Submission to the National Cultural Policy 2026

Public Consultation

Pillar 3: Centrality of the Artist

Aligning the tax treatment of professional artists with the realities of creative work in Australia

Submitted by

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Based on findings from *Artists as Workers: An Economic Study of Professional Artists in Australia (2024),*

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Executive summary

This submission addresses *Pillar 3: Centrality of the Artist* of the next National Cultural Policy. It is made by Katya Petetskaya with Professor David Throsby AO, co-authors of *Artists as Workers: An Economic Study of Professional Artists in Australia* (2024), the seventh and most recent in a four-decade series of national artist surveys conducted at Macquarie University with the support of Creative Australia (formerly the Australia Council).

The title of our 2024 report "*Artists as Workers*" deliberately reflects the framing introduced by *Revive*. The policy intent of supporting the artist as a worker is, however, undermined by tax settings that fail to reflect the economic reality of professional artistic practice. In particular, the $20,000 Assessable Income Test and the related $40,000 "other income" threshold together exclude the majority of practising professional artists from claiming legitimate business losses against other income in the year incurred.

Evidence from our most recent national survey shows that median creative income for Australian professional artists is $11,000 per year, and that just under half of artists earn less than $10,000 from their creative work in any given year. While the $20,000 test was designed to filter genuine businesses from hobbies in the general economy, it is calibrated for circumstances that do not apply to the artistic occupations. The $40,000 "other income" cap, set in 2000 and unindexed for more than two decades, has lost approximately half its real value over that period and now captures the very group of portfolio-career artists it was originally designed to protect.

At the same time, mean expenses incurred by artists in running their creative practice have risen from approximately $10,000 in 2014/15 to $17,000 in 2021/22. The cumulative effect is that artists, who are recognised in Taxation Ruling TR 2005/1 as carrying on a genuine business, are nonetheless required to defer increasingly material business losses for indefinite periods, in a manner inconsistent with the worker status that Pillar 3 affirms. We propose four reforms that would bring the tax treatment of professional artists into alignment with that framework.

1. About this submission

Artists as Workers (2024) draws on responses from more than 600 practising professional artists across eight principal artistic occupations and reports on the reference year 2021/22. This submission is grounded in those findings and addresses Pillar 3 directly, focusing on a specific tax policy issue. This submission was prepared by Katya Petetskaya, drawing on the joint research with Professor David Throsby AO. The submission's analysis and policy directions have been discussed with and supported in principle by Professor Throsby.

2. Pillar 3 and the artist as worker

The consultation paper restates the core commitment of *Revive* that artists are workers who make substantial contributions to Australia's economic and cultural life. Pillar 3 calls for cultural policy that responds to “changing conditions for creative work” and that recognises creators “across the broader economy”.

Recognition as a worker is not only symbolic. It carries practical consequences for the design of social and economic policy settings, including the tax system. Where general-purpose tax rules treat the typical patterns of artistic income as evidence of non-commerciality, the worker status that *Revive* affirmed is effectively withdrawn at the point of tax assessment. The next National Cultural Policy provides an opportunity to close this gap.

3. The non-commercial losses regime and the $20,000 test

Under Division 35 of the *Income Tax Assessment Act 1997*, losses from a business activity carried on by an individual or sole trader can only be offset against other income (such as salary and wages from arts-related teaching or non-arts employment) in the year incurred if the taxpayer satisfies the income requirement and passes at least one of four tests. The Assessable Income Test requires the business activity to have generated assessable income of at least $20,000 in the financial year. Where none of the four tests is satisfied, the loss is quarantined and deferred to a later year in which the business returns a profit.

Section 35.10(4) provides an exception for professional arts businesses (and primary production): the non-commercial losses rules do not apply if the artist’s assessable income from other sources is less than $40,000. This concession was introduced in recognition that artists’ creative incomes are characteristically low and irregular. However, both the $20,000 threshold and the $40,000 “other income” threshold have remained unchanged since the regime was introduced in 2000. Neither has been indexed; neither reflects the income distribution of practising professional artists in 2026.

