

**Submission
No 87**

**INQUIRY INTO INTEGRITY, EFFICACY AND VALUE FOR
MONEY OF NSW GOVERNMENT GRANT PROGRAMS**

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Submission to the Inquiry into the integrity, efficacy and value for money of NSW Government grant programs.

23rd August 2020

I am responding to the general purpose of the inquiry, to “inquire into and report on the integrity, efficacy and value for money of NSW Government grant programs”. Point (a) (iii) refers to “arts funding such as the Regional Cultural Fund” and I will refer to arts funding but not the Regional Cultural Fund. Regarding point (b) “the manner in which grants are determined”, this submission relates to (ii) “the transparency of decision making under grants schemes”, and in particular (iii) “the independence of the assessment of projects” and “the scope of Ministers’ discretion in determining which projects are approved”.

My background is in music. I have worked as a professional musician for 20 years and hold a Bachelor of Music (Performance) and Diploma of Social Sciences (Sociology and Social Policy), most of my work is in the jazz community and education.

I have worked for a national music service organisation and Regional Conservatorium, sat on committees for several arts organisations (at the time funded by Create NSW / Arts NSW and/or the Australia Council). Since 2014 I have sat on a number of peer assessment panels for the Australia Council, Australian Music Fund (APRA) and Art Music Awards, and have managed two national competition/awards processes (Music in Communities Awards, Freedman Fellowships).

I have applied several times to Create NSW for my band’s projects.

1. Ministerial Powers

My main concern is with Ministerial intervention in funding decisions.

Regional Cultural Fund

In May this year I read about alleged pork barrelling by the government, spending a disproportionate amount of the Regional Cultural Fund on coalition seats.¹

This is one of the specific purposes of the inquiry. I know very little about the Regional Cultural Fund and I hope this inquiry will be able to get to the bottom of what happened. I mention it for two reasons.

Firstly, although I could see how a legitimate process with integrity could lead to mostly Coalition electorates receiving funding (most regional electorates are held by the Coalition), I would not be at all surprised to hear that there was political interference in this fund. The story came shortly after the federal government’s ‘Sports Rorts’ had been revealed and not too long after some examples of the current NSW Minister for the Arts involving himself in funding decisions, which I will get to.

Secondly, it perfectly demonstrates my point, and the reason grant funding decisions should be as far removed as possible (ideally, through legislation) from the Minister. If you have a system that structurally and authentically avoids political interference in grant decisions, it also protects politicians from claims of interference. If this story emerged about the Australia Council it would be easy to deflect, saying the arms-length agency made the decisions and approved funding with their statutory power, and the Minister had nothing to do with it.

2018 Intervention

This story should be no surprise to anyone. We saw Minister Harwin intervene in funding decisions to redirect money away from small to medium arts organisations that were deemed worthy by the expert panel, to give extra funding to the Sydney Symphony (which they later returned).ⁱⁱ We have seen the complete disregard for proper process in allocation of grants in the federal coalition government with the sports rorts, a situation with quite different circumstances but similar underlying issue: an expert panel recommends applicants for a funding round but the Minister has the power to approve the funding, and is able to effectively choose their own list of successful applicants. This appears to be a legal, although I would say inappropriate, use of the Minister's power, but there is even a question about the Minister's legal authority to overrule an agency's decisions in the 'Sports Rorts' situation.ⁱⁱⁱ I do not know whether it is possible to legislate protections against this sort of intervention in the NSW government.

A document obtained by the ABC's Michaela Boland through an FOI request showed the Minister's handwritten 'no' and a comment to redirect funding away from most of the applicants that the panel recommended.^{iv} It is worth noting that this saw the light of day only because a journalist took the initiative to investigate this. It should not be left up to rejected applicants to advocate these issues publicly (particularly when their ongoing survival may depend in part on Create NSW decisions) and the ever-decreasing ranks of arts journalists to investigate.

I suggest the panel read the ABC article that I have included in the footnotes (ii) which outlines the situation fairly clearly. This is a legal but inappropriate abuse of process and should not have happened.

