NATIONAL ASSOCIATION
FOR THE VISUAL ARTS LTD

PO Box 60 Potts Point
NSW 1335 Australia

T +61 2 9368 1900
F +61 2 9358 6909
E nava@visualarts.net.au

www.visualarts.net.au
www.artscareer.com.au

ACN 003 229 285
ABN 16 003 229 285

NAVA gratefully acknowledges the assistance provided by the Australian Government through the Australia Council, its arts funding and advisory body, and by the Visual Arts and Craft Strategy, an initiative of the Australian, State and Territory Governments.

Patrons: Pat Corrigan AM
Janet Holmes à Court AC
Professor David Throsby

Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport
PO Box 6100
Parliament House
Canberra ACT 2600
rrat.sen@aph.gov.au

11 April 2013

Dear Committee Secretary

**NAVA submission to the parliamentary inquiry into the Australia Council Amendment Act 2013**

The National Association for the Visual Arts (NAVA) is pleased to have the opportunity to make this submission to comment on the replacement of the Australia Council Act 1975 with a new Act. NAVA commends the Government's intentions to modernize the Act and allow the Council greater operational flexibility. In this submission we will concentrate our comments on proposed changes to the functions and governance structure of the Australia Council. We believe it is essential that the amendments we propose be enshrined in the Australia Council Act to ensure that the functions of the Council are clear and legislated, and not decided subject to the views and predilections of the particular political or administrative leadership at the time. In relation to two cornerstone principles, NAVA commends the Government for retaining its commitment to the arm's length principle. However, NAVA proposes a strengthening of commitment to arts expert representation and the peer assessment principle.

NAVA is the peak industry body representing and advancing the professional interests of the Australian visual and media arts, craft and design sector. Since its establishment in 1983, NAVA has been influential in bringing about policy and legislative change to encourage the growth and development of the visual arts sector. It also sets best practice standards for the industry. In addition NAVA provides a number of direct services to constituents, helping to increase professionalism by offering career development opportunities including training, resources, public events, sector interactivity and networking and some small grant programs. It also provides expert advice, representation and a range of other services. Currently it has around 3000 paid members and almost 8000 Facebook followers.

NAVA takes a lead role with cross sector arts industry groups including currently as:
• co-convenor of ArtsPeak - the confederation of 32 peak national arts organisations
• founding member of the Australian Design Alliance – constituted of the 13 peak national design bodies
• active member of the National Advocates for Arts Education – made up of 8 peak national artform and arts teacher organisations
• partner with the Australian Craft and Design Centres in the National Craft Initiative

• convenor and secretariat for the National Visual and Media Arts, Craft and Design Network – representing 22 key subsector groupings.

**1. Functions**

In relation to the proposed changes to the functions of the Australia Council NAVA wishes to support some of the new proposals and ask for strengthening of or changes to others. We are concerned to ensure that powers and responsibilities of the Council are enhanced not diminished. We also wish to draw attention in the redrafting of the Act to potential inconsistencies between the intention of the 'Creative Australia' national cultural policy and the Australia Council's specified Functions.

1.1 Privileging excellence

NAVA believes that in replacing the clause from the 1975 Act "to provide, and encourage the provision of opportunities for persons to practise the arts" with "to support Australian arts practice that is recognised for excellence", that this may diminish the scope of what the Council can support in relation to risk and experimentation. Work that already has been recognized as 'excellent' will not necessarily be at the cutting edge of change. NAVA asserts that supporting work which has yet to prove its potential, would be to open the way for innovation. To achieve this kind of innovation there has to be a preparedness to fail. 'Excellence' presumes that the stamp of approval of this practice already has been earned through previous endorsement.

**Recommendation: retain the existing clause in the 1975 Act.**

1.2 Diversity

NAVA commends the inclusion of 'diversity' in the concept of "excellence in Australian arts practice". This ensures the opportunity for the Council to support "a diverse range of activities" in recognition that our culture is one which includes cultural expression by people from a range of cultural experience and backgrounds. This includes the perspectives of Indigenous artists, those with a disability, artists living in regional and remote areas of the country and people from different genders and sexual orientations. However, NAVA would recommend that it be rearticulated more clearly.

