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# **INDEPENDENT STATUTORY AUTHORITY STATUS FOR THE NATIONAL FILM AND SOUND ARCHIVE**

**A joint public statement by**

**Archive Forum (AF)  
Australian Historical Association (AHA)  
Australian Society of Archivists (ASA)  
Friends of the National Film and Sound Archive (FNFSA)**

**5 July 2006**

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## 1 Introduction

1 The National Film and Sound Archive (NFSA) is Australia's national audiovisual archive. It was established in 1984 to provide for the preservation and accessibility of the nation's audiovisual heritage. Its historical background is summarised in Appendix 1. This paper sets out what is needed for the NFSA to carry out its archival functions reliably, efficiently and effectively. "Independence" and "autonomy", as defined in this paper, are not ends in themselves, but a means to an end – being the existence of an effective and sustainable guardian for the national audiovisual memory.

2 Recognising the special requirements of audiovisual heritage, UNESCO sets out minimum standards of autonomy to support organisations in their mission, and defines an audiovisual archive as an **organisation or department of an organisation which has a statutory or other mandate for providing access to a collection of audiovisual documents and the audiovisual heritage by collecting, managing, preserving and promoting.**<sup>1</sup>

3 The archivist's mission is defined by the Australian Society of Archivists as follows:

**Archivists ensure that records which have value as authentic evidence of administrative, corporate, cultural and intellectual activity are made, kept and used. The work of archivists is vital for ensuring organisational efficiency and accountability and for supporting understandings of Australian life through the management and retention of its personal, corporate and social memory.**<sup>2</sup>

4 The audiovisual heritage includes documents, objects, artefacts and technology, the latter giving AV archives a strong museological aspect. The International Council of Museums (ICOM) defines a museum as:

**A non-profit making, permanent institution in the service of society and of its development, and open to the public which acquires, conserves, researches, communicates and exhibits, for**

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<sup>1</sup> Source: Edmondson, Ray: *Audiovisual Archiving: Philosophy and Principles* (Paris, UNESCO, 2004) pp 24, 42-43. This document also defines "audiovisual heritage", "preservation" and other key terms and concepts.

<sup>2</sup> Source: Australian Society of Archivists' website [www.archivists.org.au](http://www.archivists.org.au)

**purposes of study, education and enjoyment, material evidence of people and their environment.<sup>3</sup>**

5        These definitions illustrate the philosophical and professional lineage of the NFSA within the field of memory institutions – the libraries, archives and museums which collectively maintain access to the nation’s memory. Audiovisual archives, which collect moving images and recorded sound and related material, have emerged during the 20<sup>th</sup> century as an institutional type embodying a new and increasingly recognized profession. The NFSA itself has become one of its most internationally admired exemplars.

6        The transfer of the NFSA to the Australian Film Commission on 1 July 2003 brought together two dissimilar bodies on unequal terms without the benefit of a philosophical basis for the union. The consequences of this are examined below.

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<sup>3</sup> Source: ICOM statutes (1989) Article 2.1

## 2 What's the need? Essential features of a national audiovisual archive

1 Like its peer national collecting or memory institutions<sup>4</sup>, the NFSA has two fundamental characteristics:

- The very long term nature of its activities, spanning many generations
- The “public good” nature of the institution: its broad contribution to Australian society

The governance arrangements for all these national memory institutions have certain features in common, which align the role of the institution, its functions and powers with public accountability. The key features are:

### 2 Longevity, continuity and stability.

The most sophisticated physical provisions for the preservation of, and access to, its holdings may count for little if the organisation itself is impermanent, unstable or vulnerable to sudden, major changes in its structure, functions or ethos. The continuity of curatorial expertise and corporate memory – crucial both to care of the heritage and maintenance of relationships – is equally vital to its stability and competence.

### 3 Mandate from Parliament or Government.

Whether defined in legislation or in a direction from Government, the functions and mandate of the institution need to be clearly defined. Enshrining the mandate in legislation, such as by creating it as a statutory authority, supports the stability of the institution. By conferring a legal personality, the functions and powers of the institution cannot be arbitrarily changed, but altered only through transparent due process which allows for public and parliamentary debate.

The need for an archives to have a public mandate and independent status were recommended in the Australian Law Reform Commission's review of the *Archives Act 1983* and the National Archives of Australia.<sup>5</sup> It was noted that independent status through legislation would assist to “establish a reputation as a professional and respected organisation with standing in the community, meeting the needs of ... the public”.<sup>6</sup>

### 4 Guiding philosophy and ethical basis

National memory institutions need to be motivated and guided by clearly articulated professional values and ethics, which provide an enduring framework beyond the exigencies of changing

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<sup>4</sup> National Library of Australia, National Archives of Australia, National Gallery of Australia, National Museum of Australia, National Maritime Museum, Australian War Memorial, Australian Institute of Aboriginal and Torres Strait Islander Studies, Old Parliament House, National Portrait Gallery

<sup>5</sup> Australian Law Reform Commission, *Australia's Federal Record, A review of the Archives Act 1983*, Report No. 85, 1998. Available at [www.alrc.gov.au](http://www.alrc.gov.au)

<sup>6</sup> *Ibid.*, p.61

circumstances and personalities. This framework is the basis of the institution's corporate culture and professional standards.

