artists who are forced to take other income earning employment will be enhanced and the economic position of artists will be recognised in a similar way to that of primary producers.

## **3.3 Enhance tax concessions for private support for the arts.**

### *The present situation*

The arts in Australia enjoy support from business and individual benefactors through sponsorship and philanthropic donations. Sponsorship and philanthropy is in the main directed towards public arts organisations, which are in receipt of funding from commonwealth, state, territory and/or local governments.

In general, government grants only partly fund the total activities of a theatre, gallery or other arts organisation. Unless substantial income by way of sponsorship, fundraising and philanthropy can be accessed, the arts organisation cannot achieve its full potential.

The arts face formidable competition in attracting funds from charities, the majority of which are focused on other sectors (particularly health and welfare) and sporting organisations.

### *Recommendation*

- We recommend the adoption of enhanced tax concessions for organisations and individuals donating to the arts, which would increase the attractiveness of the arts as a recipient of donations.
- One way of delivering an enhanced tax concession for moneys donated to arts organisations listed on the Register of Cultural Organisations, would be an incentive along the lines of the existing 125% deduction for expenditure on research and development activities or by allowing a rebate of tax at an enhanced

rate. Similarly, sponsorship for arts organisations should provide a greater tax deduction than ordinary business expenses.

#### *Effect of adopting the recommendations*

Allowing a greater tax concession for donating to and sponsoring the arts would provide an added incentive to support the arts and go some way towards leveling the playing field with other recipients (e.g., sports, health and welfare). We believe this recommendation would have benefit beyond the arts in encouraging donating and sponsoring in the research and science sector as well.

### **3.4 Change the FBT status for arts organisations.**

#### *The present situation*

Not-for-profit arts organisations (along with most other not-for-profit organisations) are currently treated as rebateable employers for fringe benefit tax purposes. A rebateable employer has at least part of their FBT liability rebated by 48% with the result that their FBT liability is less than the liability of an equivalent for-profit organisation, even after taking into account the fact that the for-profit should be entitled to a tax deduction for the FBT liability.

The rebate is applied to less than \$30,000 of grossed up fringe benefits provided, in an FBT year, to each employee. In very broad terms, this means that the rebate applies to a fringe benefit with a cost to the employer of about \$15,000.

Fringe benefits provided by public benevolent institutions, health promotion charities, religious institutions, public hospitals, private not-for-profit hospitals and ambulance services are exempt from FBT, though, in some cases, the extent of the exempt benefit may capped on a per employee basis.

This is a more generous arrangement than the arrangement which an arts organisation can access, especially so where the dollar value per employee is not subject to a cap.

#### *Recommendations*

- We recommend that arts organisations be included in the list which can access the FBT exemption. Preferably a cap on benefits per employee would not be applied; this would restore the situation to that which existed in FBT years ending on 31 March 2000 and earlier.
- Alternatively, if on equity grounds, it was necessary to continue to apply a cap we recommend the \$30,000 cap should be increased to at least restore its real value to the level it enjoyed when it was introduced. It has not changed since its introduction for the 2001 FBT year. Had indexation to the CPI been applied, the cap would now be \$38,866.

### *Effect of adopting the recommendations*

Adoption of either of these recommendations would allow arts organisations to compete more effectively with the private sector for administration and executive staff; the remuneration gap between the not-for-profit arts sector and the general economy, would be reduced, thereby lessening an impediment for executives to cross to the arts sector.

Higher quality executive and administration staff supports higher achievement levels across the key areas of artistic vibrancy, audience development and financial stability.

### ***3.5 Increase the tax deductibility of the cost of attending fundraising events and examine the treatment of material benefits for donors***

#### *The present situation*

Where

- a cash contribution of more than \$150 is made by an individual to attend a fundraiser; and
- the GST-inclusive market-value of the right to attend the event does not exceed \$150 or 20% of the amount of the contribution, whichever is less,

a deduction can be claimed for the amount of the contribution less the GST-inclusive market-value of the right to attend the event.

Similar rules apply where the contribution is made in the form of property.