**Recommendation: include a new clause in Functions as follows:**
**'to provide support to the arts that reflects the diversity of Australia'.**

In addition, NAVA believes that a separate clause which specifies a role in supporting and fostering the value of Indigenous culture should be included. By doing so, the recognition of and support for Indigenous culture will be affirmed and the Government's principle cultural agency will be mandated to act on Goal One in *Creative Australia*.

**Recommendation: include a new clause in Functions as follows:**
**'to recognise, respect and celebrate the centrality of Aboriginal and Torres Strait Islander cultures to the uniqueness of Australian identity'.**

1.3 Community engagement

NAVA is concerned that in replacing the clause " to promote the general application of the arts in the community" with "to support and promote the development of markets and audiences for the arts", there is a lack of appreciation of the revolution occurring in the active involvement of citizens in all aspects of culture. No longer are people content to be passive audiences for and consumers of culture. Increasingly they are using the plethora of technological tools to actively engage in cultural production, commentary and critique. The changes wrought by new hardware tools like mobile devices and platforms like social media in particular require cultural institutions to be able to move with the times.

The Australia Council Act should be enabled to respond to the changes occurring and demonstrate forward vision, possibly for at least the next 40 years.

**Recommendation: to include a new clause in Functions as follows:**
**'to encourage community participation in arts practice and the shaping of our cultural identity and its expression'.**

1.4 Freedom of Expression

Having seen the results of a recent increase in censorship of artists, NAVA is very concerned at the removal of the responsibility of the Council "to uphold and promote the right of persons to freedom in the practice of the arts". While it is important for the Council to have regard to the right of persons to freedom in the practice of the arts as a matter to be taken into account in the performance of its own functions (ref Clause 11), this does not empower the Council to be an advocate for and defender of this right on behalf of the arts community.

As is well understood, freedom of expression is a hallmark of a liberal democratic society. Unfortunately, in the absence of a Bill or Charter of Rights, this right currently is not protected in Australia law and censorship of artists happens all too often. NAVA frequently finds itself called upon to defend artists against unjustified constraints on their practice and believes this should only happen if they are breaking the law. This freedom is a principle which should be upheld and promoted by the Australia Council as the country's pre-eminent arts agency and the role should be included in Functions in the Act ie: NAVA believes that the Council's role should be strengthened by being required to be both an active advocate for artistic freedom of expression and applying these principles in its own decision making.

**Recommendation: include a new clause in Functions as follows:**
**'to uphold and promote the rights of persons to freedom of expression in the form of art'.**
**In addition to a requirement that:**
**'the Council must, in the performance of its functions and the exercise of its powers have regard to the rights of persons to freedom of expression in the form of art'.**

1.5 National identity

NAVA is concerned that in removing the clause "to foster the expression of a national identity by means of the arts", the Australia Council will no longer be seen to have a role in ensuring that Australian content is protected and fostered. Having seen the loss of opportunity to protect Australia's cultural production and distribution in the process of the Australian government's negotiating of a free trade agreement with the US, NAVA is alert to the need for commitment to the necessity to ensure that Australian stories and other forms of expression of our identity are given full rein. Therefore, NAVA recommends that this responsibility be retained in the Functions of the Australia Council in the Act.

**Recommendation: retain the existing clause in the 1975 Act.**

1.5 International engagement

There is an obvious incremental increase in international opportunities for cultural enrichment and soft diplomacy through artistic exchange which need to be supported and fostered by the Australia Council. NAVA believes that it may position the Australia Council as parochial if a clause is not included in the new Act which specifies that the Council has some responsibility to not only "promote the knowledge and appreciation of Australian arts by persons in other countries" but also to actively provide opportunities for artists to travel and engage. This would realize some of the recommendations eg: in the 'Australia in the Asian Century' White Paper as well as in 'Creative Australia'.

**Recommendation: include a new clause in Functions as follows:**
**'to promote and provide opportunities for engagement and exchange for Australian artists nationally and internationally'.**

1.6 Incentives
By replacing the clause "to promote incentives for, and recognition of, achievement in the practice of the arts" with "to recognise and reward significant contributions made by artists and other persons to the arts in Australia", there is shift away from a role for Council in taking action to promoting incentives, to one which simply responds to what is already in existence. NAVA would recommend retention and strengthening of this active role.