## **5 Accountability and transparency**

Like other public instrumentalities, national memory institutions are accountable and their administration is transparent. The normal mechanisms of accountability include a logically structured and ministerially-appointed Council, a policy framework open to public debate, relationships with appropriate professional societies, friends and other constituency groups, and a parliamentary reporting regime which allows the institution's budget, performance and range of activities to be fully recorded and publicly scrutinised.

## **6 Professional autonomy**

It follows that to fulfill its mandate, the institution has autonomy and independence in key professional matters. Legal control of collections and activities, organisational structure, disposition of its budget, public relations and professional representation should rest with the organisation. Decisions on the collection and its management should reflect the "public good" purposes of the organisation, and therefore be made according to the professional judgements that serve these ends rather than political, commercial or other short term interests.

### 3 What's the problem? Analysis of present arrangements

The Australian Film Commission (AFC), established in 1975, is a statutory authority under the Commonwealth Authorities and Companies Act 1997 (CAC Act). As a result of amendments to its Act it assumed stewardship of the NFSA from 1 July 2003. Two and a half years later it is possible to evaluate both the inherent limitations of the arrangement, and their practical application.<sup>7</sup>

#### 1 Limitations of the AFC Act:

The Act does not provide an adequate basis for a national memory institution in which public trust and confidence is justified.

The Act recognizes a “national collection” under the control of the AFC comprising:

(a) the programs that are owned by, or are in the possession of, the Commission from time to time; and

(b) all material associated with programs that is owned by, or is in the possession of, the Commission from time to time.

The Commission is empowered to develop, maintain, preserve and make available items in the national collection, although none of these terms are defined in the Act. They are therefore capable of wide interpretation.

However, *the Act does not recognise the existence of the NFSA*, or indeed of any archival entity or institution to have custody of the national collection. It makes no mention of archival values, ethos or skills. It does not offer a philosophical basis for the union of two separate and dissimilar entities.

Under the Act, the NFSA no longer has any formal institutional existence, and in practice it has been reduced to an administrative division of the AFC. It has no legal personality, and therefore no ultimate control over, or ownership of, the “national collection”. Its only powers are those delegated from time to time by the AFC; *as an administrative division, the NFSA can be radically altered or even abolished at any time by decision of the AFC*. This danger is already apparent in changes which have occurred, or have been proposed, under the AFC.

*The Act therefore provides no basis for the longevity, continuity, stability and professional autonomy generally accepted as essential for national memory institutions.*

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<sup>7</sup> It is not the purpose of this document to recount the detail of either the Government's *decision* to transfer the NFSA to the AFC or the AFC's controversial *handling* of its mandate with respect to the NFSA. A large variety of writings on these topics can be accessed through the websites of Friends of the NFSA at <http://www.archivefriends.org.au/>, Archive Forum at <http://www.afiresearch.rmit.edu.au/archiveforum/> and the AFC at [www.afc.gov.au](http://www.afc.gov.au). An overview essay, *What's a nice archive like you doing in a place like this*, appeared in *Archives and Manuscripts*, journal of the Australian Society of Archivists, Vol 32 No 2, November 2004

## 2 The character of the AFC

As a funding and promotional agency the AFC is essentially an instrument of Government policy for the film industry. Policies change, and as a result the AFC's traditional functions might in future cease or be transferred to other agencies. This propensity is demonstrated in the AFC's history and in recurring debate about its utility and survival.

By contrast, national archives and museums are, by nature and definition, permanent entities which are to be perceived and trusted as such. *To make a permanent entity subordinate to such an agency, without any safeguards for its continuity beyond the agency's life, is contradictory. No such safeguards exist in the present Act.*

## 3 Practical limitations

The acquisition of the NFSA approximately doubled the AFC's budget and tripled the size of its staff. It widened the AFC's range considerably, and also took it, for the first time, into the realm of sound as well as moving images. The AFC was created to serve a narrow film industry constituency, while the NFSA was created to serve a broad public constituency. There is a wide gulf between these worldviews, and logically a complete reformation of the Commission's membership and ethos would be needed to embrace them.

