AUSTRALIAN MAJOR PERFORMING ARTS GROUP

Exposure draft: Tax and Superannuation Laws Amendment (2014 Measures No. 3) Bill 2014: in Australia special conditions

Submission to:

General Manager
Law Design Practice
The Treasury

Email: TaxLawDesign@treasury.gov.au

Contact:

Bethwyn Serow, Executive Director
bethwyns@ampag.com.au

Tel: 02 9253 5350

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Introduction

AMPAG appreciates the opportunity to comment on the current exposure draft and recognises and welcomes a number of improvements to the legislation.

In particular AMPAG welcomes the introduction of the Arts Minister as the authority in relation to determinations on entities operating within the Arts sector:

> **30-18 Fund, authority or institution must operate in Australia etc.**
> (9) A fund, or an organisation that maintains a fund, covered by item 12.1.1 of the table in subsection 30-100(1) (register of cultural 31 organisations) satisfies the conditions in this section if:
> (a) it satisfies the condition in paragraph (1)(a); and 33
> (b) the *Arts Minister makes a determination in relation to the 34 fund or organisation under subsection 30-19(2).

We also welcome the introduction of reasonableness in relation to an entity's role and responsibility in how funds are expended by third parties:

> **30-18 Fund, authority or institution must operate in Australia etc.**
> (4) For the purposes of applying subsection (3), take into account the use of the money, property or benefits by an entity outside Australia only to the extent that it would be reasonable to expect the fund, authority or institution to have knowledge of, or to obtain knowledge of, the use of the money, property or benefits outside Australia.

However, the draft is binary in nature – it's all or nothing without any consideration of the meritorious nature of the activity concerned, nor with any regard to whether the offshore activity creates the risk at which the measures are directed.

The current draft has removed the schedule for MPA listing present in this previous 2012 which we had requested was enlarged so as to exempt all major performing arts companies. Companies need clarity and certainty in relation to DGR status when trying to raise philanthropic funds for overseas activities and collaborations. As the proposed law stands, they will be compelled to seek a determination which will require them to navigate a series of hurdles and reporting, creating new red tape with no benefit to the sector. In addition, it is highly doubtful that these new reporting and assessment requirements will reduce the actual mischief being targeted by the legislation.

While we recognise philanthropists want certainty in relation to DGR status of funds donated, it is the company that carries the responsibility for proving both the purpose for which the funds are to be directed and the quality of execution of such purpose. If this legislation were to inadvertently trigger non-compliance, it would be extremely damaging to the companies' relationship with its donors and its brand reputation. Therefore, AMPAG argues there is benefit in exempting select performing arts companies. We also believe there is a need to clarify the use of certain terms relied upon in the legislation.

AMPAG's recommendations

Our thinking behind our recommendations is explained throughout this submission, but for the sake of clarity we also list them here.

1. Government prepares and releases a regulation impact statement to quantify the costs to on arts organisations in complying with the legislation.

2. Government introduces a self-assessment option to enable not-for-profit performing arts organisations avoid unnecessary red tape.

3. To preserve efficiencies and provide certainty, the draft regulations are amended to include a schedule listing the MPA companies that tour overseas or fund artist training and development or artistic collaboration overseas or overseas artistic talent or services to come to Australia for cultural engagement and exchange, now or in the future, recognising that their activities are deemed to satisfy the in Australia requirements. At the very least, restore the Australian Chamber Orchestra, Sydney Dance Company, and add Bangarra, Circus Oz and Belvoir as exempt organisations.

4. The word 'touring' is removed from 'touring arts organisations' in the legislation and explanatory memorandum and associated regulations.

5. An example is included in the EM of the treatment of expenditure for overseas goods or services that then come to Australia in part or in whole.

6. The Regulations set out clearly how determinations are made and monitored.

7. The term 'reasonable' is defined so that there is more clarity around expectations and requirements.

8. delete (4) (b) from the regulations '*and the activities it is conducting outside Australia are an effective means of achieving its purpose'*

9. Clarification is given about whether the law is to be applied retrospectively.

10. No extra layers of reporting are introduced in the enabling of the new Bill.

11. The clause in the EM—that an activity will not be effective, where there are practical alternate activities that could achieve the purpose faster, or achieve the purpose to a higher degree, using less time, money and other resources—is deleted because it raises far more ambiguities than it clarifies.