In relation to auctions at a fundraiser, where

- more than \$150 cash is contributed by an individual as consideration for the goods or services acquired at an auction held as, or in conjunction with, a fundraising event; and
- the GST-inclusive market-value of the goods and services so acquired does not exceed \$150 or 20% of the amount of the contribution, whichever is less,

a deduction can be claimed for the amount of the contribution less the GST-inclusive market-value of the goods or services acquired.

These measures exclude many smaller fundraising events where the donation element is not large. For instance, where the contribution for attending a fundraising event is \$500 and the GST-inclusive market-value of the meal served at the fundraiser is \$120, the legislation does not allow a deduction for the \$380 donation because the cost of the meal exceeds the lesser of 20% of the amount of the contribution and \$150.

Larger, more costly, events will generally satisfy the tests as long as the GST-inclusive market value of attending the event does not exceed \$150.

Regarding auctions, the GST-inclusive market value of the item being auctioned cannot exceed \$150 for the rules to have application.

Fundraisers are an important way of raising revenue for under resourced arts organisations. More generous thresholds in the tax legislation dealing with fundraisers would increase the amounts which would be able to be raised at such functions and enhance the integrity of the legislation.

The Australian Tax Office also has restrictive guidelines for organisations providing material benefits to major donors. For example, the ATO considers that providing free tickets, access to VIP area, or performance programs to a donor constitutes a material benefit and thus their donation is not tax deductible.

#### *Recommendations*

- We recommend that the 20% threshold be raised to 50% and the \$150 limit be raised to \$250. These levels more accurately reflect the costs of producing fundraising events.

This would mean that a ticket which cost \$500 to attend a function where the GST inclusive market value of the meal served was \$120, a deduction for \$380 would be able to be claimed. Tickets issued would be able to state this fact, which is important in the marketing and ultimately the success of the event. The thresholds should be reviewed regularly to ensure they retain their “value”.

- We recommend that for auctions, the same changes to thresholds should be made and a new, alternative, test introduced. The new test should apply where the item acquired at auction cannot satisfy the thresholds of the primary test. This test would apply where an asset was acquired at a fundraiser auction for an amount at least 20% greater than the certified GST inclusive market value of the asset. In these circumstances, a percentage of the excess (say 50%) would be tax deductible.
- We recommend that the current restrictions surrounding arts donors and material benefit be examined to lift restrictive guidelines for arts organisations.

#### *Effect of adopting the recommendations*

Fundraising would be made easier and income increased for arts organisations.

### ***3.6 Consider the treatment of artists under the current social security system.***

#### *The present situation*

The Newstart program is not conducive to supplementing artists’ incomes while they continue to carry out their artistic activities—it is not designed to be. The obligation under Newstart to undertake extensive job search activities, the emphasis on finding paid employment, rather than profitable self-employment, and the requirement to take up paid

employment if offered militates against an artist being able to use Newstart as an income support mechanism.

Work for the dole is a mutual obligations program available to unemployed people after they have been receiving unemployment benefits for six months. Work for the dole involves working on (largely) community projects in return for unemployment benefits. For artists, this often means being forced into work outside their arts practice, robbing them of time and opportunity to improve their skills through ongoing research and development.

We note that social security arrangements for artists are a key issue for the arts sector and advise that the Australia Council is currently partnering with the Department of Environment, Water, Heritage and the Arts (DEWHA) in a research project that will contribute toward the department's work on potential measures for streamlining the treatment of artists within the social security system.

#### *Recommendation*

- We recommend that the work of DEHWA in examining the social security system for arts practitioners be considered in the context of this review. In particular, consideration should be given to the accessing of payments and the ability to include arts practices within the mutual obligation activities.

#### *Effect of adopting the recommendation*

Artists would be able to enhance the skills needed in their chosen profession while receiving income assistance. Creative output would be increased.

### ***3.7 Consider the treatment of Indigenous artists post the replacement of the Commonwealth Development Employment Program (CDEP).***

#### *The present situation*

Prior to 2007, the Commonwealth Development Employment Program (CDEP) was a valuable part of the tax/transfer system, which provided employment opportunities for Indigenous Australians. The scheme offered tangible benefits for Indigenous artists living and working in remote areas, and was an important instrument for providing employment opportunities and income support.

