

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIA COUNCIL AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for  
the Arts, Sport, the Environment, Tourism and Territories,  
the Hon Ros Kelly MP)



## AUSTRALIA COUNCIL AMENDMENT BILL 1990

### OUTLINE

The purpose of this Bill is to give effect to those aspects of the Government's response to the McLeay Report which require amendment of the Australia Council Act 1975. The McLeay Report is the Report of the House of Representatives Standing Committee on Expenditure Inquiry into Commonwealth Assistance to the Arts. This Committee was chaired by Mr Leo McLeay MP, and the Report was tabled in Parliament in September 1986. The Government's response to the McLeay Report was tabled in May 1987.

The Government's response supported the recommendations of the McLeay Report which called for a streamlined Australia Council structure, responsive to Government policies. The amendments to the Australia Council Act are intended to provide a more efficient Council structure and to clarify the relationship between the Council and the Government.

The amendments do not infringe on the Council's independence regarding grant decisions. However, they provide mechanisms for the Minister to communicate to the Council in writing on any matter and to direct the Council in its activities. The Council has the right to comment on these directions in its Annual Report.

The Bill makes a number of amendments to the membership provisions for the Council and its Boards. To facilitate co-ordination, all Board Chairpersons are to become ex officio members of the Council. The overall number of Council members remains the same (minimum of ten, maximum of fourteen) but the requirement for two representatives of the Government to be members of the Council has been removed and provisions for members representing the broad public interest are added to assist the Council to be responsive to the wishes of the community at large, the taxpayers and consumers of cultural programs. The maximum number of Board members will be increased from eight to nine to cater for large Boards amalgamated in the streamlining process and the minimum number of members will be reduced from six to five to allow for creation of small artform Boards. Provision is made to allow the Council to appoint Committees to assist the Boards with their work.

A major aspect of the Government's response to the McLeay Report was the decision to provide a more responsive Council structure in relation to community cultural development. To achieve this aim, the Bill provides for a special co-ordinating Board which may comprise the Chairperson and members of Council, Board Chairpersons and members, and members representing the community interest and arts practitioners. Maximum membership is to be thirteen including a Chairperson. It is intended that these provisions will allow the Minister to establish a Board which has a broad perspective appropriate to community cultural development and direct access to Council through its membership.

FINANCIAL IMPACT STATEMENT

It is not expected that any additional funds will be required as a result of these amendments to the Australia Council Act. The aim of the McLeay Report and the Government's response was to provide a more cost-effective Council structure. The number of Council Boards has been reduced from eight to five. The Council's administration funds and staffing levels have been reduced in recent budgets and cost savings have already been achieved.

The amendments will create a Council structure which need not require additional funds and may lead to cost savings.

## NOTES ON CLAUSES

Clause 1 - Short title etc.

1. Formal

Clause 2 - Interpretation

2. This clause amends and inserts definitions required as a result of other amendments outlined in the following paragraphs.

Clause 3 - Insertion of new sectionsMatters to be taken into account by Council

3. Over the past ten years there has been an increase in the number of Commonwealth cultural authorities and in the role of State and local agencies in arts funding. To avoid duplication and to ensure that Commonwealth policies are taken into account in the grant giving process, new section 6A will oblige the Council to have regard to Commonwealth Government policies and where practicable, to the policies of State and local governments as they relate to the arts. In addition, this section will provide the opportunity for the Minister to write to the Council to clarify Government policies and any other matters, as he or she sees fit.

Directions by Minister

4. Following new section 6A which ensures that the Council is mindful of Government policies, new section 6B allows for the power of Ministerial direction to the Council. It is intended to assist in ensuring that the Council is in no doubt as to the Government's intentions and expectations with regard to the policies which are to guide its operations. It is expected that the power of Ministerial direction under new section 6B will rarely be used and clarification of Government policies will normally be carried out through consultation between the Minister and the Council.
5. The power of direction is not to apply to decisions on individual grants. Grant decisions are to remain the responsibility of the Council and its artform Boards, to preserve the principle of arts funding being provided at 'arms length' from Government.

Clause 4 - Membership of Council

6. This clause amends section 9 of the Principal Act, with the result that all Board Chairpersons will be ex officio members of the Council, to facilitate co-ordination of Council's activities. The requirement for two Commonwealth Government officers to be members of the Council is to be removed to allow for appointment of members representing the general public interest. The addition of a member or members on Council representing the interests of the

general community is in line with the Government's response to the McLeay Report. It is designed to ensure that taxpayers' and consumers' interests are considered by Council in the allocation of Government funds.