12. If the this clause is not deleted, it should be clarified to set out the meaning of 'effective' and at what stage the determination would be made.

13. It should also not require any extra reporting.

14. The EM or Regulations spell out what 'greater regulatory screening' actually means in practical terms.

15. The Government clarifies the DGR status of funds raised and used in Australia—especially when a proportion of the funds raised are used overseas but have not been deemed to comply with the 'in Australia' conditions—under the 'solely in Australia' and 'principally in Australia' test.

Who is AMPAG

AMPAG is the umbrella association of 28 not-for-profit major performing arts companies (MPAs) from around Australia (see Appendix A).

Most AMPAG members are Australian-registered charities, with a small number being statutory bodies.

The companies present theatre, dance, ballet, circus, opera, orchestral and chamber music performances around Australia as well as educational and access programs. In 2012 the AMPAG companies reached audiences of 3.6 million.

One in every five Australian school children is reached by MPA education programs each year. The companies work closely with schools and communities to develop the content. All together in 2012, they reached 537,000 school children and teachers, attending 6,000 schools performances, inspiring them, delighting them and extending their knowledge.

As well as their extensive national tours the member companies in AMPAG tour internationally. In 2013 the MPAs toured all over the world, including to Vietnam, Britain, Japan and America. In 2012 they performed 259 times in Asia, Europe and North America to 97,000 people. They also enter into coproduction with performing arts companies in other countries, support artist training overseas and conduct community engagement workshops, arts education programs and artist exchange as their role in developing artistic excellence.

In 2012 the MPAs directly employed 8400 people.

The 28 Australian major performing arts companies as a group generated ticket sales with a box office revenue in 2012 of $203 million (an increase of $28 million on 2011) and total income from all activities of almost $470 million. Each federal $1 attracts a further $2.5 dollars in either private sector support or ticket sales—an impressive result given that the companies operate in a not-for-profit environment where access, education and reach are championed alongside ticket sales and financial prudence.

The MPAs' ticket sales represent approximately 60 per cent of all ticket sales in Australia in their particular art form categories.

In the 12 years since 2001, private giving has increased $23.6 million or 308.0 per cent, tracking well ahead of CPI levels. Without that private sector support and the related commercial activity, and in the absence of an increase in government core subsidy, most of these companies would be unable to continue to operate.

'In Australia' special conditions

AMPAG agrees with the overall purpose of the 'in Australia' special conditions for income tax exempt entities, to address the mischief identified in the 2009-10 Budget as expressed in the Explanatory Memorandum:

> 1.6 The purpose of the introduction of 'in Australia' special conditions for income tax exempt entities, which took effect from 1 July 1997, was to address international tax avoidance arrangements which used charitable trusts and certain other not-for-profit (or non-profit) organisations to shift funds overseas to avoid Australian taxation.
>
> 1.7 Subsequently, the 'in Australia' special conditions have also operated to minimise the risk of income tax exempt entities being used for terrorist financing and money laundering, and to ensure the proper operation of not-for-profit entities and their use of public donations and funds.

However, AMPAG is concerned that this legislative approach will have a much broader negative impact on the community and that the current draft, if adopted will result in the government instituting a full assessment system to consider if organisations' non-Australian activities or expenditure can be determined as 'in Australia' on a case by case basis. The proposed legislation contains no option for self-assessment and no exemptions for any major performing arts company. Instead, it requires the minister to make individual determinations on any and all income tax exempt performing arts companies and any overseas or engagement activities to which they direct DGR funds.

The imposition of extra red tape on the MPAs is unnecessary. It achieves no greater integrity in addressing the mischief that this legislation is targeting but does create uncertainty for the MPAs in the interim period before determination, as well as generate additional layers of red tape.

Has the government been supplied with a regulation impact statement or will such a statement be forthcoming to quantify the costs of complying with the new legislation?

