



Australian Government



Submission

Draft Regulator Performance Framework

September 2014

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About the Australia Council

The Australia Council for the Arts (the Australia Council) was originally established as an independent statutory authority by the *Australia Council Act 1975*. On 1 July 2013, the *Australia Council Act 2013* commenced, updating the functions of the Australia Council which are:

- (a) to support Australian arts practice that is recognised for excellence;
- (b) to foster excellence in Australian arts practice by supporting a diverse range of activities;
- (ba) to support Aboriginal and Torres Strait Islander arts practice
- (bb) to support Australian arts practice that reflects the diversity of Australia;
- (bc) to uphold and promote freedom of expression in the arts;
- (bd) to promote community participation in the arts;
- (c) to recognise and reward significant contributions made by artists and other persons to the arts in Australia;
- (d) to promote the appreciation, knowledge and understanding of the arts;
- (e) to support and promote the development of markets and audiences for the arts;
- (f) to provide information and advice to the Commonwealth Government on matters connected with the arts or the performance of the Council's functions;
- (g) to conduct and commission research into, and publish information about, the arts;
- (h) to evaluate, and publish information about, the impact of the support the Council provides;
- (i) to undertake any other function conferred on it by this Act or any other law of the Commonwealth;
- (j) to do anything incidental or conducive to the performance of any of the above functions.

The Australia Council's purpose is to champion and invest in Australian arts. We do this by supporting excellence across all art forms and leveraging our investment in the arts to support and build a vibrant arts ecology. We also act as a national advocate for the arts and work to increase national and international engagement. In 2013-14 the Australia Council invested \$199.2 million in grant and project funding for artists and arts organisations across the country.

The Australia Council's appropriation for 2014-15 is \$211.8 million. The Australia Council's budgeted average staffing level for 2014-15 is 127, including a leadership team of five Executive Directors and the Chief Executive Officer.

The Australia Council and the Draft Regulator Performance Framework

The Australia Council is not a regulator according to the primary definition of the term: 'a Government body that administers, monitors or enforces regulation' (page 3 of the Framework). However, it is our understanding that the Australia Council is classified as a 'regulator' because of 'imposing a regulatory cost' (page 5 of the Framework) in the form of compliance and reporting associated with our grant making.

The Australia Council submits that in order for the Draft Regulator Performance Framework (the Framework) to be relevant and applicable to a range of organisations including regulators, 'quasi-regulators' and organisations such as ours offering grants, it needs to be framed more broadly. For example, the introduction and the purpose of the Framework should explicitly refer to and address those organisations that are not actual regulators but that still fall within its scope. Likewise, the proposed KPIs and measures include language and content that is either not directly relevant to the Australia Council or that is, at times, inconsistent with our purpose and activities. The Australia Council submits that further clarification and possibly some re-wording would ensure that the Framework meets stakeholder and community expectations rather than leading to confusion and misunderstanding.

The Australia Council supports the intention expressed in the 'Implementation of the Framework' section (page 4 of the Framework) that implementation of the Framework should 'be flexible', 'cost-effective' and 'complement, rather than duplicate other processes'. It is critical that the final Framework should have the flexibility to be applied proportionately to the size and scale of organisations and commensurately to a range of regulatory activity.

Framework Timeframe (page 5)

We understand that on 1st January 2015 the Department of the Prime Minister and Cabinet will issue guidance on implementation, with the first assessment period to start on 1 July 2015. In order to pave the way for streamlined self-assessment reporting that builds on existing processes, the Australia Council proposes that the deadlines imposed should align with current *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and Annual Report requirements. It is also essential that allowance is made for organisations to implement processes for Ministerial Advisory Councils (MACs) to validate evidence and review the self-assessment reports. Further detail on the function and the operation of the MACs would be welcomed as would consultation on the timeframes for the self-assessment reports bearing the above factors in mind.

FOCUS QUESTIONS

The Performance Framework for Regulators

- *Will the Framework achieve the overall objective to encourage regulators to undertake their functions with minimum impact?*
- *Are there any elements of the Framework that are unclear or require further explanation?*

The Australia Council submits that the Framework should clearly articulate the kinds of organisations and ‘regulatory functions’ that fall within its scope as well as why various types of activity are deemed to constitute ‘regulation’.