There has been no such reformation. What happened in practice on 1 July 2003 was not a merger of two organisations, but a hostile takeover of a large organisation by a small one, with the AFC setting out to impose its own worldview on the NFSA and seeking to progressively subsume it, despite Government assurances to the contrary.<sup>8</sup>

So the AFC remains the Australian **Film** Commission (not the Australian **Film and Sound** Commission). The traditional film industry skills base of its Board of Commissioners is unchanged: since July 2003 there has been no move to incorporate substantial archival expertise and experience into the Board.<sup>9</sup> Such a Board will be consequently limited in its ability to provide leadership and informed governance of an archives program. At best it will be dependent on advice from the NFSA and it could easily find itself making decisions without full awareness of their impact.

On the other hand, the AFC's film industry clientele might be understandably concerned if the present concentration of film industry expertise and knowledge were diluted as a result, and the Commission had less capacity and time to deal with the industry's concerns. *The potential for either or both communities to be permanently disenfranchised arises, thereby inviting continuing protest.*

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<sup>8</sup> “[The NFSA] is a separate organisation with a separate objective...[it] will not be subsumed by the AFC” *Hon Peter McGauran, House of Representatives Hansard 18 June 2003 pp 15925,15926*

<sup>9</sup> In debate on amendments to the AFC Act, Senator Bob Brown proposed a further amendment to the Act to require that “at least three members of the Commission shall be persons who have knowledge of, or experience in, film and sound archival requirements and processes”. In response, the Minister, Senator Rod Kemp, said “Now there is a merged organisation we would want to make sure of course that the expertise existed on the board to provide the vital input to board decisions. I think I can give you the assurance that people with the expertise will be appointed...I think we can achieve the intention of what this amendment is seeking.” Senator Brown's proposed amendment was defeated. *Senate Hansard 26 June 2003 p. 12268*

## 4 Perspectives and agendas

In the dynamic created by the merger, conflicting agendas have been experienced. For example:

- There has been a natural tendency to *privilege the film industry* over broader social responsibilities to other NFSA users, and to favour the moving image over the sound media. This perspective has been clearly evident in AFC policy thinking.<sup>10</sup>
- In response to approaches from another institution, AFC management contemplated *divesting the NFSA's sound function*, notwithstanding the profoundly destructive implications of such a move. It did not eventuate, but the approach was not immediately rejected out of hand.<sup>11</sup>
- For good reason, film producers and the archival community have increasingly divergent policy positions on aspects of copyright law and the control of intellectual property. *How can AFC lobby for both positions?*
- From an industry perspective it is natural to view the NFSA's collections as "AFC assets" and "content" rather than as national heritage and public assets, artifacts and works. AFC corporate culture and legal style is conditioned by the need to support a commercial industry and lobby for commercial advantage. *In this setting the NFSA becomes an inventory rather than an institution.* Archival and museum judgments and relationships are primarily cultural rather than commercial.
- *The archival profession has a recognised sense of vocation*, and many archivists spend their entire working lives in the field - and even in the same institution. Cumulative experience and long corporate memories are valued. Few NFSA staff have – or need – a history of work in the film production industry. *The AFC works to an opposite ethos* of constant staff turnover, where individuals leave active film production for a few years to serve in the AFC, and are financially compensated for their absence from production when they return to the industry.
- Archives have long time horizons and need to manage for long term sustainability. The AFC is necessarily driven by short term industry needs – and politics. *This dichotomy is unlikely to make priority setting and resource allocation simple or easy.*
- NFSA's highly specialised technical infrastructure was developed to support both its own work and the needs of other memory institutions holding audiovisual collections. *It has become, by definition, the AFC's in-house technical facility and corporate needs have increasingly usurped its original purpose.*

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<sup>10</sup> For example in the *Stage II Directions* paper, December 2003

<sup>11</sup> This comment is not made lightly. The AFC's official position on the matter, in a statement on 23 November 2005, is that *There is no substance to the rumours that the AFC is divesting itself of the sound collection. To the extent that there is any suggestion of this, it is being generated by external stakeholders. The Commission has made a commitment to maintain the sound collection, and a long term strategy for the development of the sound collection is currently being formulated.*

## 5 Accountability and transparency

Prior to 1 July 2003 the Director of the NFSA was formally responsible to the Secretary of the Department of Communications, Information Technology and the Arts (DCITA). Its skills-based Advisory Council, appointed by and reporting directly to the Minister, had wide terms of reference and was independently chaired. Under a joint letter of transmission from the Council Chair and the Director, the NFSA tabled its own substantial annual report in Parliament which, among other things, set out its detailed financial statements.<sup>12</sup> The NFSA Director gave account to the Senate Estimates Committee on the same basis as other institutional heads.

Following transfer to the AFC, the NFSA no longer has its Advisory Council, nor direct access to the Minister. The NFSA Director reports to the Chief Executive Officer (CEO) of the AFC, who in turn reports to the Commission. An advisory committee, appointed and chaired by the NFSA Director, works to limited terms of reference. However, its advice is not formally published; *not even its existence* has been acknowledged in the AFC's annual report, where coverage of the NFSA's activities and issues has become brief and selective, drastically reduced compared to previous years.<sup>13</sup>

It is no longer possible to discern the NFSA's actual budget from the financial statements in the report. The NFSA does not constitute a discrete output of the AFC.<sup>14</sup> Many of the NFSA's service functions (such as accounts, personnel, and public relations) have been removed from its control.