Recommendations 1 and 2

1. Government prepares and releases a regulation impact statement to quantify the costs to on arts organisations in complying with the legislation.

2. Government introduces a self-assessment option to enable not-for-profit performing arts organisations avoid unnecessary red tape.

In previous iterations of this legislation AMPAG asked that the performing arts be treated in a similar fashion to environmental organisations and foreign aid services. This recommendation was made in the context of the previous version of legislation which also provided exemptions for a number of MPAs. AMPAG recommended then and reiterates now that the legislation be introduced with MPA companies exempt.

That said, we are pleased to see the inclusion of section 30-19 Determination by Environment Minister or Arts Minister, recognising that if determinations need to be made, the expertise of the Arts Minister is preferable to the matter(s) being considered or reviewed by the ATO alone.

However, we have procedural concerns about the new condition that the Arts Minister may make a determination 'if the fund or organisation is a '***touring arts organisation'.*** We believe this term is ambiguous and unnecessarily open to interpretation.

Division 50—Exempt Entities includes a number of prescribed organisations such as religious, sport, relief and research-focused entities. No performing arts companies are listed. AMPAG would like to clarify where arts organisations, which are actively working internationally and are determined as complying with 'in Australia ' by the related minister, are to be listed and when. If these schedules are to be 'administrative' rather than 'legislative' it would be more efficient for government to simultaneously prepare an initial schedule to recognise arts organisations involved in activities overseas that are deemed to comply with the 'in Australia' requirements.

MPAs such as Bangarra, the Australian Chamber Orchestra, Circus Oz and Sydney Dance Company (and there are several more) regularly include overseas performances, workshops and artist development as part of their core activities. In 2013 Belvoir took more productions to the international stage than any other theatre company in Australia—a development that is set to continue. When government began its consultation on this legislation Belvoir was less active, MTC hadn't toured internationally and Sydney Symphony Orchestra's multi-year engagement plan with China was still on the drawing board. The many and varied performing arts-related international activities are both encouraged and praised by government and its agencies, and are very useful to government.

Government already knows the intent of these MPA companies—their objectives have been agreed by federal and state governments directly. Regular reporting already occurs and has ensured the federal government is informed of both the quantitative and qualitative nature of the major performing arts companies' activities here and abroad. The MPAs are well governed and comply with Australian laws.

Recommendation 3

3. To preserve efficiencies and provide certainty, the draft regulations are amended to include a schedule listing the MPA companies that tour overseas or fund artist training and development or artistic collaboration overseas or overseas artistic talent or services to come to Australia for cultural engagement and exchange, now or in the future, recognising that their activities are deemed to satisfy the in Australia requirements. At the very least, restore the Australian Chamber Orchestra, Sydney Dance Company, Bangarra, Circus Oz and Belvoir as exempt organisations.

Clarifying the terms

AMPAG seeks to clarify the term '**promoting the performing** arts' (see Appendix B). In this context, we believe the term should:

- take the common meaning of the word being to support or actively encourage (a cause, venture, etc.)
- include development of artistic talent, performing arts excellence and innovations as well as development of audiences and that such activity can occur both within Australia and overseas.

MPA companies' international cultural exchange is not limited to activity outside Australian borders—companies such as the Brandenburg are importing services too, for example the Whirling Dervishes will travel from Turkey later this year to perform with their orchestra. Co-productions are also common, for example State Opera of South Australia, Queensland Opera Opera, Opera Victoria and West Australian Opera together are jointly involved in an international co-production of *Otello* with opera companies in South Africa and New Zealand. There is a flow backwards and forwards of creative interaction that can include payment for international goods, services and associated artistic activity, as well as funding elements of this overseas creative activity to be brought to Australia.

AMPAG seeks to clarify the term '**touring arts organisations'**(see Appendix B). The use of the term is problematic as it implies the legislation requires the arts organisation to move across locations, nationally and potentially internationally. However, MPAs' international collaboration and associated expenditure can occur through co-productions and through the invitation of foreign performers to join the companies in Australia. Such activities are not associated with the concept of touring—and while the goods or services may travel, they do not tour.