Key performance indicators and evidence

- *Do the six KPIs clearly articulate community and business expectations of regulatory performance?*
- *Are the six KPIs in the draft Framework comprehensive?*
- *Do the examples of output/activity match the relevant KPI?
Are there any additional examples of evidence that should be included (that are applicable to a range of regulators)?*

The information included in the ‘Best Practice’ sections and the ‘Measures of good regulatory performance’ can be extrapolated to apply broadly to the Australia Council’s management of our grants and funding arrangements with recipients. However, the Australia Council submits that if the six KPIs are to be clearly relevant and applicable to ‘quasi-regulators’ and other organisations such as ours, the language and content could be broadened. For example, while the Australia Council recognises that our grants program falls within the scope of the Framework, it is not usual practice for our organisation to be referred to as a ‘regulator’, nor would our grant recipients see themselves as ‘regulated entities’. Further explanation and clarity would ensure a better understanding of why organisations such as ours fit within this context. Two examples are included below to illustrate this point.

KPI 3 – Actions undertaken by regulators are proportionate to the risk being managed

This KPI as it is currently drafted is not directly relevant to the Australia Council. Our primary purpose is to champion and invest in Australian arts – not to manage risk. We acknowledge that risk management is central to the administration of our grants program but this is part of our business rather than an explicit mandate or purpose. Further detail in the best practice section would help to explain the different kinds of risk being managed.

KPI 4 – Inspection and monitoring approaches are streamlined and co-ordinated

Again, as the Australia Council is not a ‘regulator’ in the traditional sense, ‘inspection’ is not part of our practice – indeed it is rather an alien term. Again, further explanation and clarification would allay any concerns this could raise.

Examples of evidence

The draft Framework indicates that the suggested examples of output/activity based evidence are a starting point (page 10). The Australia Council is very supportive of the proposal that organisations put forward their own examples of output/activity and supporting evidence that match each of the KPIs. This will ensure that existing reporting processes are drawn upon as much as possible and that the evidence provided is particular to the activities of individual organisations.

The review process

- *Does the proposed review process meet your expectations of a robust assessment of regulator performance?*
- *What constitutes a major regulator?*
- *What criteria should be used to select regulators for the targeted external reviews (once every three years)?*
- *Does the proposed scrutiny around self-assessments do enough to ensure that regulators will be accountable for their performance?*

Major regulators and targeted external review

Significantly more clarity is required around what constitutes a major regulator and what criteria should be used to select regulators for the targeted external reviews. The Australia Council submits that as part of the criteria proposed for **both** major regulators and targeted external reviews, minimum thresholds should be stipulated in the final Framework regarding the size, annual budget and the nature of an organisation's activity (including the kind of risk it manages) in order for it to be eligible for either form of additional review. This will create certainty and ensure that undue administrative burden is not placed on those smaller organisations that do not have the capacity to absorb it.

With regard to self-assessment, the Australia Council supports the objectives of flexibility, accountability and transparency. As suggested, the Australia Council would seek to align these assessments with existing reporting and evaluation processes in order to mitigate the costs and resources involved in meeting this requirement.

Reporting requirements

- *Will the proposed reporting requirements improve regulator transparency and accountability?*
- *How do the Framework's reporting requirements match or complement existing reporting requirements for regulators?*
- *Does the Framework sufficiently integrate with the Public Governance, Performance and Accountability Act 2013 requirements for non-financial performance assessment and reporting (currently under development?).*

The Australia Council appreciates that the Framework is not intended to increase the administrative burden on regulators. However, the Australia Council queries the statement on page 5 of the draft Framework that ‘assessment and reporting against the Framework can replace any existing individual regulator frameworks to the extent possible’. All of the Australia Council’s existing reporting arrangements are mandated by legislation. Under the *Australia Council Act 2013* and the *Public Governance, Performance and Accountability Act 2013* (‘PGPA Act’) the Australia Council is required to produce the following reporting and compliance evidence to the Minister for the Arts:

- An Annual Report;
- An annual performance statement and any other reporting requirements pursuant to the PGPA Act such as the proposed Enhanced Commonwealth Performance Framework;
- A Corporate Plan that includes ‘a review of the Council’s performance since the start of the year previous to the year in which the plan is prepared, measured against the most recent plan for any part of that period’ Section 45 (1) (d) *Australia Council Act 2013*; and
- Portfolio Budget Statements.

In addition, under section 16 of the PGPA Act, we are required to establish and maintain “appropriate systems of risk oversight and management” and appropriate internal controls. These mechanisms ensure that the Australia Council is held accountable for its performance and proper processes and practices are in place to maintain this.

The Australia Council refers to the subsequent statement on page 5 of the draft Framework that ‘where this is not possible, the assessment and reporting requirements of the Framework should complement the existing monitoring processes’ (page 5). The Australia Council supports the approach taken in the Framework that enables organisations to use and reference existing reporting processes through the self-assessment mechanism in order to meet the requirements of the Framework at the same time as mitigating additional administrative cost.