

10 August 2025

The Hon John Graham MLC
NSW Minister for the Arts

*Online submission made through the Department of Creative Industries, Tourism,
Hospitality and Sport*

ARTS LAW'S CULTURAL TAX REFORM SUBMISSION

The Arts Law Centre of Australia (**Arts Law**) is the national community legal centre for the arts. We provide free or low-cost legal advice to creators residing in all Australian states and territories and we assist arts organisations apply best practice standards to make for a better world. Arts Law makes this submission on behalf of our broad client base and in particular creative artists and organisations. Arts Law assists and advocates for thousands of Australian artists and organisations annually. Artists in the Black (**AITB**) is a dedicated program of Arts Law; we provide free legal advice and information about legal issues for Aboriginal and Torres Strait Islander artists and their communities. Through AITB, we hope to reach Aboriginal and Torres Strait Islander artists where they are, including in regional and remote areas.

Arts Law acknowledges the Traditional Owners of the various lands on which Arts Law works and pay our respects to Elders past and present. Please note that for the purposes of this submission, we respectfully use the term 'First Nations' to reference the Aboriginal and Torres Strait Islander people belonging to this country.

1. SUPPORT FOR KEY PROPOSALS IN DISCUSSION PAPER

The discussion paper outlines key proposals that align with Arts Law's advocacy and the needs of the sector and about which we're keen to explore, namely:

Exempting prize money, fellowships, and grants from income tax will likely have a directly beneficial effect (e.g. following models in Finland where grants and scholarships awarded by public bodies are tax-exempt when used for artistic purposes. Private grants are tax-exempt up to an annual threshold; France, artists

earning less than 77,700 euros per year to apply a flat 35% deduction to account for professional expenses, remaining 66% is taxed as personal income).

Similarly, we are supportive of:

Changing GST settings to better support artists and the arts economy across the board;

Non-Commercial Loss changes;

Introducing simplified artists' deductions (introduction of special expense rules for artists to reduce compliance costs and increase post-tax incomes, e.g. standard deductions to simplify tax returns and reduce compliance costs);

Allowing artists to be able to receive more income from other sources and still be able to claim for expenses related to art production;

Introducing offsets for specific industries such as theatre and live music (Eg like tax relief for theatres in the United Kingdom, allowing companies producing live theatrical performances to claim a share of their costs as an additional tax deduction);

Reforming existing screen tax incentives, e.g. rates set to improve international competitiveness

Property incentives and vacancy taxes for affordable creative spaces (encourage property owners to make vacant commercial space to the creative sector; this could be usefully extended to include community and not-for-profit organisations that provide essential support for creative artists and industries); and,

Further philanthropic incentives (i.e. for the making of donations to the sector and otherwise, measures to render financial support for the arts less burdensome for supporters; allowing tax deductions to be greater than the value of the donation, including prompts in tax returns for people to donate tax refunds).

2. FIRST NATIONS ARTS: THE IMPORTANCE OF THE CREATIVE INDUSTRIES

First Nations people continue to practice art and culture as they have done for thousands of years. First Nations art has shaped and continues to profoundly influence our shared national identity. Today, the First Nations art industry is a growing economy. The creative industries are not only an important economic industry but also an important expression of cultural identity. Art and culture are interconnected; for many First Nations artists, artwork is a reflection of their cultural identity through connection to Country, kinship and ancestors. The arts not only

serves as an important national and international economy but also creates economic and self-determination opportunities for First Nations artists and communities. Arts Law welcomes the opportunity to introduce tax reform in New South Wales and Australia that may specifically assist First Nations artists.

3. RECOGNISING AND VALUING INDIGENOUS CULTURAL AND INTELLECTUAL PROPERTY (ICIP)

Indigenous Cultural and Intellectual Property (**ICIP**) encompasses all aspects of First Nations people's traditional knowledge and cultural expressions. ICIP can often be evident in artwork such as through traditional stories, cultural symbols, and knowledge systems. Although often expressed artistically, ICIP is governed by cultural responsibilities, kinship systems, connection to Country and lore.

