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**THE CHAMBER
OF ARTS AND CULTURE**
WESTERN AUSTRALIA

Chamber of Arts and Culture WA

SUBMISSION TO THE REVIEW OF THE AUSTRALIAN CHARITIES AND NOT-FOR-PROFITS COMMISSION (ACNC) LEGISLATION

28 FEBRUARY 2018

**Chamber of Arts and Culture WA submission to the Review of Australian Charities and Not-for-profits
Commission (ACNC) legislation**

Monday 28 February 2018

Patrick McClure AO
The Chair
ACNC Act Review Panel
The Treasury
Langton Crescent
Parkes ACT 2600

E: ACNCReview@treasury.gov.au

Dear Patrick McClure

The Chamber of Arts and Culture WA welcomes the opportunity to provide input to the Review of the Australian Charities and Not-for-profits Commission (ACNC) legislation (the Review).

The Chamber's submission will address the key concerns for the arts and culture sector in Western Australia with regarding to the current operations of the ACNC, education and guidance for the sector and the two object changes to the Act as proposed by the ACNC submission.

In summary

- Overall the Chamber believes that the ACNC effectively serves the purpose for which it was established. It has the potential to be a one-stop charity regulator that can reduce red tape for the not for profit arts sector, the majority of whom have slender resources.
- Many of the governance concerns in the not for profit sector can be attributed to lack of knowledge around the areas of compliance in terms of registration and management of charitable organisations. The Chamber supports calls for greater education to be provided to the sector in these matters.
- We have strong concerns about the submission by the ACNC that two new objects be added to the Act. Effective use and accountability are the primary responsibility of the board of charitable organisations. We believe that there are sufficient further safeguards within the existing system to deal with problems arising from 'mission drift' and the effective use of monies and other benefits derived because of the charitable status of these organisations.

Sincerely



Henry Boston
Executive Director

ABOUT THE CHAMBER OF ARTS AND CULTURE WA

The Chamber is the state's representative arts body, providing an independent, unified voice for the sector in Western Australia.

The Chamber was formed in October 2010 following the amalgamation of the WA Arts Federation and the Cultural Chairs group with a high-profile Board of Management made up of key WA business leaders, cultural policy-makers, and arts practitioners. The inaugural chairman was Sam Walsh AO. The current chairman is Helen Cook and the deputy chairman is Janet Holmes à Court AC.

The Chamber is a not-for-profit organisation with DGR status that brings the Western Australian arts sector together to debate, discuss and to address the major issues that impact on the promotion and development of arts and culture in Western Australia. Our activities include professional development, research, and the promotion of the value of arts and acts activity for individual and community wellbeing.

It has a membership of 230 arts organisations, individuals, and businesses across the broad spectrum of the arts, individual members, and associates members. The membership includes the not for profit arts and culture sector in Western Australia as well as businesses and individuals with an interest or engagement with arts and culture.

The Chamber believes that a vibrant and diverse arts and cultural scene is essential for economic, social, and personal well-being.

A full list of members can be found in Appendix 1.

PERFORMANCE OF ACNC TO DATE

It is the Chamber's view that a regulator such the ACNC is 'critical' infrastructure to support a healthy NFP sector; a sector that is the heart of our civil society. We welcomed the formation of the ACNC and subsequently registered with it once the initial uncertainty of its continued existence had been resolved.

In short, we believe the ACNC has been a success story for the sector. Its ability to deliver on red tape reduction has been slower than hoped, due in a large part to matters outside its control (such as attempts to abolish it and the consequent reluctance to engage by state and territory governments). We look forward to a finalised agreement between the ACNC and the Department of Commerce, the state regulatory body in Western Australia.

On all other measures the ACNC has been effective against its objects, with the establishment of a verified public register and its client-focussed registration and advice service has been well-received by the not for profit arts and culture sector.

ROLE OF ONE STOP SHOP FOR ALL NOT FOR PROFITS INCLUDING CHARITIES

The Chamber supports the ACNC's charity register being promoted as the 'single source of truth' in relation to charitable organisations; this will in turn ensure that all governments use the same base data in relation to a charity when making decisions regarding that charity. There are significant red tape reduction initiatives to be made by this simple, cost saving step.

We are broadly in support of the concept of a 'one stop' Australian regulator for all not-for-profits (NFPs) not just charities'. We endorse the Law Council of Australia's submission (LCA submission) and the important points it makes including:

- there is benefit in adopting one regulatory framework for all not-for-profit organisations, particularly those with similar tax concessions and in protecting the existing framework,
- but any extension should be attempted gradually, with consideration of issues including, organisational size, Commonwealth tax exemptions, legal structures, referral of State powers and other regulatory schemes, and
- any scheme should be voluntary and consistent with the objective of reducing red tape.

GUIDANCE, EDUCATION AND PUBLICATION

The Chamber notes, in the Justice Connect submission, that many not-for-profits and charities are referred to it from the ACNC; 17.85% of traffic to the Not-for-profit Law website comes from the ACNC. It further states that this traffic is largely derived from one of the ACNC's fact sheet-style guidance pages.