**Recommendation: strengthen the existing clause in the 1975 Act as follows:**
**'to promote and provide incentives for, and recognition of, Australians' achievement in the practice of the arts nationally and internationally'.**

1.7 Accord
One of the ambitions of 'Creative Australia' the new national cultural policy is to establish a National Arts and Culture Accord, which will describe how each level of government will support arts and culture and set out principles for ongoing cooperation. In removing the clause "to encourage the support of the arts by the States, local governing bodies and other persons and organizations", there would be no role specified for the Australia Council to provide encouragement, leadership and co-ordination for other levels of government in supporting the arts. Seeing the current contraction of financial commitment by several of the states is a warning sign that action needs to be taken to redress this shortfall. This is an example of where negotiation by the Australia Council could be helpful.

**Recommendation: retain the existing clause in the 1975 Act.**

1.8 Research
NAVA welcomes the addition of the clause "to conduct and commission research into, and publish information about, the arts". The generation of new data and analysis about the arts will be a welcome expanded role for the Council.

**2. Governance**

2.1 Board
NAVA is deeply concerned that there is a risk that the new Board for the Australia Council may not be constituted of a majority of arts experts. The new clause simply specifies that the Minister, in appointing members of the Board of the Council, has to be satisfied that the person has appropriate qualifications, knowledge, skills or experience and "in making appointments, the Minister must have regard to the desirability of the Board including members who have skills, experience or involvement in the arts". Previously the requirement was much more specific in directing that the Minister was required to appoint as Council Board members "such number of persons who practise or have practised the arts or are otherwise associated with the arts as the Minister thinks fit". NAVA urgently asks for reconsideration of this change. The lack of guarantee of arts expertise in the majority of members of the governing Board is a change deplored by NAVA.

**Recommendation: retain and strengthen the requirement for the Minister:**
**'to appoint as Australia Council Board members a majority of persons who practise or have practised the arts or are otherwise closely associated with the arts'.**

2.2 Committees

The principle of peer assessment has potentially been compromised in the new Act which says "The Board may establish committees to advise or assist in the performance of the Council's functions or the Board's functions. Note: For example, the Board ***may*** establish an expert committee of persons with appropriate experience for the purposes of peer assessment."

The recommendations made by the consultants who undertook the review of the Australia Council were to do away with the artform boards and the requirement that the chairs of these boards would be members of the governing council of the Australia Council. This change allows the Council to make its own decisions about the structures for dealing with policy and grant making. Previously the Act required that "a majority of the members of a Board for the time being shall be persons who practise the arts or are otherwise associated with the arts". While this allows the Council greater flexibility in devising its own internal decision making structures which is welcome, with the change to the Act, a board or committee established by Council is no longer required to have artform representation. NAVA is extremely concerned that this may diminish the certainty of artform expert peer assessment in both grant making and policy decisions. NAVA strongly recommends that a new clause be included which rectifies this by requiring artform decision-making to be done by expert arts peers, not by Council staff or non-arts representatives.

**Recommendation: make it a requirement that:**
**'On any Board or Committee appointed by Council a majority of the members shall be persons who practise the arts or are otherwise closely associated with the arts'.**

2.3 Recommended change

The provisions in the 1975 Act for people with arts expertise and experience to constitute the majority of representatives on the Council's governing council and boards have been removed and not replaced with any specific provision for peer review.

**Recommendation:**
**- that peer assessment be enshrined in the Act as a decision making principle, and**
**- that the majority of governing board and committee members must be people with arts expertise and experience, and**
**- that funding decisions should be made by expert arts peers.**

NAVA wishes to thank the Senate Committee for providing the opportunity to offer an industry perspective and make recommendations for change to ensure that the Australia Council will grow in strength and relevance as the preeminent arts body for the country.

We would welcome the opportunity to elaborate further to the Committee.

Yours sincerely

Tamara Winikoff
Executive Director