

# UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions

## Call for Submissions

In its 2007 policy *New Directions for the Arts*, the Australian Government committed to ratify and give effect to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (the Convention).

The Convention plays an integral role in achieving UNESCO's core aims – to promote unity in diversity and to recognise the common heritage of humanity. The Convention recognises the pluralism of cultural identity and promotes cultural diversity as a renewable and transformative human resource.

The Convention aims to preserve and develop the ability of people to express themselves through their artistic works and cultural expressions and to have access to those of others. The Convention also aims to promote cultural diversity as an essential part of the common heritage of humanity.

The Department of the Environment, Water, Heritage and the Arts (the Department) is the lead agency in the ratification process for the Convention. The Department is seeking views from arts, culture, Indigenous, education and heritage organisations and other relevant stakeholders on the likely implications of Australia's accession to the Convention. Your written submission is invited, in relation to –

1. Significant policy, resourcing or infrastructure implications that would affect your activities under the Convention
2. Opportunities created, or constraints imposed by, the Convention on your organisation's (or your individual) ability to protect and promote the diversity of cultural expressions, and
3. Any other significant implications of Australia's accession to the Convention.

Submissions will form an important part of the National Interest Analysis that will accompany the Convention when it is tabled in Parliament for consideration by the Joint Standing Committee on Treaties.

Submissions and enquiries should be directed to:

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**Your written submission would be appreciated by 3 November 2008.**

Visit [www.unesco.org/culture/en/diversity/convention](http://www.unesco.org/culture/en/diversity/convention) for more information about the Convention.

## **UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions**

### Background

The Convention on the Protection and Promotion of the Diversity of Cultural Expressions (the Convention) was adopted in 2005 and entered into force in March 2007. As of 12 September 2008, the Convention had been ratified by 89 states, plus the European Union.

The Australian Government committed to ratify and give effect to the Convention in its *New Directions for the Arts* policy statement of September 2007. In December 2007, the Department of the Environment, Water, Heritage and the Arts (the Department) convened an inter-departmental committee to commence the ratification process. Membership of the committee comprised officials from departments with portfolio responsibility for areas such as arts, culture, heritage, intellectual property, immigration, multicultural affairs, communications, Indigenous affairs and trade. Committee members were asked to identify any potential inconsistencies between the text of the Convention and existing domestic policy and legislative and international treaty obligations.

The committee identified two main concerns. Firstly, it was suggested that there is some ambiguity in the wording of Article 16 in relation to Australia's domestic immigration rules. It is intended that this concern be addressed by Australia making an interpretative declaration to Article 16 upon accession, which makes it clear that Australia's immigration laws and regulations are not subordinate to the Convention.

Secondly, it was also suggested that Article 20 may be inconsistent with Australia's existing international treaty obligations. It is proposed that this concern be addressed by Australia making a reservation to Article 20. The proposed reservation states that the Convention will be implemented in a manner that is compatible with Australia's other international treaty obligations.

It is not uncommon for governments to make declarations and reservations in respect to certain articles when acceding to international treaties. Copies of the Article 16 declaration and the Article 20 reservation are at [Attachment A](#) for reference.

### Scope and definitions of the Convention

Article 3 provides that the '...Convention shall apply to the policies and measures adopted by the Parties related to the protection and promotion of the diversity of cultural expressions.' Within the Convention, 'cultural expressions' are defined as '...those expressions that result from the creativity of individuals, groups and societies, and that have cultural content.' The objective of the Convention is specifically to protect and promote the diversity of cultural expressions embodied in activities, goods and services.

In Australia, measures for the protection and promotion of the diversity of cultural expressions are likely to include grants, subsidies, policies, legislation and regulations. They can be made in relation to the creation, reproduction and dissemination of cultural expressions, as well as access to, and enjoyment of, those expressions.

### Rights and obligations of parties to the Convention

As a general rule, parties to the Convention have the right to formulate and adopt their own measures at any level of government to protect and promote cultural expressions, however these measures are to be consistent with the provisions of the Convention. In particular, measures to promote the creation, production, dissemination, distribution of, and access to, cultural expressions should pay special attention to the needs of women and minority or Indigenous groups within territories. The Conventions encourages measures that facilitate: information sharing and transparency between parties; education and public awareness to promote the importance of the diversity of cultural expressions; the integration of culture in sustainable development; cultural exchanges, giving preferential treatment to developing countries; and international cooperation in situations of serious threat to cultural expressions.

Parties are obliged (at Article 8) to report to the Convention's Intergovernmental Committee on measures taken within their territory every four years. The Department will coordinate reporting, with input from stakeholders across all jurisdictions.

Details on rights and obligations are outlined in Part IV of the Convention (Articles 5 through 19).

### International Fund for Cultural Diversity

In addition to the above obligations, parties are encouraged to make regular voluntary contributions to the International Fund for Cultural Diversity that is established under Article 18 of the Convention. While the details of how the Fund will operate are still being determined, it is anticipated that these contributions would be borne by the Commonwealth.

The Fund will be used for projects that specifically protect and promote the diversity of cultural expressions according to the aims of the Convention, particularly in developing countries or regions where cultural expressions are at risk of becoming diminished. All parties are eligible to put forward projects for consideration by the Intergovernmental Committee.

### Australia's domestic treaty approval process

The next step in Australia's treaty approval process is to table the Convention in Parliament, along with a National Interest Analysis (NIA). This Call for Submissions is an important part of the NIA that is being prepared by the Department. The NIA will include a summary of stakeholder's views received by the Department and will be available for public comment when it is tabled in Parliament for consideration by the Joint Standing Committee on Treaties in late 2008 or early 2009.

Following consideration by the Committee and the approval of the Federal Executive Council, the Australian Government is able to ratify the Convention by depositing an instrument of accession to the Convention to the Director-General of UNESCO. The Convention would enter into force in Australia three months after the date of deposit of the instrument of accession. If ratification proceeds, it is anticipated that the Convention would enter into force in Australia in late 2009.

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**Article 16 declaration and Article 20 reservation**

Article 16 declaration

*Australia declares that it considers that the obligation in Article 16 on developed countries to “facilitate cultural exchanges with developing countries by granting, through the appropriate institutional and legal frameworks, preferential treatment to artists and other cultural professionals and practitioners as well as cultural goods and services from developing countries” is not intended to affect the content or interpretation of domestic legislation, regulations, rules or criteria relating to eligibility for immigration visas or permits, or the exercise of discretion under legislation or regulations or in respect of rules or criteria.*

Article 20 reservation

*With regard to Article 20 (1) (a) and (1) (b), Australia makes the following reservation:*

*This Convention shall be interpreted and applied in a manner that is consistent with the rights and obligations of Australia under any other treaties to which it is a party, including the Marrakesh Agreement Establishing the World Trade Organization. This Convention shall not prejudice the ability of Australia to freely negotiate rights and obligations in other current or future treaty negotiations.*