There is an emphasis on expenditure overseas for activity taking place overseas. But how will expenditure overseas for activity in Australia be treated? There are no examples in the explanatory memorandum to the legislation about how arts organisations securing an overseas artist for a performance in Australia will be treated, even though it could involve critical even pivotal expenditure overseas.

The term 'touring' may be misleading and lead to unintentional limitations.

Benefits of performing overseas and international collaboration

AMPAG notes there are many benefits for MPAs performing overseas and collaborating with international artists and companies, including:

Professionalism—performers, musicians and artists experience the best the world has to offer, and must also compete at a comparable level.

Reputation—such visits enhance Australia's reputation as a country where the arts are encouraged and flourish a view of Australia as a country of sensibility, excellence and artistic significance. This fortifies and grows audience engagement in Australia as well as internationally

Education—many performing arts companies conduct master classes and other training activities with universities, schools and other institutions overseas.

Cultural exchange—through the worldwide exchange of musicians, performers, conductors, composers and artists, all countries enhance their understanding of each other.

Diplomacy—the performing arts are a vital component of Australia's cultural diplomacy, offering embassies and high commissions around the world the opportunity to showcase Australian talent both on and off the stage.

The companies regularly get glowing reviews in respected international media outlets—most recently Circus Oz has performed to great acclaim in North America, and the Australian Chamber Orchestra in Canada and the US.

Recommendations 4 and 5

4. The word ***touring*** is removed from '**touring arts organisations**' in the legislation and explanatory memorandum and associated regulations.

5. An example is included in the EM of the treatment of expenditure for overseas goods or services that then come in whole or in part to Australia.

How will determinations be made?

AMPAG supports the role of the Arts Minister in determining whether or not arts companies' international activities are permissible when a determination by government is required (notwithstanding the recommendation for exemption of MPAs and the introduction of a self-determination/assessment option in the first instance).

We also appreciate that the current draft makes the powers and processes of the Arts Minister's decisions relating to touring arts activities consistent with those of the Environmental Minister's in relation to environmental activities.

However, it appears that the Australian Chamber Orchestra and Sydney Dance Company are not identified in subsection 30-80(2) as exempt organisations. They were identified as exempt, after a long process of negotiation, in the Bill's 2012 iteration. We note in addition that advanced discussions for the exemption of Bangarra and Circus Oz took place in 2012 and 2013.

The 2014 Regulations specify the process by which the Arts Minister may make a determination recognising companies may be deemed to satisfy the 'in Australia' rule while conducting a level of activities overseas supported by DGR funds.

We are concerned that this regulation will introduce an unnecessary additional layer of reporting and red tape.

AMPAG questions whether the Arts Minister is required to monitor an art company's international activities on an annual basis or if a company can be

deemed to fulfil the 'in Australia' requirements subject to periodic review—for example, every five years should the Minster require it.

In the case of MPA companies, their remit, objectives and strategic plans are periodically scrutinised and agreed with the federal and state governments through their arts agencies. **AMPAG does not see value in introducing a separate assessment process.**

Given the purpose of the MPA companies is to promote the performing arts, the art form, the audience and the artist and that these companies are partially funded directly by the Arts Minister through a grant allocation administered by the Australia Council, there is no real or perceived threat that the MPA companies will engage in mischief that this legislation seeks to address.

Therefore, to introduce an additional level of reporting and monitoring is a waste of government and companies' resources. There is a further risk of uncertainty should there be a delay between ratifying the legislation and the Arts Minister completing the required determination processes for companies engaging in activities or expenditure abroad.

Recommendation 6

6. The Regulations set out clearly how determinations are made and monitored.

How will ambiguities be addressed?

The current regulatory approach introduces a number of ambiguities that threaten to increase compliance and with it red tape and a level of uncertainty that may prove unattractive to donors until such time as the Minister has made a determination.

The criteria to identify a 'touring arts organisation' are set out in the EM to the Tax Laws Amendment (2014 Measures No. #) Regulation 2014. However, there seems to be too much fluidity allowed in the interpretation of the term. They say:

> The fund or organisation's need to conduct activities outside Australia **must be genuine and reasonable in the circumstances**.