The Archive appears in its own right in the 2002-2003 Government Directory, along with other non-statutory entities such as Old Parliament House, National Portrait Gallery and National Science and Technology Centre, as a "function with distinct branding" within DCITA. The following year, unlike the other bodies, it is no longer listed. It is simply acknowledged in small print under the entry for the AFC.<sup>15</sup>

*Because the NFSA has long term public good objectives which require accountability to the public, this rapid retreat from transparency is a matter of great concern.* Moreover, it has been accompanied by an evident reluctance on the AFC's part to respond to questions or input from stakeholders or Parliament, and increased restrictions placed on media access to NFSA staff. It is therefore not surprising that there has been a parallel increase in the activities of constituency bodies making approaches to the Minister and putting questions on the public record – many of which have so far gone unanswered.

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<sup>12</sup> Technically an "annual review" since the NFSA was not a statutory authority but an "outrider" of DCITA.

<sup>13</sup> AFC 2004/05 annual report. The AFC has recently promised that NFSA section in the 2005/06 annual report will give expanded coverage of budget, collecting and preservation activities.

<sup>14</sup> In 2004/05 the NFSA provided output 1.3 (preservation and development of Australia's national audiovisual collection) and part of output 1.4 (provision of access to and promotion of Australia's national audiovisual collection).

<sup>15</sup> *List of Australian Government Bodies 2002/2003* p 65; *List of Australian Government Bodies and Governance Relationships as at 31 December 2004* p 83. Both directories are published by the Department of Finance and Administration.

## 6 Identity

The NFSA has built a clear and unique public identity over two decades.<sup>16</sup> Both the AFC and the Minister have, at various times, publicly declared a commitment to maintaining the Archive's identity as quite separate from the AFC.<sup>17</sup> Yet *the thrust of AFC governance and policy was the opposite - to progressively subsume its identity into the generality of the AFC*. This led to strong public protest.<sup>18</sup>

There was, and is, no reason why the NFSA could not, as promised, maintain a clear and separate identity as a national memory institution while being legally part of the AFC. There are other organisations which exemplify this principle by operating autonomously within a larger entity. Indeed, as shown above, the NFSA itself did this successfully as an "outrider" of DCITA for 20 years until 2003. But in practice the dynamic of the AFC environment militated against the honouring of a clear public commitment, and the situation was not self correcting.

A case in point has been the loss of the NFSA's discrete physical identity in Sydney and Melbourne. Its offices in those cities have since been moved and co-located with the AFC where they are less visible. Since there was a Ministerial declaration that the transfer of the NFSA to the AFC *was not driven by a need to save money* and there would be no physical relocation, *it must be assumed that the rationale for the moves lay elsewhere*.

If the NFSA was a separate statutory authority, such issues would never have arisen in the first place, and would never have needed to consume the time and energy of constituency groups, nor the associated administrative energy and resources.

## 7 Institutional integrity

The NFSA is a large organisation which has now been made subordinate to a much smaller one. In this sense, the AFC tail wags the NFSA dog. Even when diminished by the loss of its support functions to the AFC, the NFSA division is still twice the size of the rest of the AFC put together.

*The dynamic of the situation favours the AFC carving up and subsuming the Archive by hiving off staff and activities, and reducing the relative size of the NFSA within the AFC structure: in effect, dismantling the institution. This intention was clearly signaled in 2003; to a large degree it has been (so far) successfully opposed by constituency pressure, but tensions and new inefficiencies remain apparent – especially so in the public access and sound areas.*<sup>19</sup>

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<sup>16</sup> From June 1999 to December 2003 it was re-branded "ScreenSound Australia" but has since reverted to its original name, National Film and Sound Archive.

<sup>17</sup> For example, Hon Peter McGauran: "The separate identity and name of ScreenSound will be preserved... there is a need to lift its profile in the general community... the National Film and Sound Archive will retain its identity under the new arrangements" *House of Representatives Hansard 18 June 2003 pp15925, 15926*; and Kim Dalton: "We consider it to be very important, as we have always said, that the archive has a distinct identity – an identity which is distinct from the Film Commission's identity and one that can operate independently, so that the archive can have a presence which is independent of the AFC." *Senate Legislation Committee for Environment, Communication, Information Technology and the Arts, Estimates hearing 17 February 2004, p ECITA 58*

<sup>18</sup> In response to constituency concerns, the AFC changed its policy in March 2006 and, within limits, will be restoring the separate identity of the NFSA.