Multi Year Funding

I have some concerns about the recent Multi-Year Funding (announced on 30th July 2020). One of them is conflict of interest and I will get to that below.

I am suspicious, perhaps with good reason or perhaps without, about the Minister's role in this funding.

Something unusual has happened with Service Organisations, and the Contemporary Music panel. Every other panel seems to have chosen not to fund a Service Organisation, or perhaps they have but somehow those organisations have been moved out to be funded in some other way. However, the Contemporary Music panel only funded Service Organisations.

The Sydney Morning Herald reported that Writing NSW did not receive funding.^v The article also notes that the organisation's CEO was on the panel. That is another issue (see below) but one question this raises is whether the funding was recommended by the panel but did not get past the Minister's desk. I don't know how to interpret her public criticism of this as someone that ought to have known whether it was recommended for funding or not. Was this about the panel's decision making, or something that happened after the panel's recommendations? The inquiry could find out.

Suggestion: Could the Inquiry use its powers to compare the list of panel recommendations with the list of successful applicants? Were any recommended by not funded? Were any funded by not recommended?

Delays

Create NSW / Arts NSW have long been associated with long delays and uncertainty in funding announcements. I am simply adding this to the submission as another thing that statutory independence could improve.

Federal Issues

Part of my concern comes from the intervention of the federal Minister for the Arts, then George Brandis, from 2014 until he left that position. I cannot go into this issue in detail other than to say federal arts funding was taken out of the statutory, arms length body and placed under the Minister's control. This opened it up to potential political interference, tried to set a precedent (that Minister's view was that elected representatives rather than panels ought to have the power to make funding decisions, which is the opposite of my opinion) and introduced bad processes. I will address some of the processes around panels below, but the administration of some federal programs use a worse process: assessors give feedback on applications but *do not meet* (this is crucial), so others in the department of at Ministerial level have to make decisions and the assessors would not necessarily know whether there has been any intervention, because they did not meet.

The situation at Create NSW sits between what I am describing (Brandis' initiative) and the Australia Council. It's not as bad as it could be, but certainly not as good as it could be either.

2. Internal Process

I have some concerns about the process used by Create NSW in assessing grants.

Panels Don't Rank?

I referred earlier to a case in 2018 where the Minister intervened in a panel's recommendations. I could see on that document that applicants were ranked, but I have heard (cannot confirm) that sometimes they are not. The panel's recommendations should be ranked to ensure that nobody else is making decisions about priorities, ie. staff or the Minister. Ranking is easy to do and actually helps the process, perhaps the only reason not to rank applicants is if someone wanted to prioritise them later. If the Inquiry is able to find that all Create NSW panels always rank applications, ignore my comment!

Panels Don't Assess Budgets?

I have been told by staff during a feedback meeting that my application was assessed first by staff, then by the panel. When I asked about this, they said the budget and some other parts of the application are assessed by staff while the text / narrative part of the application, presumably supporting material, is assessed by the panel.

This is not good enough for a couple of reasons.

There appear to be more inputs to the decision making process than the panel (ie. staff, advisory panel, Minister) when there ought to be one (advisory panel). I have already stated that the Minister should not be involved in this, but I believe staff should not be part of the assessment process in that way. This may not be happening in all situations.

Also, the people that are chosen to assess applications on their artistic merit, viability and other criteria, should be assessing the full application. That definitely includes the budget. They ought to know, probably more so than staff, how realistic and reasonable the budget is for the proposed

activities. The budget may weight an application favourable or unfavourably enough to recommend it or not.

Panels Can Include Applicants

In the recent round of Multi Year Funding, all but one (Visual Arts) of the Artform Advisory Boards recommended funding to an organisation that was run by one of the panel's members. That is, one of the panellists was a key staff member (artistic director and/or general manager, not just a board member or peripherally involved) of a successful organisation.

There are plenty of examples of this and I am not going to list them or suggest that they should not have received funding. There are a few issues such as the privileged position of a panellist knowing what happened during that funding round, perhaps a subtle positive bias as a colleague of the panellists. This could be read as a slur on panellists and I don't mean to accuse anyone of that, in fact I have heard that the panels are quite fair and professional, I am just pointing out that it is a possibility and that the perception this could happen is unfair to all panellists. It shouldn't happen.