4. Evidence from Artists as Workers

The following findings from the latest National Artists Survey (2024), reporting on the 2021/22 financial year, are directly relevant to the design of the non-commercial losses regime as it applies to professional artists.

4.1 Creative income is low and skewed

- **Mean gross creative income:** $23,200 per year (up from $18,800 in the 2014/15 reference year).
- **Median gross creative income:** $11,000 per year (up from $6,000 in the 2014/15 reference year), indicates that half of all professional artists earn less than $11,000 from their creative work.
- **Just under half of all professional artists** earn less than $10,000 from creative work in a given year. **Only 15%** earn more than $50,000 from creative work.
- **24%** of professional artists earned zero creative income in 2021/22, up from 17% in 2014/15, despite spending significant time on creative work.

Although mean creative income now sits marginally above the $20,000 Assessable Income Test, the median is little more than half the threshold and is the more reliable measure for a skewed distribution. The test is, therefore, met by only a minority of professional artists in any given year and produces erratic outcomes that bear no necessary relationship to whether the artist is genuinely carrying on a business.

4.2 Most artists work as self-employed individuals

- **78%** of artists work as freelancers or self-employed in their principal artistic occupation; the figure remains close to the long-term peak of 81% recorded in 2014/15.
- **63%** of artists operate as unincorporated sole traders with an ABN, which is the dominant business form for artistic practice.
- **Casualisation has continued to deepen** in artists' arts-related and non-arts work: freelance/self-employed arrangements in arts-related work rose from 40% in 2014/15 to 59% in 2021/22. In non-arts work, from 26% to56 %.

The non-commercial losses regime applies precisely to individuals and sole traders, which is the dominant business form in the arts and reform of the regime, therefore, directly affects the working conditions of the great majority of professional artists. The continuing shift towards freelance and self-employed arrangements increases the policy relevance of the regime over time.

4.3 Portfolio careers and the $40,000 threshold

- **Mean gross arts-related income** (e.g. teaching in the art form)**:** $15,300.
- **Mean gross non-arts income:** $16,000.
- **Mean "other income"** (arts-related + non-arts combined): $31,300, which is close to the $40,000 cap on average and exceeded by the substantial proportion of artists holding arts-related jobs, such as teaching positions, together with additional non-arts work.
- **The $40,000 cap was set in 2000** and has never been indexed; adjusted for CPI to 2026, $40,000 in 2000 is in the order of $75,000 - 80,000 today, meaning the cap's real bite has approximately halved since the regime was introduced.

The $40,000 "other income" cap was originally designed to protect low-income artists holding modest outside work. Because it has not been indexed for more than two decades, it increasingly captures the very group it was intended to protect: artists who sustain their artistic practice by income from other work, arts-related and non-arts. The mean minimum annual after-tax income that artists themselves identify as necessary to meet basic living costs is $48,000, which is well above the unindexed cap.

4.4 Artists incur substantial, legitimate business expenses

- **Mean annual expenses related to creative practice:** $17,000 in 2021/22, a 70% increase on the $10,000 figure recorded in 2014/15.
- **Median annual expenses:** $8,700.

- Major cost categories: subcontractors (16%), materials and consumables (13%), equipment and software (11%), general administration (8%), freight and travel related to creative practice (7%), studio and venue rent (4%).
- These are the kinds of expenses that any small business would deduct as a matter of course.

The non-commercial losses regime does not deny that these are legitimate expenses. It defers them. For artists with low and irregular creative incomes, however, deferral can mean indefinite postponement: a loss in 2025/26 may not be utilised until a profitable year that may never arrive, while the artist is denied the offset against teaching or PAYG income earned in the same year the expense was incurred.

4.5 Artists subsidise their own practice

- Artists spend close to 60% of their working time on creative work but earn only 43% of total income from it.
- Non-arts work, occupying 18% of working time, generates almost 30% of total income.
- In real terms (CPI-adjusted), average artists' incomes have remained flat over the seven years to 2021/22, while incomes in the wider economy have risen.
- Artists' total gross income ($54,500) in 2021/22 was below the average for all persons in the labour force ($73,300) and well below comparable professionals ($98,700) and managers ($107,400).
- Only 21% of artists can meet their minimum income needs from creative work alone and 42% cannot meet them even when all earnings inside and outside the arts are combined.

