

# National Cultural Policy Submission

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**Submitted:** as an individual

## The right to cultural participation: Submission in response to the call for input to the new Australian National Cultural Policy

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### Introduction

This submission is related to: ‘Pillar 5: Reaching audiences’.

It is proposed that the principle of the human right to cultural participation be incorporated into the new National Cultural Policy in full recognition of Australia’s existing obligations under the International Covenant on Economic, Social and Cultural Rights.

### A charter for cultural rights in Australia

Australia’s first national cultural policy, *Creative Nation*, published in 1994, included a Preamble from its Advisory Panel which declared:

We recommend the Government’s commitment to a charter of ‘Cultural Rights’ that guarantees all Australians:

- the right to an education that develops individual creativity and appreciation of the creativity of others;
- the right of access to our intellectual and cultural heritage;
- the right to new intellectual and artistic works; and
- the right to community participation in cultural and intellectual life.<sup>1</sup>

This recommendation was, however, not taken up by the Government of the day.

This was not the first time there had been a call for such a declaration in Australia. Previously, the then chair of the Australia Council, Donald Horne, had argued:

just as we have learned to speak of political, social and economic rights we must now learn to speak of cultural rights. ... if we were to make a declaration of cultural rights, what rights would we declare? It is possible to imagine them in three interconnected groups: rights of access to the human cultural heritage; rights to new art; rights to community art participation.<sup>2</sup>

Given their similarity, it is possible that the *Creative Nation* Advisory Panel’s recommendation was inspired by these remarks.

The second national cultural plan, *Creative Australia*, published in 2013, had no advisory panel but included this passing observation: ‘Cultural rights have been recognised in international

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<sup>1</sup> Commonwealth of Australia (1994). *Creative Nation: Commonwealth cultural policy*. Canberra: Commonwealth of Australia, p. 2. (The panel comprised the following ten prominent arts figures: Gillian Armstrong, Thea Astley, Rodney Hall, Jennifer Kee, Jill Kitson, Michael Leslie, Graeme Murphy, Bruce Petty, Leo Schofield, Perter Spearritt).

<sup>2</sup> D. Horne (1986). *The public culture*. London: Pluto, p. 234.

covenants’.<sup>3</sup> However, while the document went on to mention lending rights and the rights of performers and artists, there was no further mention of cultural rights of the general population.

More recently, the Australia Council has cited the Universal Declaration in regard to the right to cultural participation in its *Strategic Plan 2021-25*, but only tentatively in a footnote.<sup>4</sup>

### **International obligations**

‘International covenants’ do indeed recognise cultural rights. They are mentioned in the *Universal Declaration of Human Rights*, drafted in the aftermath of the Second World War, and adopted by the General Assembly of the newly formed United Nations in December, 1948. Among its 31 articles, Article 27 states:

Everyone has the right freely to participate in the cultural life of the community [and] to enjoy the arts.<sup>5</sup>

Australia was among the UN member states which ‘adopted and proclaimed’ the Universal Declaration in 1948. Does this mean that the people of Australia have enjoyed ‘the right freely to participate in the cultural life of the community’ all this time? Since the Universal Declaration is intended to be, as the name indicates, *universal*, one answer is ‘yes’. However, the declaration is a statement of principle, so there is no legal requirement for UN member states to fulfil its principles in practice. This situation changed in 1966, when the UN reiterated the Universal Declaration rights in two *covenants* which had the status of treaties in international law. These were: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The latter re-stated the right to participation in cultural life in Article 15.<sup>6</sup>

Australia ratified the ICESCR in 1975, which means that the Australian Parliament accepted the terms of the treaty, including the obligation to ‘take steps, ... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures’ (Article 2.1).

The ICESCR deals with a number of weighty matters, such as the right to food, housing, social security, work and education. While these are likely to attract significant attention from governments, the UN has stated that the rights set out in the covenants are: ‘universal,

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<sup>3</sup> Australian Government (2013). *Creative Australia: National cultural policy*. Canberra: Commonwealth of Australia. p. 31.