Obviously these people would have left the room when their application was being assessed, I think we can take that for granted. Create NSW seems to be setting the bar for conflict of interest below the point of excluding applicants from a funding round, and I would raise it. It is inevitable that panel members will sometimes have a connection to applicants, since they work in the sector and it is helpful to have panellists that are working with and have connections to artists and arts organisations. In my experience someone with such a direct connection to an application and whose job depends largely or entirely on that funding would not be allowed to sit on the panel for that round.

Transparency & Reporting

Create NSW's reporting has changed and I find it not to be very accessible. Until recently Assessment Meeting Reports were published, giving results and contextual information about the funding round such as success rate and the number of applicants. This information was quite useful as a successful or unsuccessful applicant, and was useful in compiling this submission. It is embarrassing when the success rate is extremely low.^{vi}

The Australia Council publishes a searchable database. Create NSW has been publishing PDFs with all successful applicants listed, but no other information.

The reporting could be improved.

Artform Boards / Lack of Practising Artists

I am focused on the Contemporary Music panel, and cannot speak for all of the others. The panel is full of people in industry roles, with few working musicians. I know of one that has been on this panel. Some see this as a strength of the Create NSW panels, having people working in industry organisations that understand the importance of funding those industry organisations. I see this as lacking in relevant experience. It is absolutely possible to have working musicians on funding panels that understand the workings of the industry and organisations enough to be involved.

There may be a lack of people nominating themselves for the Advisory Boards, I haven't nominated myself, but I do know that some musicians did apply.

There was a period where Create NSW used panels with representatives from mixed backgrounds. As in, someone from music, someone from theatre, someone that might be across more than one area. This may have been an interesting experiment but I don't believe that was a good model. The current situation is better, but I would suggest creating panels for each round rather than having one panel for everything. This would help avoid the conflict of interest issues I have already mentioned.

3. Improvements

Suggestion: Replace Create NSW with a statutory agency at arms length from the government, more or less the way the Australia Council operates in relation to the Federal Government.

The Australia Council has the best model for managing arts funding, independent of political intervention. Decisions are made based on criteria and assessed by an expert panel (similar to Create NSW) but the authority to approve those grants has been passed to the Australia Council as an independent statutory body.

Maintaining the current system in NSW erodes trust in the system, leaves politicians wide open to claims of pork barrelling or political intervention, and casts a shadow over the many worthy projects that *are* funded, such as those mentioned in this story. It is unfair to everyone involved.

My main suggestion is to replace the current Create NSW with an independent statutory body that would have its funding, priorities and governance decided by government but individual funding decisions strictly removed from political interference.

Suggestions: This seems unlikely so I have a list of improvements that could be made:

- Panels always assess the full application
- Panels always rank applications
- Panellists cannot be key staff members of an applicant, or an applicant themselves (for individual applications), they should remove themselves from that round
- The Minister should not intervene in panel decisions as a matter of convention, even under the current legal structure
- This inquiry should consider recommending a legal structure to (a) limit the ability of a Minister or anyone in Create NSW to intervene in panel decisions, and/or (b) improve transparency. Could there be a legal limit to Ministerial power such that a breach could trigger ICAC's interest?

- i <https://www.abc.net.au/news/2020-05-26/bega-gallery-missed-out-on-nsw-regional-arts-grant/12282108>
- ii <https://www.abc.net.au/news/2018-09-26/arts-groups-miss-out-as-minister-funds-special-project/10298452>
- iii <https://www.abc.net.au/news/2020-03-11/legal-questions-striking-at-the-heart-of-the-sport-rorts-saga/12044020>
- iv <https://www.abc.net.au/cm/lb/10299722/data/the-document-with-the-handwritten-notes-data.jpg>
- v <https://www.smh.com.au/culture/books/writing-nsw-faces-existential-crisis-after-funding-cut-20200810-p55kdg.html>
- vi <https://visualarts.net.au/news-opinion/2018/nsw-arts-industry-calls-ambitious-investment-following-poorest-funding-round-history/>