The Australian Government announced in October 2008 that a new Indigenous Employment Program would replace CDEP. The effects of this change are yet to be seen. However, the previous CDEP scheme had considerable positive impact on Indigenous arts. We estimate 323 artists and arts workers were employed under this program in the remote areas of Northern Territory and South Australia.<sup>11</sup>

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<sup>11</sup> 2007 estimates provided by Desert Inc., the Association of Northern, Kimberley and Arnhem Aboriginal Artists (ANKAAA) and Ananguku Arts & Culture Corporation (KU Arts).

### *Recommendation*

- We recommend that Indigenous employment programs for artists, especially in rural and remote areas, are considered in the context of this review, with particular reference to the dual role of Indigenous artists as producers and contributors to their communities.

### *Effect of adopting the recommendation*

Indigenous artists are given appropriate assistance to participate in and contribute to the Australia's creative output.

### **3.8 Clarify the income tax treatment of awards and fellowships offered by the Australia Council**

#### *The present situation*

The Australia Council regularly offers awards to individual artists in recognition of outstanding achievement in their fields. Such awards include:

- the Don Banks Music Award which is awarded annually to a distinguished artist who has made an outstanding and sustained contribution to the art form
- the Red Ochre Award which pays tribute to an Aboriginal or Torres Strait Islander artist who, throughout their lifetime, has made outstanding contributions to the recognition of Aboriginal and Torres Strait Islander arts
- the Ros Bower Award, which honours an artist with a proven record of high achievement in the field of community cultural development
- the Visual Arts Emeritus Award and the Visual Arts Emeritus Medal which recognize the special achievements of Australian visual artists and arts writers who are making an outstanding contribution to the development of Australian art
- the Writers' Emeritus Award which recognizes the achievements of eminent literary writers over the age of 65 who have made an outstanding and lifelong contribution to Australian literature.

Uncertainty exists about the taxation status of these awards, which in 2006/07 totalled \$313,296. Previous non-binding advice received from the Australian Taxation Office (ATO) has indicated that awards made in respect of the personal qualities and contributions of the recipient with no direct or indirect relation to their income generating or business activities would be of the nature of a gift or windfall, and would not be taxable. Binding advice could not be offered without identifying the recipients and gaining their consent.

The ATO further advised that a definitive answer should be sought by the award recipients via the private ruling system. Thus the Australia Council is unable to fully advise recipients on the taxable nature of their award. By contrast, the Prime Minister's Literary Awards (administered by the Department of Environment, Heritage, Water and the Arts) are similar in nature and unequivocally offered tax-free.

The Australia Council also offers fellowships to artists with a proven track record of achievement in their fields. In 2006/07, these fellowships totalled just over \$1.8m. These fellowships provide an individual artist who has demonstrated outstanding achievements or potential with an annual grant of \$45,000 for two years and are “once in a lifetime” grants. They have the nature of living allowance, providing the recipients the financial freedom to further explore and develop their art form practice.

However, the fellowship comprises assessable income and as such the recipients do not receive the full value of their grant.

#### *Recommendation*

- We recommend that awards and fellowships offered by the Australia Council be declared non-assessable for income tax purposes.

#### *Effect of adopting recommendation*

Making awards tax-free will clarify an existing area of uncertainty for the Australia Council and for award recipients. Making fellowships tax-free will boost artists’ incomes and generate greater creative output, and provide a valuable financial boost for proven artists in the prime of their careers. Both measures would have minimal impact on revenue, with the total value of awards and fellowships in 2006/07 being just over \$2.1m.

### ***3.9 Enable charitable trusts, foundations and Prescribed Private Foundations to disburse to individual artists and non-DGR arts organisations through the Australian Cultural Fund***

#### *The present situation*

The ACF is a unique facility that:

- receives cash donations from individuals and businesses
- makes grants to develop Australian culture and support Australian artists
- provides tax deductible receipts to donors
- has been operated by AbaF in accordance with the Income Tax Assessment Act 1997 since 2001.