How is the term 'reasonable' defined—and is the law to be applied retrospectively?

The examples that follow (taken from the EM to the Regulations) could clearly be described as 'reasonable':

> For example, an organisation listed on the ROCO established for the sole purpose of providing musical education to West Australian school children is, in the absence of any other relevant factors, unlikely have a genuine need to conduct activities overseas.
>
> However, another organisation listed on the ROCO established for the sole purpose of promoting Australian culture overseas is likely to have a genuine need to conduct activities outside Australia to give effect to its purposes.

However, there are many other examples that would be less easily pigeon-holed. For example, a state-based performing arts company might have the opportunity to provide masterclasses in a regional centre overseas. While that kind of overseas travel would not necessarily reflect its primary purpose, it may be supported by DGR funds and it would enhance Australia's international reputation.

Defining the term 'reasonable' is crucial for understanding many of the suggested amendments to the Act. For example, the ED to the Regulations also states that:

> (4) The fund or organisation must take reasonable steps to obtain evidence showing that:
> the activities it has conducted outside Australia have been a genuine attempt to achieve its purpose; and
> (b) the activities it is conducting outside Australia are an **effective means of achieving** its purpose.

The requirement suggests gathering and acquitting evidence of intent and outcome is necessary for each individual activity or initiative. AMPAG questions the relevance of an assessment that considers if this activity is effective. Given this legislation is to stop money laundering, this requirement is inappropriate as it introduces an assessment of the program in relation to the charities objections-rather testing if the overseas expenditure of funds constitutes a form of money laundering. Is this the intent—and if so, how will this be administered?

By stating that that the activities 'have been' a genuine attempt, and that they are 'effective', is the law to be applied retrospectively in this case? We would strongly oppose jeopardising the DGR status of funds already expended overseas in good faith.

Recommendations 7 - 9

7. The term 'reasonable' is defined so that there is more clarity around expectations and requirements.

8. delete (4) (b) from the regulations '*and the activities it is conducting outside Australia are an effective means of achieving its purpose'*

9. Clarification is given about whether the law is to be applied retrospectively.

What is considered to be sufficient evidence?

We are also concerned about the evidence required to demonstrate these steps—the requirement for 'evidence' is repeated, for example:

> The fund or organisation must take **reasonable steps to obtain evidence** showing that its activities outside Australia have been a genuine attempt to achieve its purpose …
>
> If the fund or organisation works with another person (however described) on activities outside Australia, it must **take reasonable steps to obtain evidence** showing that it effectively interacts and coordinates those activities with that other person. …

> If the fund or organisation is registered with the Australian Charities and Not-for-profits Commission (ACNC), it must **provide information** demonstrating that it is in compliance with the ACNC governance standards.

Is the reporting required by both the Australia Council and the ACNC sufficient to fulfil this requirement, or would extra reporting be required? We would strongly oppose any extra onerous reporting requirements made on our members, who already report against a plethora of requirements.

For example, one NSW-based company advised that the *regular* reporting they were required to do, before the ACNC was introduced, comprised:

- Australia Council and Arts NSW—business plans, acquittals, online quarterly data input, other periodic reporting, changes in Board and senior staff
- Register of Cultural Organisations (ROCO)—half yearly return on all donations received (either from individuals or corporate donors)
- Australian Bureau of Statistics—quarterly return
- Australian Taxation Office—quarterly BAS, annual FBT return, withholding tax declarations
- Charities NSW—specific annual report information
- ASIC—AGM, changes in Board Directors etc.
- Workers Compensation—salary information on staff (which is already provided to ATO).

AMPAG supported the 2012 proposal to reduce red tape and duplication, which was the intention behind setting up the Australian Charities and Not-for-profits Commission. As we said in our submission at that time, the proposed reduction in red tape and duplication of reporting, if fearlessly and comprehensively employed, should go a long way to helping alleviate the headache of charities dealing with multiple reporting regimes.

Recommendation 10

10. No extra layers of reporting are introduced in the enabling of the new Bill.

What is considered effective?