The current legal framework does not adequately recognise ICIP as a form of intellectual or economic property. Arts Law encourages the possibility for tax reform to further protect and recognise the importance of ICIP in First Nations artwork. Artwork may thus be recognised as not only artwork but also important cultural contributions. This approach should be taken holistically and in genuine and respectful consultation with First Nations artists. Arts Law submits that there may be areas for further consideration with:

Expanding tax deductible expenses to include ICIP expenses: Many First Nations artists may incur expenses that are not recognised as acceptable tax deductible expenses. For example, this may include travel costs to Country or expenses from meeting with Elders and knowledge holders. Expenses associated with travel for attending ceremonies may also benefit First Nations artists to ensure connection to culture and Country is maintained. Introducing tax deductions that include ICIP expenses may amount to appropriate and holistic taxation support for First Nations artists.

Tax or GST incentives for ICIP: Tax incentives could be tied with the use of ICIP protocols or ethical licensing agreements. This could include tax benefits for galleries, businesses or publishers that partner directly and ethically with First Nations artists.

Exemptions or reductions: exempting or reducing tax on income that is redirected into community trusts or cultural programs.

4. FURTHER CONSIDERATIONS: SUPPORTING ARTISTS AND THE ART SECTOR

Arts Law welcomes further considerations and discussion about potentially useful tax reform for artists and the art sector. Alongside the proposals in the discussion paper, Arts Law would like to draw attention to:

Implications of Generative AI: Artists and the art sector are increasingly concerned about the implications of generative artificial intelligence (gen-AI) on the viability of their art practices and businesses. The new tax reform could address these concerns by introducing a state-based levy (as well as, ideally, federally) to be maintained as a fund for artists in NSW (as well as, ideally, around Australia), on Big Tech owners of gen-AI systems, tools and suppliers to remunerate creators for use of their works in large language models' training data in future and to compensate for uses already made without their permission and even, their awareness.

Educational tools: To further assist artists and to simplify the taxation process, Arts Law encourages the development and access to educational tools specific to the arts sector. This may include creating tailored compulsory courses for the arts sector and outreach programs. As noted by David Throsby and Katya Petetskaya in *Artists as Workers: An Economic Study of Professional Artists in Australia*: “to thrive as a freelance or self-employed worker, artists must possess a range of business skills.” Not aligning their education with the practical realities of professional artistic life and the unique nature of the artistic workplace is setting artists up for failure. This also has revenue implications. If artists lack the necessary business skills they need to appropriately account for their change in wealth within a financial year, they may pay too much tax which puts them at a disadvantage, or, conversely, the ATO may be deprived of revenue to which it is entitled.

Understandings of artists' and artistic professionalism: Complexity around the categorisation of a change in income within a financial year could be remedied through implementing a more streamlined definition of professional artistic practice. For example, a useful and more accessible working definition of professional artistic practice can be found in David Throsby and Katya Petetskaya's *Economic Study of Professional Artists in Australia*. They explain that “the term professional is intended to indicate a degree of training, experience or talent and a manner of working that qualifies artists to have their work judged against the professional standards of the relevant occupation.” This definition offers a clear and practical framework for understanding artistic professionalism. While it bears similarities to the ATO's interpretation, it avoids conceptual complexity. This makes it particularly valuable for artists in establishing a clearer understanding for when income earned through artistic practice will constitute ordinary income or that of a hobby.

Creating a clearer and more accessible criteria as to what constitutes a professional artist for tax purposes could also improve public perception of a career in the arts which would enhance social cohesion. Many people don't take a career in the arts seriously since, as noted by the ATO, “professional artists...have the distinction of pursuing as a business that which many others undertake purely for personal

pleasure.” Such a perception by the ATO is erroneous and arguably insulting to many professional artists. Like any other industry, the arts involve the creation of products and services for human consumption, often requiring years of training and sustained effort. If we applied the same logic more broadly, we might note that professionals in other fields such as data analysts at the ATO also engage in work that shares similarities with recreational activities. Such a comparison demonstrates how the distinction between ‘pleasure’ and ‘profession’ is generally a matter of perception.

DGR: Expand the Deductible Gifts Recipient to include more art organisations.

CONCLUSIONS

Arts Law appreciates the opportunity to make these submissions and welcomes any further discussion and consultation.

Please contact Arts Law by email to artslaw@artslaw.com.au or (02) 9356 2566 if you would like us to expand on any aspect of this submission, verbally or in writing. We look forward to participating in the Summit.