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Over the period since the establishment of the Australian Charities and Not-for-profits Commission (ACNC) (December 2012 to 12 December 2017), Justice Connect has taken 7 170 legal enquiries, with the majority of these related to governance matters (1 607, or 22.4%) or starting a not-for-profit organisation (1 199, or 16.7%).

This suggests that there is a strong need for information about the registration and management of not-for-profits and charities – and the importance of the ACNC’s role in assisting registered entities in complying with, and understanding the ACNC Act, by providing them with guidance and education (s.15-5(2)9b) (iii) of the Act). Guidance and education is necessary to assist organisations understand their obligations to comply and can also act as a deterrent (they realise their obligations and are then keen to avoid any breach).

We agree with the ACNC recommendation that the legislation be amended to allow the ACNC Register to include the grounds on which a decision to revoke a charity is based, and a summary of the reasons for the revocation. We think this will both help promote public confidence in the ACNC decisions and promote compliance by others (through illustrating the standards required by charities) and ensure provide greater trust and confidence in the sector.

Publication of such information will also assist in helping to form an overall picture of charity misconduct, for example, whether misconduct is largely limited to failure of administrative matters (such as failure to submit certain reports) or more substantive matters such as non-entitlement due to a disqualifying purpose or failure to meet other registration requirements such as the Governance standards or no longer meeting requirements such as being for public benefit.

NEW OBJECTS TO THE ACT AS PROPOSED BY THE SUBMISSION FROM THE ACNC

The Chamber is strongly opposed to Recommendation 2 in the ACNC submission that the objectives in the Australian Charities and Not-for-Profit Act 2012 (Cth) (the ACNC Act) be amended to include:

- (a) to promote the effective use of the resources of not-for-profit entities; and
- (b) to enhance the accountability of not-for-profit entities to donors, beneficiaries and the public

In relation to object a), we acknowledge that it is appropriate that resources of a not-for-profit be used effectively, however, the use of resources is a matter for the governing body of that charity. We note most charities will formalise this requirement in their constituent document (e.g. clause 43.1 of the ACNC template constitution).

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We also note the difficulty a regulator would have in deciding what constitutes an effective use of resources. For example, a not-for-profit may want to undertake broad consultation with its members, key stakeholders, and the community about delivering a new service. The time taken to consult in this way may mean the service is not delivered as quickly as it could have been. Some may suggest this consultation was not effective or efficient, while others may argue it is best practice community development that gives a greater chance of the service being designed to meet the community's needs.

There are inherent difficulties in the concept of 'effective use of resources' aside from the broader issue, which is simply that it is not the role of the regulator.

In relation to object b), we also acknowledge that not-for-profit entities should be accountable to donors, beneficiaries and the public. However, as above we are of the view that accountability is the responsibility of the governing body.

It is the role of donors, members, the stakeholders, and other funders to determine (through the accountability mechanisms put in place by the governing body) to decide if the organisation is using its resources effectively and if they want to continue to support (fund) the charity or not.

Also new object (b) is already expressly dealt within in the Act by section 15-10 (b) which requires "in performing his or her functions and exercising his or her powers, the Commissioner must have regard to the following ... (b) The need for transparency and accountability of the not-for-profit sector to the public (including donors, members and volunteers of registered entities) by ensuring the public has access to information about not-for-profit entities".

Relevant to the discussion of both objects a) and b), we note that under the Act the Commissioner is explicitly tasked with having regard to principle of regulatory necessity, reflecting risk and proportionate regulation (section 15-10 (e)).

We also note that any addition to the objects would require consideration of additional resourcing as the ACNC "has been funded only to undertake operations directly related to the first object" (ACNC submission, pg. 20- 21).

For further information please contact:

Henry Boston

Executive Director

Chamber of Arts and Culture WA

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APPENDIX 1: CHAMBER MEMBERS

ARTS ORGANISATION MEMBERS

Aboriginal Art Centre Hub WA	Contemporary Dance Company of Western Australia
Alliance Francaise de Perth	Country Arts WA
ART ON THE MOVE	DADAA
Artrage Inc	Fashion Council WA
ARTrinsic Inc	Fliptease Pty Ltd also training as Access Circus
Arts Margaret River Inc	FolkWorld Inc.
ARTS Narrogin Incorporated	FORM building a state of creativity Inc.
Artsource	Fremantle Arts Centre
artsouthWA Inc	Fremantle Chamber Orchestra
Ausdance WA	Fremantle Press
Australian Cinematographers Society	FutureNow
Australian Screen Editors (WA)	GAWA (Glass Artists of WA)
Australian Society of Archivists, WA Branch	Heritage Perth
Australian Writers' Guild (WA)	History Council of Western Australia
Awesome Arts Australia Ltd	International Art Space (spaced)
Barking Gecko Theatre Company	JCG (John Curtin Gallery)
Black Swan State Theatre Company	JMGAWA Inc
Bunbury Regional Entertainment Centre	JumpClimb
Carnamah Historical Society & Museum	Just Improvise
Centre for Stories	Kimberley Aboriginal Law and Culture Centre
Charlesworth Ballet Institute	Lawrence Wilson Art Gallery
CinefestOZ	Lost and Found Opera
CircuitWest Inc	Madjitil Moorna Inc
Circus WA	Mandorla Art Award
Community Arts Network WA (CANWA)	Mandurah Performing Arts Inc