The ACF can receive gifts from individuals, families, groups and businesses - as long as they are not related to the grant recipient. Individuals and corporates make donations to an individual artist or non-DGR (Deductible Gift Recipient) small organisation auspiced through Australian Cultural Fund.

Currently, the ATO has advised charitable trusts, foundations and PPF’s that they cannot make disbursements in this way and must only disburse to DGR entities. This severely limits access to philanthropy by individual artists given the enormous growth of PPF’s in recent years (over 800).

*Recommendation*

- We recommend removing the restriction on charitable trusts, foundations and Prescribed Private Funds(PPF's) that prevents them disbursing to individual artists and non-DGR small arts organisations through the Australian Cultural Fund

*Effect of adopting recommendation*

Increased opportunities for access to philanthropic support for individual artists and non-DGR small arts organisations.



## Appendix 1:

Extract from McAndrew, C., *Artists, taxes and benefits an international review*, Arts Council of England, 2002

### *The Quebec Artists Exemption*

Within Canada, the provinces of Ontario, Quebec and British Columbia are centres for cultural industries and the arts. Quebec, in particular, has led other provinces in increasing the levels of funding for culture, strengthened the role and mandate of its Ministry of Culture, and created the *Conseil des Arts et des Lettres*. Quebec is the only province that collects its taxes separately from federal taxes.

Quebec provides a tax exemption for artists from copyright income, known as the Quebec Bill 108, an amendment to the 1995 Income Tax Act. This bill originally stated that artists and creators in the province were entitled to an annual income tax exemption on copyright income up to \$30,000 CAN (€21,300). This exemption worked on a sliding scale: all copyright income up to \$15,000 CAN (€10,650) was tax exempt. After that the exemption decreases up to a value of income of \$30,000 CAN (€21,300) (Mathieu, 2000). The exemption ceiling was increased to \$60,000 CAN (€42,600) in 2001 and now works on a similar sliding scale basis.

The idea behind the exemption was that artists, creators and producers are crucially important to many economically important cultural industries such as music, sound recording, publishing and film making, yet often supply unpaid or underpaid labour. It was felt that artists and creators provided the equivalent of the 'research and development' for the cultural community in the national interest. As Canada has had a long history of supporting research and development in scientific, industrial and technological fields, the bill was a step towards providing the same recognition and support to cultural innovators (Standing Committee on Canadian Heritage, 1999).

The Quebec exemption is only available on the copyright income of artists, therefore available only to 'creators' whose artistic work results in an original literary, musical or artistic work. The reasoning behind this is the belief that creators take the most risks as they carry out research and development for which there is no payment in time, and no assurance that there will be any remuneration upon completion. It is also claimed that when remuneration is forthcoming it may be in fairly small amounts and paid over extended periods (CCA, 2002a). As in the Irish case, performing artists are excluded from the exemption, as it is claimed that they are generally paid for work as and when they do it.

The exemption, although clearly designed to significantly improve the economic position of certain artists, can be criticised for ignoring the unpaid research and development work by actors and other performers. They are also often among the lowest-paid artists, whereas the major beneficiaries of copyright are well-known, high selling artists. For example, CCA (2002a) reports that the average employment income for writers is \$27,942 CAN

(€19, 839) versus actors with about three-fifths that at \$17,035 CAN (€12,095), dancers at \$11,946 CAN (€8,482) and other performers at \$14,097 CAN (€10,009)<sup>12</sup>. Although in theory neighbouring rights can be obtained for 'performers' performances' of a copyright work, these are not used in practice and can only be obtained through a contractual agreement. To date, no payments have been made.

The Quebec exemption has been supported by various arts organisations throughout Canada, and in 2000 the Nelson Riis' Private Members' Motion M259 was put forward to adopt the Quebec Bill throughout the country. Despite its support in the arts community, there was no political will from any party in 2002 to support it or anything similar.

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<sup>12</sup> CCA (2002a) are reporting from 1996 Census Data from Statistics Canada.