<sup>19</sup> The AFC's *Stage II Directions* paper, released in December 2003, spelt out its intentions. Because of the controversy it created the plan has not, for the most part, been overtly implemented. On 7 December 2005 the Minister wrote to the

The same dynamic gives the AFC an incentive to encourage attrition rather than growth in the NFSA; to redefine and centralize support functions; and to direct new and additional resources, and position upgrades, away from the NFSA to other parts of its structure.

## 8 Separation of powers

Trying to integrate a broadly based memory institution like the NFSA with a narrowly based funding and promotional body like the AFC creates contradictions arising from the separate character of each. Examples:

- The NFSA subscribes to relevant professional codes of ethics and its own internal code of ethics. The AFC does not have a corporate code of ethics (and if it did an archival code would not suit its needs.) *Where activities interface, how can the NFSA enforce its ethical codes – when any action or stance of the NFSA can be overruled by the AFC?*
- Previously the NFSA and the AFC received separate budget allocations from Government. Now there is a single allocation, apportioned by the AFC. There is an *inherent risk that decisions will be influenced by short term, commercial, political or other considerations which are at odds with the ongoing societal “public good” nature of the NFSA.*
- The body which funds and promotes new films is now also the body which decides what will, and won't, be preserved – and how well. *There is a risk that collection acquisition decisions will be influenced by political, commercial or other short term factors rather than independent curatorial judgement and the “public good”.*
- The access services and priorities of an Archive serving the broad public good are not likely to be congruent with those of an AFC serving a sectional clientele.

The merging of the AFC and the NFSA fundamentally violates *the principle of the separation of powers* – the allocation of conflicting responsibilities to separate entities which can discharge them independently.

## 9 Governance, status and representation

The establishment of the NFSA gave the audiovisual heritage, in its own right, the same institutional status as “older” parts of the national memory and from 1984 it operated in professional forums on the same level as the other national memory institutions.<sup>20</sup> As a result of its transfer to the AFC it has now lost that status, both formally and as a matter of policy.

In reality, the Archive has lost the governance protections available to all other national memory institutions. There is no dedicated, ministerially-appointed skills-based Council able to guide it,

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ASA in response to resolutions passed at its October AGM calling, among other things, for the definitive withdrawal of the plan and noted that the Government was committed to the integration of the Archive within the Australian Film Commission.

<sup>20</sup> Speech by Prime Minister Hon R J L Hawke at the opening of the NFSA headquarters, 3 October 1984

defend it, set its policies and strategy, and act in its interests; there is no mechanism for it to be held publicly accountable in its own right; its professional autonomy is circumscribed; it does not control its own identity, collection, structure or budget; it is no longer recognized as an entity in government listings. Nor, like most, does it have a legal personality and a legislative mandate.

*It is now in an anomalous position in maintaining its visibility to forums such as the Collections Council of Australia, because the AFC is not the kind of organisation which has a logical place within such structures. Its freedom to relate to its peer institutions is now constrained by the reduced area of discretion available to the NFSA Director, relative to his opposite number in other institutions.*

It is unlikely that members of the general public, or the audiovisual industries, fully appreciate these realities, since neither the AFC nor the NFSA is likely to advertise the NFSA's inherent vulnerability. To do so would be to further erode the NFSA's effectiveness. Equally, to encourage false perceptions is dishonest.

## **10 Legal deposit**

Australia will eventually follow world trends and the statutory deposit of audiovisual documents will be introduced, as anticipated in 1985<sup>21</sup> and as committed to by the present Government. Just as printed publications are deposited by law in the National Library, audiovisual documents will be deposited in the NFSA – or so one would expect.

Under the present Act, however, the legal beneficiary will be the AFC, not the NFSA, because the NFSA is not mentioned in the Act and has no legal personality of its own. Unless the Act is changed accordingly, the scheme will be unable to offer depositors a legal assurance that deposited material will be placed and kept permanently within the Archive. *The uncertainty attaching to the NFSA's own survival within the AFC will attach to all material received under legal deposit.*

The same *simplicity and archival certainty* applying to printed materials deposited in the National Library should be available to creators of audiovisual documents. *Under the present Act this cannot be achieved.*

## **11 Synergies and value-added**

In the public announcements and parliamentary debate that preceded the transfer of the NFSA to the AFC in July 2003, much was said about the 'synergies' and enhanced benefits to the public and both organisations that would result, and these were advanced as the justification for their 'integration'. There were accompanying assurances about protecting and growing the separate identity of each body.<sup>22</sup>

To date there has been no official evaluation of whether these benefits have been delivered and assurances honored, although constituency bodies have argued that the track record on both counts has been poor. By this stage, therefore, it is fair to ask the fundamental question: *what has been the*

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<sup>21</sup> *Time in our hands*, Report of the NFSA Advisory Committee, 1985 pp 14,15

<sup>22</sup> The Hansard record from both the Representatives and Senate is extensive. The speech of Hon. Peter McGauran on 18 June 2003 (House of Representatives Hansard pp 15925, 15926) is perhaps representative of the Government's position. See also relevant press releases of 13 May 2005 by the AFC and the Minister for the Arts.