The non-commercial losses rules ask, in effect, whether a business activity is generating a return commensurate with the inputs applied to it. For many professional artists, low financial return is not evidence of non-commerciality but a structural feature of the sector. A tax regime that treats this pattern as a marker of non-commerciality misunderstands artistic work.

4.6 Precariousness has intensified

Almost half (45%) of artists experienced some unemployment in the period between 2017 and 2022, compared with 24% in 2010-2015 and 28% in 2004-2009. Also:

- Around a third of artists who sought unemployment benefits encountered difficulties accessing them because of their occupational status.
- Four in ten artists do not consider their arrangements for future financial security to be adequate.

These figures reflect, in part, the COVID-19 pandemic, but they also reveal the structural fragility of artistic livelihoods. Tax policy settings that compound this fragility by denying the ordinary in-year offset of business losses work against the resilience objectives identified across the consultation paper.

5. Inconsistency with established tax policy on artists

The Australian Taxation Office's own ruling on professional artists, as in Taxation Ruling TR 2005/1 *Income tax: carrying on business as a professional artist*, provides a precise, principles-based framework for distinguishing professional artists from hobbyists. The criteria turn on commitment to artistic practice, training and skill, manner of operation and the seriousness of the intent to produce assessable income. These are the right criteria, and they are independent of any arbitrary dollar threshold.

An artist recognised under TR 2005/1 as carrying on a professional arts business has already met principled tests of commitment, training, manner of operation and intent to produce assessable income. Requiring that artist to also pass a single-year quantitative threshold creates a mismatch that falls most heavily on artists with low or irregular creative income.

6. Recommendations

We recommend that the next National Cultural Policy include a commitment to review and reform the application of the non-commercial losses regime to professional arts businesses, in consultation with relevant Commonwealth agencies. Specifically:

1. **Lower the Assessable Income Test and allow it to be satisfied on a five-year averaged basis.** For taxpayers identified as carrying on a professional arts business under TR 2005/1, consider lowering the $20,000 single-year threshold to $6,000-$8,000 in average annual creative income over five years. This would better reflect the lumpy character of artistic income[1] and capture a substantial majority of artists carrying on a professional arts business[2].
2. **Raise the "other income" threshold in the professional arts business exception.** Increase the threshold under section 35.10(4) from $40,000 to a level reflecting current portfolio careers and cost-of-living conditions. A revised threshold in the order of the CPI-adjusted value of the original cap would better reflect current portfolio careers and cost-of-living conditions.[3] Index the threshold to CPI thereafter so that it does not erode in real terms.
3. **Align the regime with TR 2005/1.** Consideration should be given to whether recognition under TR 2005/1 could provide a sufficient basis for allowing professional arts business losses to be offset in the year incurred, without requiring satisfaction of a separate quantitative test. This brings the operational tax position into alignment with the foundational ruling.
4. **Improve sector information and guidance.** Our survey shows that artists rate digital business skills, business and strategic planning and funding application skills as their weakest areas of competence. Reform of the non-commercial losses regime should therefore be accompanied

[1] As evidenced in our survey, 24% of artists earned no creative income in 2021/22 alone, but most earn some creative income across multiple years.
[2] Our broad estimate is that 65% to 75% of professional artists would be able to meet this test.
[3] We suggest a figure in the range of $80,000–$100,000, consistent with the CPI-adjusted value of the original cap and with the income profile evidenced in "*Artists as Workers*".

by accessible, sector-specific guidance to enable artists to navigate the revised rules on the same footing as other small business operators.

7. Alignment with the Pillar 3 framework

The reforms set out above are directly responsive to Pillar 3. They support fairer workplaces by allowing artists' legitimate business expenses to be treated on the same basis as those of other small business operators. They recognise artists across the broader economy by aligning tax treatment with the worker status affirmed by Revive. They also support lifelong learning and creative skills, since 70% of artists sustain their practice through arts-related work (teaching being dominant), which is currently penalised by the unindexed $40,000 cap.

