

Administration
MBE 148/45 Glenferrie Road
Malvern, Vic 3144
Phone: 03 9507 2315
Fax: 03 9507 2316
Email: admin@mca.org.au
Website: www.mca.org.au
ABN 85 070 619 608

Executive Director
Tel: +61 (0)2 9251 3816
Fax: +61 (0)2 9251 3817
Email: mca@mca.org.au

Music. Play for Life campaign
Tel: 02) 4454 3887 or 0439 022 257
Email: tina.mpfl@mca.org.au
Website: www.musicplayforlife.org

Australia's representative to the International Music Council



Music Council of Australia

AFTS Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

By email to AFTSubmissions@treasury.gov.au

May 1, 2009

Submission to Australia's Future Tax System review

The Music Council of Australia (MCA) is the national peak music organisation. The Council is comprised of 50 persons and is formally constructed to ensure representation across the entirety of the music sector. Among the 50 are nominees of major national music organisations.

The purpose of the Music Council of Australia is to bring together all sections of the music community in order to advance a diverse and vibrant musical life throughout Australia. To achieve this, MCA, independently and in partnership, gathers and provides information, conducts research, undertakes advocacy, ensures representation in relevant forums, and initiates and realises projects that advance musical life.

Musicians and music workers are the indispensable agents for achieving the purpose. To be effective, they must have the personal resources to survive and to work. The operation of the taxation regime is an important factor in achieving this personal and vocational viability.

The music sector is a substantial contributor to the national economy

The circumstances of musicians and music workers is important not only for their individual viability but because they are participants in a sector that makes a significant contribution to the national economy.

The value of the music sector should be assessed in a similar way to that of the tourist industry (as a "satellite account"). Much of the activity of the music sector is interlaced with other sectors that are separately accounted for in the

national accounts. For instance, radio broadcasting is one of the most important ways in which music is distributed to its audience. For its part, radio broadcasting depends more than anything else upon the recordings produced by the record industry and could not survive in its present form were it not able to broadcast music. But for purposes of the national accounts, radio broadcasting is treated as a separate category. The costs of the delivery of physical recordings to their audience is counted as a part of the music sector accounts. The costs of delivering music through radio broadcasting are excluded from accounts of the value of the music sector even though much of the radio broadcasting industry is arguably a branch of the music industry.

The ABS does not collect sufficient data to show the contribution of the music sector to GDP and certainly does not treat music as a satellite account. Lacking this official data, the Music Council has made an estimate of the value of the sector at somewhere below \$7 billion in 2005-06. The method by which the calculation was made is described in the Music in Australia Knowledge Base on the Music Council website.¹ There, economist Hans Hoegh-Guldberg begins with the following statements:

1. The most comprehensive report containing an economic valuation of the Australian music sector was published in 1987 by the Australia Council (Hans Hoegh-Guldberg, *The Australian music industry*). It found that the estimated value added to the Australian economy through music-related activities in 1984-85 was \$1.545 billion at the then current prices.
2. According to the 1987 report, the estimated music product represented 0.7% of the 1984-85 GDP. This is close to what the national accounts currently allow us to estimate, as \$1.585 billion is 0.69% of the most recent published GDP at the then current prices (\$231.337 billion).
3. However, the correct measure is percent of total gross value added at basic prices (GVA), rather than percent of GDP. At constant 2004-05 prices [\(1\)](#) GVA accounted for 89.0% of total GDP in 1984-85 with the other component, indirect taxes less subsidies, making up the remaining 11%. The estimated music GVA represented 0.77% of total GVA at basic prices in 1984-85.
4. The ratio in 1984-85 between constant-price GDP at 2004-05 prices, and current-price GDP, was 1.9778; that is, prices almost doubled over these twenty years according to the ABS chain-price index. The index increased by a further 4.8% in 2005-06 for both GVA and GDP. Applying these ratios, the estimated music product in 1984-85 at 2005-06 prices was \$3.285 billion ($1.585 \times 1.9778 \times 1.048$).

The next step involves judging whether the music sector has kept or changed its share of the total economy, 0.77% of the total gross value added (GVA), which rose to \$886 billion in 2005-06 (at 2005-06 prices):

1. The following indicative long-term growth trends assist the perspective: GDP at constant prices rose by 3.21% per annum between 1974-75 and 2005-06 according to the national accounts, total GVA by 3.36% pa, and the GVA for culture and recreation by 3.28% pa ([Table 1](#)).
2. As a first approximation based on the similarity of the total trends and the trend in the culture and recreation industry group, this suggests that music may have just maintained its share of total GVA, that is .77%. The implication is that the music sector contributed just under \$7 billion to the 2005-06 economy (\$6.82

¹ http://www.mca.org.au/web/component/option,com_kb/task,article/article,78/

billion), compared with \$3.28 billion in 1984-85. This represents a 108% increase, in parallel with total GVA.