*value-added to the NFSA from its transfer to the AFC? Have there been any benefits accruing specifically from that relationship that would not have accrued anyway from the traditional cooperation between the two bodies? The equal and opposite question is has the NFSA been disadvantaged by the transfer, and if so, how?*

The principles of transparency and accountability apply to these questions as much as to any other, and *by now a proper independent assessment is surely due*. It should not just be left to constituency bodies to conduct it.

## **12 Professional and public support**

After some two and a half years it is clear that the present legislative arrangement has failed to gain the endorsement, ownership and support of the Archive's constituency, and is unlikely ever to do so. The AFC's performance of its mandate has been repeatedly criticized on the public record, and the AFC has all too often ignored or attacked its critics rather than respond to them. Happily, changes in personnel and policy in recent months evidence a new mood and a willingness by the AFC to begin building trust and common ground with stakeholders. Issues of transparency and consultation are at last being grappled with.

Yet while the AFC should be accountable for its performance, the essential problem lies in the legislation itself, which has brought together two philosophically dissimilar bodies on unequal terms without a cogent rationale. Everything that has happened as a result demonstrates what *can* go wrong, and what – with the best will in the world – can *keep* going wrong, until the fundamentals are corrected.<sup>23</sup>

Public support, freely given, is essential to the effective operation of the NFSA and other national memory institutions. It comes in many forms: donation of collection material and information, financial donations and sponsorship, research findings, volunteer assistance, access sought by the general public, advocacy and moral support. But the pact is mutual. The institution has to earn and keep that support by engaging responsively with its constituency, developing collections to encourage research, and operating competently, transparently and ethically. *The support which the NFSA has earned over so many years can only be given freely. It cannot be compelled by the AFC or anyone else.*

The present arrangement has set up a dynamic in which constituency bodies have reluctantly found themselves in the role of watchdogs and whistleblowers, protecting the Archive from the predations of the AFC, and to that extent diverting their energies from the support, liaison and professional input which the NFSA needs. The record indicates that this is not an outcome ever intended by Government in transferring the Archive to the AFC. It is not a dynamic that should continue.

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<sup>23</sup> “We have taken into account after a great deal of thought and contemplation the implications of the cultural objectives of the agencies, the need for appropriate governance arrangements and the relationships with key stakeholders. Integrating the AFC and ScreenSound Australia is going to provide benefits for the two organisations involved but, most importantly, for the constituencies they represent and serve.” *Hon Peter McGauran, House of Representatives Hansard 18 June 2003 p 15925*

## **4 What's the solution? Key criteria for judging adequate arrangements**

It is generally accepted that decision-making and resource control powers are aligned with accountability in achieving archival outcomes. The factors which characterise sound arrangements include:

### **1 Public confidence and trust – does it exist?**

“Public good” organisations like national archival institutions are heavily reliant on public trust – in their values, competence, integrity, stability and accountability. Out of such trust grows the credibility of the organisation, and the commitments which researchers, volunteers, donors of collection material and sponsors make to them. The stature and reputation of the organisation is a measure of the public confidence it has earned. Without such trust and confidence a national memory institution like the NFSA cannot function effectively.

Legislation does not of itself bestow trust, nor is it an automatic prerequisite. But when trust in an Archive has been built up over time, and the real significance of the *lack* of legislation is suddenly made clear by events, the loss of trust can be devastating. This is what has happened to the NFSA. Over 20 years it built a wide support base and a significant international reputation, admired as an exemplar. *Its constituency trusted that the promise of enabling legislation, to define its mandate and autonomy, would be fulfilled in due time – as it almost was, more than once.*

It has therefore fallen to voluntary professional bodies, like the sponsors of this paper, to pick up the baton and call attention to the conditions which are essential to restore and merit full public trust and confidence in the NFSA.

### **2 Identity**

Public confidence, commitment and trust attaches in the first instance to an institution's name – and, as recent history shows, this is especially true of the NFSA. Its identity, brand and public image therefore need to be under its own control and not subjugated to the identity of any other organisation.

*The NFSA's control of its own identity includes the control of its own public relations, publicity and public information, website, representation and the use of its brand.*

### **3 Functions and powers**

The NFSA is the guardian and gateway to Australia's audiovisual heritage and, like its peer national memory institutions, needs all the powers necessary to discharge that “public good”. This includes legal ownership and/or stewardship of the “national collection” and the national audiovisual heritage, and all responsibility for selection, acquisition, deselection and disposal. It is responsible for the preservation of this heritage – properly defined - and for access to it, including the observance of all contractual, legal and moral obligations attached thereto and the provision of a range of appropriate access mechanisms.