<sup>4</sup> Australia Council for the Arts (2021). *Creativity connects us: Corporate Plan 2021-25*. Sydney: Australia Council, p.18, n. 16.

<sup>5</sup> Office of the UN High Commissioner for Human Rights (OHCHR) (2006). *The Core International Human Rights Treaties*. Geneva: United Nations. NB. Article 27 also refers to the right to ‘share in scientific advancement and its benefits’ but this is not addressed in this submission. Furthermore, Part 2 of Article 27 states: ‘Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author’. While acknowledging the importance of this dimension to the cultural sector, it is not addressed in this submission.

<sup>6</sup> Copies of the UN human rights treaties can be found in OHCHR (2006), see note 4. The right to cultural participation is also re-stated in a number of subsequent treaties to which Australia is a party, including the *Convention on the Elimination of All Forms of Discrimination against Women*, 1979; the *Convention on the Rights of the Child*, 1989; and the *Convention on the Rights of Persons with Disabilities*, 2006.

indivisible and interdependent and interrelated'.<sup>7</sup> So states which ratify the ICESCR undertake to support *all* the rights it contains, including the right to participate in cultural life.

Therefore, while the Australian government/Parliament did not adopt the 1994 Advisory Panel's recommendation for a 'Charter of Cultural Rights', by its official engagement with the UN human rights system in 1975, it undertook an obligation to become engaged in the process of ensuring that 'everyone' in Australia enjoyed the right to cultural participation.

However, the evidence suggests that Australian governments have not taken this responsibility seriously. They have been at best half-hearted.<sup>8</sup>

Having ratified the ICESCR, the Australian Government is required to submit periodic progress reports to the UN Committee on Economic, Social and Cultural Rights. In its comments on Australian reports, the Committee has repeatedly called on the government to incorporate explicit recognition of the ICESCR into domestic human rights law, which it has failed to do, arguing that existing human rights legislation and democratic processes – at federal and state/territory level – are sufficient.<sup>9</sup> However, in its own submission to the UN Committee in 2017, the Australian Human Rights Commission called for the Commission's Act of Parliament to incorporate the ICESCR.<sup>10</sup> One consequence of the government's stance has been that cultural participation of the general population is not fully recognised as a human right in the Australian human rights system.

## Conclusion

The recommendation of this submission is, therefore, that the new National Cultural Policy include a commitment for Australia to fully meet its obligations under the International Covenant on Economic, Social and Cultural Rights by recognising the general right to cultural participation in domestic law.

- Submission as an individual.
- I am agreeable to the submission being made public.

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<sup>7</sup> World Conference on Human Rights (1993). *Vienna Declaration*. New York: United Nations, p. I.5.

<sup>8</sup> This reflects a documented degree of reluctance – even exceptionalism – in regard to human rights generally, see: H. Charlesworth (1993). The Australian reluctance about rights. *Osgoode Hall Law Journal*, 31(1), 195-232. D. Otto (2001). From 'reluctance' to 'exceptionalism'. The Australian approach to domestic implementation of human rights. *Alternative Law Journal*, 26(5), 220-222.

<sup>9</sup> Documents are available on-line at: <https://www.ohchr.org/en/treaty-bodies/cescr> under 'States parties reporting'. Relevant to this discussion are: in 2000: Document E/C.12.1/Add.50; in 2009: Document E/C.12/AUS/CO/4; in 2017: Document E/C.12/AUS/CO/5.

<sup>10</sup> Australian Human Rights Commission (2017). *Information concerning Australia's compliance with the International Covenant on Economic, Social and Cultural Rights: Submission by the Australian Human Rights Commission to the UN Committee on Economic, Social and Cultural Rights*. Sydney: AHRC. Furthermore, the Australia Council cites the Universal Declaration in regard to the right to cultural participation in its recent Strategic Plan, albeit only tentatively in a footnote, see: Australia Council for the Arts (2021). *Corporate Plan 2021-25: Creativity Connects Us*. Sydney: Australia Council, p. 18