The argument continues, considering various possible reservations.

In summary, the circumstances of musicians and music workers are important as a matter of equity and personal and vocational viability, and also because they participate in a sector that makes an often inadequately recognised contribution to the economy.

Data about musicians' incomes

Income data for musicians is difficult to establish with any certainty. Census data, whilst reliable in itself, is subject to particular constraints. Many musicians are not in full time employment. As the census takes account only of the income earned in the primary job undertaken in the week prior to the census, many musicians effectively become invisible in Australian Bureau of Statistics data or their income earning capacity as musicians is understated.

The most robust data is that contained in *Don't Give Up Your Day Job – An Economic Study of Professional Artists in Australia*². Published in 2003, it covers the financial year 2000-2001 and is the fourth in a semi regular series. The first survey in the series was conducted in 1983 and repeated in 1987 and 1993. The next in this series is being conducted now.

It found that, for the year 2000-2001, income for musicians and composers was as follows³:

Mean income

	Creative income	Other arts related income	Total arts income	Total non arts income	Total income
Musicians	17,700	9,800	27,600	13,500	41,100
Composers	12,700	14,000	26,700	11,500	38,200

Median income

	Creative income	Total arts income	Total income
Musicians	10,500	20,000	35,800
Composers	4,200	19,200	31,100

The report found that expenses incurred for their arts practice for the year 2000-2001 were as follows⁴:

	Mean	Median
Musicians	7,300	3,500
Composers	8,200	5,100

² *Don't Give Up Your Day Job – An Economic Study of Professional Artists in Australia*, David Throsby and Virginia Hollister, Australia Council, 2003, see online at http://www.australiacouncil.gov.au/__data/assets/pdf_file/0007/32497/entire_document.pdf

³ *Don't Give Up Your Day Job – An Economic Study of Professional Artists in Australia*, David Throsby and Virginia Hollister, Australia Council, 2003, page 45, see online at http://www.australiacouncil.gov.au/__data/assets/pdf_file/0007/32497/entire_document.pdf

⁴ *Don't Give Up Your Day Job – An Economic Study of Professional Artists in Australia*, David Throsby and Virginia Hollister, Australia Council, 2003, page 48, see online at http://www.australiacouncil.gov.au/__data/assets/pdf_file/0007/32497/entire_document.pdf

The report also found that whilst overall income from arts work for musicians increased marginally between 1986-87 and 2000-01, it declined dramatically for composers⁵.

Trends in artists' mean earned income 1986-87 to 2000-01

		Income from all arts work			Income from all work		
	1986-87	1992-93	2000-01	1986-87	1992-93	2000-01	
Musicians	24,000	24,000	27,600	34,500	32,300	41,100	
Composers	45,700	40,000	26,700	52,800	42,300	38,200	

According to the Australian Bureau of Statistics, in 2006 the gross weekly income for the majority of musicians was less than \$600 week.⁶

Musicians gross weekly income 2006

Less than \$150	515
\$150 - \$249	669
\$250 - \$399	1,042
\$400 - \$599	1,159
\$600 - \$799	675
\$800 - \$999	611
More than \$1,000	1,134
Total persons	5,904

RECOMMENDATIONS

Recommendations of the Australia Council

The MCA notes and supports the recommendations made by the Australia Council in its submission.

MCA recommendations

MCA's recommendations go to some key factors affecting musicians and the sector.

While musicians should support the nation through their taxes equitably alongside all other workers, there are some aspects of their work situation that are not typical and should be given consideration. These are addressed below.

Income tax averaging

Income tax averaging is available for artists, including musicians, composers and conductors under the provisions available for "special professionals"⁷. Given that the employment patterns of such persons are often irregular, income tax averaging allows their tax deductions to more accurately reflect the manner and the times at which their income is earned. While some few

⁵ *Don't Give Up Your Day Job – An Economic Study of Professional Artists in Australia*, David Throsby and Virginia Hollister, Australia Council, 2003, page 51, see online at http://www.australiacouncil.gov.au/__data/assets/pdf_file/0007/32497/entire_document.pdf

⁶ *Employment in Culture Australia*, Catalogue No 6273.0 2006, Australian Bureau of Statistics, 27 February 2008, see online at [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/6A0842636FC03C4CCA2573FB000BCD2D/\\$File/62730_2006.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/6A0842636FC03C4CCA2573FB000BCD2D/$File/62730_2006.pdf)

⁷ See <http://www.ato.gov.au/content/downloads/IND00134503n24750608.pdf>

musicians are engaged full time – such as those employed by the major symphony orchestras – they are in the minority.