When a system for statutory deposit of audiovisual documents is introduced, the NFSA not only needs to be the legal beneficiary and custodian but needs to operate the system with complete

autonomy, and without any suggestion that choices or decisions are influenced by other than independent curatorial judgments.

*In the discharge of these professional functions, NFSA – like its peer institutions - needs its own statutory autonomy and accountability, as distinct from delegated powers which can be potentially overruled or second-guessed.*

#### **4 Control of resources**

*The NFSA's resources - including finances, property and infrastructure – therefore need to be under the NFSA's control. This is not only so it can be held accountable for their disposition, but so that planning for resource use in predictable ways can be confidently undertaken.*

Similarly, the NFSA *needs to be in control of its own internal staff affairs*, including selection and recruitment, workplace agreements and industrial relations. Its selection parameters, workplace dynamic and recruitment base are quite different from the AFC.

*It needs control of its own contracts and agreements.* Sponsors and donors need a direct relationship. They want to support and deal with the NFSA: experience shows they are less likely to want to support or deal with the AFC.

#### **5 Independence in decision making and representation**

*Independence in decision making, free of conflicts of interest or undue pressure, is a professional “given” as well as a necessity.* It is also a matter of perception as well as fact: confidence in the NFSA depends on the perception that its decisions are made on professional grounds rather than under pressure from political, commercial or sectional interests.

All aspects of corporate planning, priority setting and management need to be under the NFSA's control.

#### **6 Accountability, governance and transparency**

The NFSA's management, policies, outcomes, budget and all other aspects of its operation need to be transparent and publicly accountable. Avenues of accountability and scrutiny include (but are not limited to) an annual report tabled in Parliament, Senate Estimates Committee scrutiny, newsletters and professional journals, media debate and responses to stakeholders. For the NFSA and other national memory institutions these are more than just a matter of formality: the level of constituency confidence and support rests on both the reality and perception of transparency.

Governance mechanisms would normally include a ministerially appointed governing council and a policy framework open to public debate

## **7 Philosophy and ethos**

Like other national memory institutions, the NFSA needs a clearly stated philosophy – a framework of values, ethics and standards which pervade its management, corporate culture and decision making, and which establish it within its professional milieu. This philosophy not only provides a frame of reference for management but also for training, staff development and public education.

## **8 Legislation and independence**

Not all national memory institutions are statutory authorities, although each but the two most recently created<sup>24</sup> (excepting the NFSA) has a separate legislative base and professional independence, as that term is defined in this document. Legislation for the NFSA would logically follow the standard model for national memory institutions and give the NFSA a legal personality. Proposed parameters have long been in existence and been recently updated – the essentials are listed below and in Appendix 2.

*Pending the passage of enabling legislation, it would be to the AFC's credit, as a good steward, to do everything possible within the scope of its Act to allow the NFSA to operate as if it were independent and to position it for statutory independence.*

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<sup>24</sup> Old Parliament House, National Portrait Gallery

## 5 Conclusion

We believe the NFSA needs to:

- **Become a permanent, autonomous national institution with its own statutory base and legal personality**
- **Thereby have its identity, role, functions and powers recognised in law, and hence**
- **Formalise the *de facto* autonomy with which it operated from 1984 until its ‘integration’ with the Australian Film Commission in 2003.**

For independence to be guaranteed, and for the NFSA to be able to operate according to sound arrangements, both the necessity and inevitability of this step, so narrowly missed in the past, must be faced. Without separation from the AFC and an adequate legislative base of its own, the permanence, continuity, identity and stability of the NFSA cannot be guaranteed and will be continually at risk. The internal dynamics of the AFC will militate against them. *Accordingly, the AFC’s present stewardship of the NFSA should be regarded as a temporary situation to be ended as soon as possible.*

The NFSA’s original mandate is contained in a 1983 Cabinet decision, subsequently fleshed out in the 1985 report of the first NFSA Advisory Committee, *Time in our hands*. In its growth over 20 years the NFSA has followed the recommendations and vision set out in this document, demonstrating its effectiveness. *The major recommendation of this report, still unfulfilled, is that the NFSA should become a statutory authority (See appendix 1)*

This outcome could be achieved in one of two ways:

(a) the passage of a *National Film and Sound Archive Act* to create the NFSA as a separate authority or agency, in tandem with amendments to the *Australian Film Commission Act* providing for the transfer of relevant assets, staff, liabilities and responsibilities. A relevant precedent is the 1988 amendment to the *Australian Film Commission Act* which accompanied the setting up of Film Australia as an independent entity<sup>25</sup> and the transfer of assets, staff and responsibilities to that new body; or

(b) an amendment to the *Australian Film Commission Act* which provided for the transfer of the AFC’s non-archival functions, assets and staff to another agency or agencies, renaming the AFC as the National Film and Sound Archive, and inserting appropriate new provisions defining the functions, powers and character of the Archive.