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Meaning Maker	The Actors Hub
Media Entertainment Arts Alliance	The Actors Workshop
Mossenson Galleries	The Blue Room Theatre
Mundaring Arts Centre Inc	The Creative Corner Inc.
Museums Galleries Australia Western Australia	The Gelo Company
Musica Viva	The Last Great Hunt
North Midlands Project	The Literature Centre Inc.
Parallax Productions Pty Ltd	The West Australian Music Industry Association Inc.
Performing Arts WA	Tura New Music
Performing Lines WA	Turner Gallery
Perth Centre for Photography	Umbrella Works Inc
Perth International Arts Festival	UWA Publishing
Perth Public Art Foundation	Victoria Park Centre for the Arts
Perth Symphony Orchestra	Voyces
PICA	WA Museum Foundation
Professional Film Crew of Western Australia	WA Venues & Events Pty Ltd
Professional Historians Association (WA)	WA Youth Jazz Orchestra Assoc.inc
Propel Youth Arts WA	WA Youth Orchestra
Push Management	WASO
Regal Theatre Foundation Limited	West Australian Ballet Company Inc
Revelation Perth Film Festival	Western Australian Academy of Performing Arts
RTRFM 92.1	Western Australian Opera
Screenwest	Western Australian Youth Theatre Company
SHEILA A foundation for women in visual art	WritingWA
Spare Parts Puppet Theatre Inc	Yirra Yaakin Theatre Company
Strut Dance	
Sunset Studios Ltd	
SymbioticA	

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INDIVIDUAL MEMBERS

Aine Whelan

Alan Dodge AM CitWA

Alan Taylor

Alison Gaines

Alison Welburn

Amanda Alderson

Andrew Lu

Andy Farrant

Anita Sykes-Kelleher

Ashley Cole

Barrie Lepley

Bev East

Bill Leadbetter

Bill Seager

Carmen Lawrence

Carola Akindele-Obe

Connie Petrillo

David Mogridge

Deborah Pearson

Dominique Monteleone

Dr David Hough OAM

Eddy Krajcar

Gary Mack

Gaye McMath

Gene Tilbrook

Helen Carroll

Helen Cook

Helen Curtis

Helen Tuckey

Helena Sahm

Ian Lilburne

James Boyd

Jane King

Janet Holmes a Court AC

Jenny Kerr

Joanna Robertson

John Langoulant

Jordan Gibbs

Jude van der Merwe

Judith Fisher

Julian Bowron

Kim Jameson

Liesbeth Goedhart

Linda Savage

Lucille Martin

Mal DiGiulio

Margaret Sommerville

Margrete Helgeby

Max Hipkins

Michael Chappell

Michael Smith

Michael Stanford

Michael Tucak

Morgan Solomon

Nathan Bennett

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Nic Croudace	City of Fremantle
Paola Anselmi	City of Joondalup
Peter Kift	City of Mandurah
Pilar Kasat	City of Melville
Pina Caffarelli	City of Perth
Robert Marshall	City of South Perth
Robyn Johnston	City of Stirling
Sally Richardson	Shire of Augusta Margaret River
Sam Walsh	Shire of Yalgoo
Shane Colquhoun	Town of Bassendean
Shona Treadgold	Town of Port Hedland
Stephen Bevis	Town of Victoria Park

Tabitha McMullan

Terry Grose

Vivienne Glance

Warwick Hemsley

Wendy Wise

ASSOCIATE MEMBERS – PORTFOLIO

Art Gallery of Western Australia

Library Board of Western Australia

Perth Theatre Trust

Western Australian Museum

**ASSOCIATE MEMBERS – LOCAL
GOVERNMENT**

City of Bunbury

City of Busselton

City of Canning

ASSOCIATE MEMBERS – CORPORATE

Copyright Agency

EY

Georgia Malone Consulting Pty Ltd

Georgiou Developments

KPMG

Linton and Kay Galleries

Localise Pty Ltd

North Metropolitan TAFE

Poolman Taxation Management

Pride Western Australia

Quality Press

Starlight Children's Foundation

TEDxPerth

Tianqi Lithium Australia

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Kim Ellwood

Louis Martin

Mary-Ellen King

Matthew Blampey

Michael Rees

Moira Nigam

Neale Parsons

Sarah Vallentine

Shirley Mcpherson

Stephen Dawson

Tim Clifford

LIFE MEMBERS

Jan Stewart PSM

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