The central recommendation set out in Section 6 is the priority of this submission. The same survey evidence, however, also speaks to three further reforms that have been canvassed consistently in recent sector consultations, including the National Association for the Visual Arts (NAVA) *Pay the Artist* workshop. We note them in Appendix A. They are subsidiary to the central recommendation but address the same underlying issue: the misfit between artists' working patterns and the design of mainstream tax and financial-system settings.

8. Closing comments

The Australian Government has, through *Revive*, made a sustained commitment to the centrality of the artist. The opportunity now is to ensure that the operational settings affecting artists' working lives are consistent with that commitment. The reform of the non-commercial losses regime as it applies to professional artists is a discrete, evidence-based and cost-effective measure that would deliver tangible benefits to a sector that, our research demonstrates, has not shared in the real earnings growth that other Australian workers have enjoyed. We would be pleased to provide further data or briefings to support the development of these reforms.

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References

Throsby, D. and Petetskaya, K. (2024), *Artists as Workers: An Economic Study of Professional Artists in Australia*, Macquarie University and Creative Australia, Sydney. https://creative.gov.au/sites/creative-australia/files/documents/2025-03/Artists-as-Workers-An-Economic-Study-of-Professional-Artists-in-Australia-2%20%281%29.pdf

Appendix A.

Additional tax and financial-system issues for future review

Related evidence from the survey also supports further review of income averaging, deductibility of artists' donations of their own work and superannuation arrangements for self-employed artists.

A.1 Access to income averaging

Division 405 of the *Income Tax Assessment Act 1997* provides for income averaging by "special professionals", a category that includes professional artists, authors, performers and production associates. The provisions are designed precisely to address the volatility of professional artistic income. The survey evidence indicates, however, that the provisions are significantly under-utilised:

- Only **19%** of artists benefited from income averaging provisions between 2017 and 2022.
- **12%** of artists were unsure whether they had benefited, typically those who asked for averaging but did not know the outcome.
- **68%** did not benefit at all.
- Take-up is lowest among the artistic occupations whose creative incomes are most volatile: composers (7%), craft practitioners (10%) and musicians (13%).

Recommendation: There would be value in reviewing awareness, eligibility and accessibility of Division 405 as it applies to professional artists, with a view to ensuring that artists can effectively access income averaging in the cycles when it is most needed.

A.2 Recognition of artists' donations of their own work

The survey shows that **almost 60% of artists** made in-kind donations of their own creative work in 2021/22, averaging **$5,600 per donor**. These donations support charitable causes, arts organisations, community fundraising and cultural events across Australia and represent a substantial in-kind subsidy from artists to the not-for-profit and community sectors.

Current tax provisions recognise artists' donations of their own work only in limited circumstances. The Cultural Gifts Program operates for donations of culturally significant items to eligible public collecting institutions, but most fundraising and community donations fall outside these arrangements. The result is that a recognised pattern of sector generosity goes uncredited in the tax system.

Recommendation: Review the Cultural Gifts Program and adjacent gift-deductibility provisions with a view to developing a clearer, accessible mechanism by which artists can claim an appropriate deduction for donations of their own creative work to legitimate fundraising and charitable purposes.

A.3 Superannuation arrangements for self-employed artists

With **78%** of artists working as freelancers or self-employed in their principal artistic occupation, the great majority of professional artists' creative income falls outside the employer-funded superannuation system. The consequences are evident in the survey data:

- **6%** of artists have no arrangements at all for future financial security.
- **40%** of artists do not consider their arrangements adequate.
- Artists rely heavily on personal savings and self-funded provision: **78%** point to their own savings or superannuation as a source of support for their creative practice.

Recommendation: Further policy work could consider targeted arrangements to support retirement-income provision by self-employed artists. Options for consideration include an opt-in artist-specific contribution framework, government co-contribution incentives calibrated to artistic income and other measures recognising the structural exclusion of the freelance arts workforce from employer-funded retirement income.