#### Clause 5 - Term of office

7. This clause amends section 11 of the Principal Act, so as to remove the minimum term of office of one year for all Council members, allowing short term appointments, such as those made by caretaker Governments. This brings the Principal Act into line with the term of appointment provisions of other cultural authorities.
8. As there are no longer to be Government representatives on the Council (see paragraph 6), subsection 11(5) regarding their term of office provisions is removed. Term of office provisions are added for members representing the broad public interest.

#### Clause 6 - Resignation

#### Clause 7 - Termination of appointment

#### Clause 8 - Deputies

9. These clauses make consequential amendments required by the repeal of the provision requiring two Commonwealth Government officers to be members of the Council (see paragraph 6).

#### Clause 9 - Meetings

10. This Clause amends section 17 of the Principal Act by introducing subsections 17(10-13) which provides the Council with the option of conducting its meetings without the requirement for members to be physically present.

#### Clause 10 - Committees

11. This clause replaces the existing section 17A, so as to allow the Council to appoint Committees to assist Boards as well as Council itself, in the performance of their functions. New section 17A provides for both the Council and relevant Boards to give directions to Committees appointed by the Council to assist Boards and that in the case of inconsistency, Council's directions prevail. New subsections 17A(7-9) enable Committees to meet without the requirement that members be physically present.

#### Clause 11 - Establishment of Boards

#### Clause 12 - Membership of Boards

#### Clause 13 - Term of Office

12. Clause 11 amends section 20 of the Principal Act so as to allow the establishment of a special co-ordinating Board (existing Boards to be retained).

13. Clause 12 amends section 22 of the Principal Act accordingly, to provide that the Minister can appoint the ~~Chairperson and members of Council, and the Chairpersons and members of Boards,~~ to the new Board to raise the status of this Board by increasing the number and status of its membership. Maximum membership for this Board only is raised to thirteen including the Chairperson. This will allow the Minister to make appointments with wide community, geographic and artform representation.
14. The maximum membership of other Boards is raised to provide for a membership of nine (including Chairperson), to cater for Boards with responsibility for more than one artform as has occurred with recent amalgamation of Boards. The minimum membership of Boards will be lowered from six to five members (including the Chairperson) to provide for establishment of single artform Boards. Boards are now to have at least one community interest representative in line with new Council membership provisions (see paragraph 6). The increase in maximum membership of Boards removes the requirement for special provisions relating to an Aboriginal Arts Board and those provisions will be removed from section 22 of the Principal Act.
15. Provisions have also been added which require the Minister to give consideration to Council advice on Board appointments.
16. The provision for a minimum term of office for Board members of twelve months is removed, for the same reasons it has been removed for Council members (see paragraph 7), i.e. to bring it into line with other cultural authorities and to provide increased flexibility of appointment periods.

#### Clause 14 - Termination of office

17. As a consequence of the amendments by clause 4 whereby the Chairpersons of Boards are to be *ex officio* members of Council, the termination of office provisions for Board members have been adjusted. The new provisions enable the Minister to terminate the appointment of a Board Chairperson who does not comply with his or her duties as a member of Council with regard to attendance at meetings.

#### Clause 15 - Meetings

18. This Clause amends section 29 of the Principal Act by introducing subsections 29(10-13) which provide Boards with the option of conducting their meetings without the requirement for members to be physically present.

#### Clause 16 - Contracts and borrowings

19. In line with the Government's Policy Guidelines for Commonwealth Statutory Authorities and Government Business Enterprises, the limit of discretion for the Council to enter into contracts is increased from \$50,000 to \$100,000.

Clause 17 - Annual reports

20. This clause amends section 38 of the Principal Act so as to provide for the Council to make public statements in its Annual Report on all specifications of matters to be taken into account, and directions issued to it by the Minister pursuant to new sections 6A and 6B (see paragraph 4) or existing section 7 (which enables the Council to delegate its functions and powers subject to any direction by the Minister).

Clause 18 - Remuneration for person holding more than one office

21. This clause substitutes a new section 41AA which provides for remuneration for persons occupying two or more offices. This could occur where a Chairperson of a Board is both a member of Council and a member of the co-ordinating Board. It also clarifies the fact that where the Chairperson of the Council is also the Chairperson or a member of the co-ordinating Board, he or she is entitled to remuneration in respect of both offices.

Clause 19 - Further amendments

22. These amendments introduce non-sexist language throughout the Principal Act.



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