The MCA supports the retention of current income averaging provisions for musicians, composers and conductors.

Tax deductibility of work-related expenses

The eligibility criteria for tax deductible work-related expenses for employee performing artists – are set out in *Taxation Ruling TR 95/20: Income tax: employee performing artists - allowances, reimbursements and work-related expenses*⁸.

A “performing artist” is defined as “a person who is a musician, actor, variety artist, singer, dancer or circus performer”⁹.

The ruling sets out those items that are deductible and those that are not, and are generally fair and equitable. By way of example, a “deduction is allowable for the cost of classes taken to maintain existing skills or obtain related skills” as is “the cost of lessons to acquire skills for use in a particular role or performance (paragraphs 77 to 81)”.

Inconsistencies

However, there are other items where, in the view of the MCA, inconsistencies exist, most likely the result of determinations being made at different times. The provisions in respect of the deductibility of clothing, for instance, state in part:

Expenditure on clothing, uniforms and footwear must satisfy the deductibility tests in subsection 51(1) of the Act and must not be private or domestic in nature (paragraph 47).

A deduction is not allowable for the cost of evening wear for orchestra members (see Taxation Determination TD 93/111 and paragraph 57).

A deduction is allowable for the cost of buying or hiring costumes, e.g., a clown costume.

A deduction is allowable for the cost of conventional clothing bought or hired as a costume for a role (see TR 94/22). Whether apportionment is necessary depends on the particular facts of the case (paragraph 24).

A deduction is not allowable for the cost of an employee performing artist’s conventional street wear worn at work (paragraphs 70 to 75).

A deduction is allowable for the cost of a dancer's special tights and dancing pumps.

The MCA considers that the ineligibility of evening wear for orchestra members to be an example of inconsistency. Orchestras members are required to wear evening wear and for that evening wear to be black. Such evening wear cannot be considered to be conventional street wear and it is a mandatory performance requirement.

In 2007, the Sydney Symphony Orchestra performed 103 subscription and stand-alone main stage performances at the Sydney Opera House and the City

⁸ See <http://law.ato.gov.au/atolaw/view.htm?docid=TXR/TR9520/NAT/ATO/00001>

⁹ See <http://law.ato.gov.au/atolaw/view.htm?docid=TXR/TR9520/NAT/ATO/00001>

Recital Centre Angel Place (in addition to its outdoor concerts and touring and outreach performances)¹⁰. The use of evening wear for these performances can hardly be seen to be use of conventional street wear nor as use incidental to the use of the evening wear in their private lives. Rather, for symphony orchestra musicians the acquisition of evening wear is a condition precedent to their capacity to perform.

The MCA hopes that in the course of this review of Australia's taxation system, consistency will be brought to bear on the treatment of tax deductible work-related expenditure.

Child care

Another matter of concern for musicians is the cost of child care. The MCA is aware that a number of submissions are being made to this Inquiry regarding child care and in the light of the more detailed submissions that will be made in this regard the MCA wishes to raise only the heavy burden of child care for classes of persons who are required to work at hours when normal child care facilities are not available.

For those employed full-time with a typical work week being Monday to Friday with working hours confined to 9am to 5pm, several options are available from after school care to long day care and the like.

Along with others who are engaged in shift work, such as nurses, musicians face particular challenges in regard to securing adequate child care. They typically work at night and regularly on weekends making the more usual sources of child care unavailable. The consequences of their working hours also dramatically increases costs as in-home child care (usually the only option if the parent does not arrive home from work until midnight or later) is invariably more expensive than is the case for after school care or the care available in long day care centres.

For those not engaged full-time, for instance symphony orchestra musicians or on short term contracts, such as those musicians engaged in commercial live theatre (musicals and the like), the difficulties can be exacerbated by irregular work patterns and irregular work, often characterised by short notice of employment dates, times and venues.

For female musicians, it can mean a complete halt to careers for many years if individual circumstances mean that child care is unaffordable. The partners of many female musicians are also musicians and, as is the case in the community more generally for shift workers, less and less are able to call on other family members to take over evening child care responsibilities on an ongoing basis.