For details see Appendix 2.

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<sup>25</sup> A Commonwealth company under the CAC Act

## Appendix 1: History

The genesis of the NFSA lies in *the National Historical Film and Speaking Record Library*, established by Cabinet decision in 1935 as part of the then Commonwealth National Library, predecessor to the National Library of Australia. It is one of four institutions which have “spun off” from the National Library over time<sup>26</sup> as the new professions, priorities, worldviews and cultures which they represent have matured in the course of natural evolution.

A 1983 Cabinet decision, announced in Parliament on 5 April 1984, established the NFSA’s mandate as follows:

*The Government will establish a new National Film and Sound Archive. The Archive will preserve moving images and recorded sound as part of Australia’s twentieth century cultural heritage. The Archive, based on the existing film and sound archives presently located in the National Library of Australia, will develop presentational material such as literature and artifacts relating to the history of Australian film and recorded sound. It will contain facilities to encourage public and industry access to the collections, and for screening old films for public viewing. The National Film and Sound Archive will be made an office within the Department of Home Affairs and Environment reporting to that Minister. Its staff and finance will be separated from the National Library immediately and its accommodation as soon as possible.*

*A National Film and Sound Archive Advisory Committee will be appointed to develop planning for the future development of the Archive... The Government has decided that there is a need for a separate institution with a charter of its own...the Government will consider the requirements further after receiving the report [from the Advisory Committee and a parallel interdepartmental committee].<sup>27</sup>*

The Advisory Committee’s terms of reference included functions and responsibilities, legislation required, resources, facilities, staffing, policies and deposit requirements. Its 136-page report, *Time in our hands*, was tabled in Parliament in November 1985. It put forward 31 recommendations, most of which have since been fulfilled. The first five dealt with accommodation, budget, and the need for legislation to establish the NFSA as a statutory authority as soon as possible.

Although legislation was prepared it was, for various circumstantial reasons, never introduced in the years following. With changes of government and mergers and reshaping of its parent department, the question of legislative independence slipped down the agenda. It was, however, revived in 2000 when the then Arts Minister, Hon Peter McGauran, advised the NFSA Advisory Council of his expectation that “arrangements for Executive Agency status [will be] progressed and [will] ensure that the independence sought by the organisation is achieved in the near future”.<sup>28</sup> The work was indeed progressed and final approval from the Department of Finance was received in late 2002. Further action, however, was then frozen pending the outcome of the Government’s review of

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<sup>26</sup> Parliamentary Library, Australian Archives (now National Archives of Australia), National Film and Sound Archive and National Portrait Gallery.

<sup>27</sup> Extracts from speech by Arts Minister Hon Barry Cohen MP on 5 April 1984.

<sup>28</sup> Letter from Hon Peter McGauran to Susan Oliver, Chair of the Council, 27 June 2000

cultural institutions, announced in December 2002. An outcome of the review, announced on 13 May 2003, was that the NFSA would be “integrated” with the Australian Film Commission.

Neither the terms of reference of the review, nor its final report, have yet been made public.

Accordingly, amendments to the AFC Act were rapidly passed through Parliament and the NFSA passed into the AFC hands with effect from 1 July 2003.

## Appendix 2

### Preferred governance arrangements for the NFSA

Most of the NFSA's peer institutions – the National Library, National Gallery, National Museum, National Maritime Museum, Australian War Memorial, Australian Institute of Aboriginal and Torres Strait Islander Studies – are statutory authorities operating under the CAC Act.<sup>29</sup> The National Archives of Australia is a prescribed agency and executive agency working under the FMA Act.<sup>30</sup> Each has its own enabling legislation.

Given its history and character – first as part of the National Library, then as an “outrider” within DCITA destined for either statutory authority or executive agency status, and currently as part of the AFC (which is a statutory authority under the CAC Act) – the most satisfactory governance model for the NFSA is that of a *statutory authority under the CAC Act*.

Official guidelines<sup>31</sup> set out possible alternatives for governance and it is clear that the NFSA exemplifies the key factors of:

- Clarity of purpose and well managed stakeholder relationships
- Need for its own enabling legislation
- Outgoing and entrepreneurial character
- Need for a skills-based governing board to guide culture, strategy and policy
- Rationale for assets to be controlled at arm's length from the Commonwealth
- Need for professional independence

The NFSA qualifies for this status because its character is so similar to other organisations which have it.

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<sup>29</sup> *Commonwealth Authorities and Companies Act 1997*.

<sup>30</sup> *Financial Management and Accountability Act 1997*

<sup>31</sup> *Governance Arrangements for Australian Government Bodies August 2005* (Department of Finance and Administration: Financial Management Reference Material No 2)