

The Board of Taxation
Submission from the Artists Foundation of WA
Division 35 (Non-commercial losses)

The Artists Foundation of WA [AFWA] is the peak representative body for visual artists in WA. A membership based service and advocacy body, AFWA has around 2000 artists on its data base. Currently 600 of them are financial members, in itself a stark reflection of the entrenched poverty of the sector.

AFWA makes this submission to assist the Board of Taxation in its post implementation review of Division 35.

Whilst we understand the Board of Taxation has a public duty to ensure tax shortcuts are not encouraged, artists have been inadvertently caught up in the provisions, with the end result being even more financial hardship in an already impoverished sector.

AFWA strongly endorses the submission made by the Australia Council for the Arts, and the Arts Law Centre of Australia to the Board of Taxation, requesting an exemption from the provisions of Division 35 [Non-commercial losses] for professional artists. We endorse the position taken for the following reasons, substantiated by our own extensive knowledge of the economic realities of visual artists in WA.

1. Very few arts businesses could meet any of the four "commerciality" tests. The recently published Throsby Report, "Don't Give up Your Day Job" is also of assistance in substantiating this view. In WA, we could not think of one visual artist who could meet the four tests.

2. The activation of Division 35 will be counter productive to the soon to be released binding public ruling – "carrying on business as a professional artist"

This public ruling will make the Division 35 redundant, thus adding confusion to an already complex area.

In support of this submission, several examples of artist members work realities are being collected, and will be emailed separately, there being insufficient time to collect such data from members.

**Jenny Wright
Executive Director
26th Feb 04**