The MCA trusts the inequitable cost of child care for those working outside full-time day time week day employment will be addressed in the context of this review.

¹⁰ *Sydney Symphony Orchestra Annual Report 2007* see online at <http://www.sydneysymphony.com/sysfiles/attachments/2007%20Annual%20Report.pdf>

New Start

For many years, in consideration of the unique working circumstances of performing artists, the Government gave special recognition to their status when seeking social security support.

Performers were deemed to have satisfied the activity test requirements of the New Start Allowance (NSA) if they had:

- full Actors Equity membership
- a demonstrated record in the industry (via a portfolio), and
- current registration with an accredited agent.

If, after twelve months, a performer had not been able to secure employment in their chosen field of endeavour, they were then required to fulfill the activity test criteria and seek any work and accept any work they might be able to undertake.

This approach recognized that performers are already highly skilled and job ready, many with tertiary qualifications. It also recognised the unique characteristics of the industry in which they sought their primary employment, the value of the arts industry to the Australian community, the need to undertake ongoing classes and like to maintain skills levels and the role that undertaking unpaid work and/or initiating unpaid work can be a key element in securing employment in their chosen field of endeavour.

In 2002, the provisions for performers were amended in the social security guidelines as follows:

“Performers are generally not required to look for work outside their chosen field within the first twelve months on NSA. However, if there are insufficient job prospects available in their chosen field to meet their fortnightly job contact requirement, then the remainder of the job contact requirement is to be achieved by looking for other types of suitable work.

“Example: If a job seeker’s fortnightly jobsearch requirement is ten but only six job prospects available in chosen field, the remaining four job contacts must be made up of other types of suitable work.

“If, during the first twelve months a person is offered casual employment outside their chosen field, they would be expected to accept the offer of casual employment. An exemption to this can be made where the person can show that casual work would interfere with a reasonable prospect of obtaining work in their chosen field.

“Example: A job seeker is offered four weeks casual employment commencing immediately, but has been offered a job in their chosen field which commences in three weeks. If the employer agrees, the person should take the casual job for three weeks. If the employer does not agree, it would be acceptable for the person to refuse the offer of casual employment.”

This created significant problems for performers as it no longer reflected the characteristics of and the reality of employment in the arts sector as was the case with the previous arrangements.

However, in 2006, the former Federal Government removed even that scant acknowledgement of the working circumstances pertaining to professional performers.

The MCA strongly recommends that the arrangements in place prior to 2002 be reinstated and, importantly, explicitly accommodate professional musicians who face the same employment uncertainties as those faced by other performers.

Performers and superannuation

As can be seen from the tables above, many performers live on extremely low incomes. Superannuation is directly linked to income, meaning that many will not have sufficient funds to support them in old age.

Superannuation as currently constructed presents some significant issues for musicians.

Superannuation in multiple funds

As can be seen from the tables above, many musicians rely for much of their income on work from non-arts related employment, and the majority will secure their arts related income from multiple employers.

Where their weekly income from their employment is at a level above which employers are required to make superannuation payments, such payments are usually made.¹¹

However, many musicians are losing considerable money as their superannuation is spread across a number of funds, all attracting fees and charges, and are disadvantaged by having small amounts of funds in a number of accounts, thus attracting less interest than would be the case were the funds consolidated. Many have been successful in having their funds consolidated but it is a matter of continually applying to give effect after the payments have been made. As most have accumulated superannuation at a very low level, every dollar counts and every day counts in terms of the accumulation of interest on those funds.

The MCA understands that employees now have the right to nominate the superannuation fund of their choice which has effectively reduced the problem of multiple funds. In the absence of nominating a fund of choice, the fund utilised is the default fund determined by the employer.

Thus while the problem of having small amounts in multiple funds has been partially addressed by the employee right to nominate, it has nonetheless not resolved the problem in its entirety - as the very large amounts held by superannuation funds for persons with no known address attests.

Employment where superannuation is not paid

Many musicians will earn more than \$450 a month from any one engagement with an employer in the entertainment industry. Consequently, the \$450 threshold above which employer superannuation payments must be remitted will be achieved. However, this is not true for all. For instance, a musician

¹¹ See below regarding an increasing trend wherein employers seek to engage artists on short term engagements as sub-contractors rather than as employees.

might have a regular three-hour engagement once a month. In such a case superannuation entitlements will not accrue.

Further, most rely on a number of jobs to survive. Those jobs might be waiting in a restaurant five hours one night a week, teaching a musical instrument in a school once a week and doing a Saturday night shift in a call centre.

