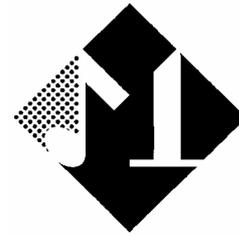


P.O. Box 287
Double Bay NSW 2028, Australia
Telephone +61 (0)2 9251 3816
Facsimile +61 (0)2 9251 3817
Email ozmusico@zeta.org.au
Website: www.mca.org.au
ABN 85 070 619 608

Subscriptions/memberships/accounts
Telephone/facsimile +61 (0)2 9327 4964
Mobile 0414 38 38 48
Email: alisoncole@ozemail.com.au

Music Council of Australia/Freedman Fellowship Program
Telephone +61 (0)2 9380 9903
Facsimile +61 (0)2 9380 8165
Email: sarahhowell@ozemail.com.au
Australia's representative to the International Music Council



Music Council of Australia

Mr Brett Heading
Chairman
Non-Commercial Losses Working Group
Board Of Taxation
taxboard@treasury.gov.au
March 5 2004

Dear Mr Heading

RE: Post-implementation Review of Non-commercial Losses (Division 35)

The Music Council of Australia thanks the Board of Taxation for its invitation to make a submission to assist in the Board's assessment of the quality and effectiveness of the non-commercial losses provisions in Division 35 of the *Income Tax Assessment Act 1997* (the Act).

The Music Council of Australia is a council of 50 distinguished persons representing the breadth of the music sector —composers, performers, educators, broadcasters, etc. across the range of musical genres. Its role is as research organisation, information provider, advocate and project manager. It is a national organisation with funding from the Australia Council, and is the Australian representative to the UNESCO International Music Council.

The Music Council of Australia endorses the submission by the Australia Council.

The Music Council also wishes to make some brief observations about the specific situation of musicians and composers.

- 1) Musicians and composers who with purpose attempt to innovate within their art form may be the greatest contributors in the long term to the development of a unique place in the world for Australian music, and at the same time take the greatest commercial risk, often waiting years before winning public acceptance and receiving any commercial return on their work. Indeed, they risk never receiving a commercial return during their lifetime. This is the nature of the art form not only in Australia but internationally.

This is not a reflection on their professionalism, their competence, or their desire to see a financial return from their work. Almost all of Australia's classical composers have given long and disciplined hours to their compositional work but had to depend over an extended period on the income from other activity to subsidise this work. This represents a subsidy by the composer to the nation.

The same can be said for performers of experimental music.

- 2) Musicians and composers who more directly address mainstream tastes may conduct their affairs in a professional and businesslike way but until they achieve a sufficient level of public interest and acclaim, find themselves with a loss-making business which they cross-subsidise from other activity. The gestation period may extend over years.
- 3) Musicians and composers commonly depend on public releases of recordings as a direct source of income and as a marketing tool used to secure more engagements and exposure.

Increasingly, these recordings are self-released, and so all expenses must be met by the musicians. Some may secure contracts from recording companies, which might appear to solve that problem. But in fact, the expenses for the recording may not be actually paid by the company but are advanced to the artist, to be repaid as the first call on artist royalties. The artist rather than the company takes that risk. Consequently artists with commercial recording contracts not only may not make any money from their recordings but may emerge in debt to the record company.

- 4) Even those musicians and composers who have achieved public acceptance may find that their business fortunes fluctuate from year to year, depending upon factors that could be within their control – or not.
- 5) Concerning the commerciality tests in Division 35:

- Statistics provided in the Australia Council submission the median creative income from the primary arts activity (middle column), and the median income from all arts activity (right column). We can infer from this that half or (much) more of these artists do not have an arts income of at least \$20,000 per year.

Musicians	10,500	20,000
Composers	4,200	19,200

- Many musicians and composers, especially those who take the greatest artistic risks or are still working to gain public acceptance (as in 1) and 2) above), will not make a profit in 3 out of 5 years

- Most musicians and composers have a portable skill which does not depend on ownership of real property

- Most musicians and composers can practise their art without need for ownership of assets worth \$100,000 or more utilised in such practice. There are exceptions – classical performers may depend on instruments valued at more than \$100,000. Some may utilise electronic or recording equipment of great value although, depending on the circumstances, the cost of serviceable equipment may in these times be much less.

- In sum, most musicians and composers would not pass the test of commerciality on the basis of use of capital property or equipment because their work does not require it. Statistically it can be shown that most would not pass the income test. We can conjecture that many would not pass the profit test.

- 6) It would be common for musicians and composers who are conducting an arts business, do not pass the commerciality tests, and depend on non-arts income for survival, to be earning less than \$40,000 in non-arts related income. Their professional skills lie in music. Their non-arts income may well be derived from areas in which they do not have high skill or do not require high skill and so are not well paid. Further, they probably work only part-time in the non-arts world. Example: the Jackson brothers are attempting to build success for their band. Both work in food preparation part time for considerably less than \$40,000/year. Their band plays perhaps three times a month, with transport and other costs eating up a large part of the fee. They put all their available discretionary funds into creating a CD which will serve as a promotional tool and may recover its costs through sales – or not. The band is in its third year and is not yet making money.
- 7) On the other hand, some musicians and composers find work as university lecturers. A full time salary exceeds \$40,000. This work depends on their musical expertise, but may not pay them to exercise it in performance or composition. They are paid to teach and administer, not necessarily to give concerts or write music. The work is arts-related but not a part of their music business.

I trust that this brief letter will assist the Board by giving some real-life context to the financial situation of music practitioners.

Yours sincerely

Dr Richard Letts AM
Executive Director