All such employment will result in income below the monthly threshold whereby superannuation entitlements are required to be paid by the employer. The result can be that musicians accrue only minimal amounts in superannuation annually and given their overall income are unable to augment provisions for their retirement from savings. For many, a substantial proportion of their income may generate no superannuation entitlements at all.

The MCA urges the Review to consider the manner in which those earning the least amount and reliant on multiple jobs for a living wage are best able to accumulate sufficient superannuation for their retirement.

Employed or self-employed or both

The advent of the Australian Business Number (ABN) has seen a dramatic increase in the number of musicians reporting they are being expected to provide their services as a sub-contractor rather than as an employee notwithstanding the nature of the relationship. This has multiple roll-on consequences, including no access to workers compensation, superannuation, and so on.

Given the short term nature of many engagements undertaken by musicians, there is little doubt that it is administratively easier for employers to treat employment arrangements as a sub-contract.

Compounding this difficulty is the fact that many genuinely earn their income from self-employment, for instance music tutoring, as well as earning income from employment **and** running a professional arts business.

Given the relatively low levels of income achieved by many musicians and given the necessary expenditure involved in pursuing their careers, the MCA considers that non-commercial loss provisions set out in Division 35 of the Income Tax Assessment Act 1997 (ITTA) could be usefully revisited.

These provisions prevent tax losses from non-commercial activities that are carried on as a business being offset against income from other sources. In establishing whether a business activity results in a commercial loss, rather than a non-commercial loss, a set of tests is utilised. However, if these tests cannot be satisfied, there is a special provision, introduced in 2000-01, for activities carried out by an individual which comprise a professional arts business – specifically, where income earned from other activities is less than \$40,000, the loss from artistic activities which otherwise fail the tests set out in the ITTA can be offset against other income, capped at \$40,000, in the year in which it occurs.

Whilst this provision represented a welcome acknowledgement of the circumstances pertaining to the arts, it could nonetheless be amended to more fully reflect the circumstances of many artists, including musicians. Most musicians earn income from non arts related employment of whom some earn more than \$40,000 and for whom the concession is therefore of no assistance.

One alternative would be to remove the cap and the other would be to index the cap. Either way, it would serve to improve the financial position of those genuinely engaged in an arts business.

Tax concessions for donations of musical instruments

The MCA is currently engaged in an appeal for the donation of musical instruments to be provided to victims of the Victorian bushfires whose instruments were burned. In many cases, the use of these instruments had been an important part of the lives of the individuals and through the schools or groups with which they performed, the community. The ability to bring music performance back into their lives through once again having access to a musical instrument can contribute much more than many other physical things to healing and a return to a full and satisfying life.

The appeal has been successful. However, it may have been even more successful had tax deductions been available for the value of the donated instruments.

The regulations now in place allow a deduction if the instrument has a value of more than \$5,000 or has a lesser value but was purchased in the previous twelve months. Many of the instruments that might be available for donation were purchased years ago and then put in a closet when their owners stopped playing them. It is these instruments that are most likely to be donated and would suit most of those whose instruments were lost. They are almost all worth less than \$5,000 or not purchased in the preceding year.

The MCA is also considering establishing a program to collect such instruments for use by children in public schools or non-profit community organisations such as bands and orchestras. This would assist greatly in expanding the school and community instructional programs where school systems or community organisations cannot afford the enabling musical instruments.

We know there are thousands of unused instruments in the community that could be passed from private to public or community ownership and benefit our children. The current tax concession regime is essentially of no assistance in encouraging such donations.

The MCA urges a revision of the current regulations governing tax deductions for the value of musical instruments and equipment donated to registered tax-deductible non-profit organisations and to suitable public entities such as schools, so as to encourage donations.

Encouraging investment in music recordings

The film industry has long enjoyed taxation incentives to investment in Australian films. The recording industry shares some of the obstacles to investment that inhibit film production. For instance, only a low percentage of films, and recordings, are financially successful so there is a high risk factor for investors, coupled with a lack of understanding of a market itself undergoing rapid change.

The MCA is not in a position to offer a more detailed analysis or proposal at this time. There is discussion within the sector as to whether taxation incentives might address some issues that have been difficult to resolve by other means. These brief remarks flag that there could be an opportunity

through the taxation system to build a more successful sound recording sector and associated exports.

The MCA requests the opportunity to send an addendum to this submission at a later date.

Thank you for the opportunity to make a submission to this most important review.

Sincerely

Dr Richard Letts AM
Executive Director