The EM also states:

> An activity will not be effective, where there are practical alternate activities that could achieve the purpose faster, or achieve the purpose to a higher degree, using less time, money and other resources.

Such a statement does not make any attempt to balance the benefits of overseas touring—and its attendant enhancement of Australia's international reputation—with cost-effectiveness.

This clause pre-empts or overrules the decision of the company, its senior management and board to determine the best way to promote the performing arts based on their overall outlook, artistic intent and longer term vision. We would strongly oppose such a determination being made without any firm criteria or basis.

What is also not clear is when such a determination may be made—whether before or after the international engagement.

There are many ways to define the term 'effective'—and 'cost' is but one of them. The MPAs' effectiveness in touring overseas can be measured in the soft diplomacy outcomes, the relationships forged, the reviews achieved, the international reputation enhanced, the cultural exchange facilitated, and the experience gained by young artists.

Recommendation 11-13

11. The clause in the EM—that an activity will not be effective, where there are practical alternate activities that could achieve the purpose faster, or achieve the purpose to a higher degree, using less time, money and other resources—should be deleted because it raises far more ambiguities than it clarifies.

12. If the clause is not deleted, it should be clarified to set out the meaning of 'effective' and at what stage the determination would be made.

13. It should also not require any extra reporting.

Possible abuse and extra reporting

AMPAG of course fully supports putting measures in place to address possible money laundering and terrorist financing:

> 1.33 The 'in Australia' special conditions provide one of Australia's substantive measures to address possible abuse of not-for-profit entities for the purposes of money laundering and terrorist financing, and ensure the proper operation of not-for-profit entities, their use of public donations and funds, and the protection of their assets. By limiting the use of monies to specified areas, in conjunction with greater regulatory screening, this ensures those monies are expended appropriately and in a manner consistent with the eligibility for tax concession status. (Explanatory Materials, 2014)

However, we are concerned about the 'greater regulatory screening' that has been flagged, and as queried above, ask if this will entail greater reporting for our members.

Recommendation 14

14. The EM or Regulations spell out what 'greater regulatory screening' actually means in practical terms.

'Solely' and 'principally'

As we have expressed in previous responses to the iterations of the 'in Australia' special conditions, some terms concern us in the scope of their application to

both gift deductibility and income tax exemption—that is, '**solely** in Australia' and '**principally i**n Australia'. These could act to limit activities undertaken for the promotion of the performing arts by any of our members **that are not designated under the Regulations** as 'touring arts organisations' and therefore not determined to meet the 'in Australia conditions'.

The terms state:

- for gift deductibility, that the fund, authority or institution operates and pursues its purposes '**solely** in Australia'

- for income tax exemption, that the entity operates and pursues its purposes '**principally** in Australia'.

'Solely' is a more exact and limiting term, and therefore we seek to further clarify the operation of the rule.

AMPAG understands that the test 'solely' relates only to the specific DGR funds raised. We would like to clarify what is the DGR status of funds raised and used physically in Australia if a proportion of the fund is directed towards overseas activity or expenditure where a company has not received a ministerial determination that the activity may be considered to comply with the 'in Australia' requirement. Is the entire fund at risk of losing its DGR status? Is that part that is spent in or on overseas services or goods at risk of losing its DRG status on the grounds that it is being spent on non-Australia activity and/or for no Australian benefit?

Recommendation 15

15. The Government clarifies the DGR status of funds raised and used in Australia—especially when a proportion of the funds raised are used overseas but have not been deemed to comply with the 'in Australia' conditions—under the 'solely in Australia' and 'principally in Australia' test.

AMPAG would be pleased to collaborate with the minister to ensure that the mischief identified in the 2009-10 is addressed without giving rise to a regime that represents the type of complexity, uncertainty and inconsistent outcomes of the present proposals.

APPENDIX A

List of AMPAG Member Companies & their location

Adelaide Symphony Orchestra	South Australia
Australian Brandenburg Orchestra	New South Wales
Australian Chamber Orchestra	New South Wales
Bangarra Dance Theatre	New South Wales
Bell Shakespeare	New South Wales
Belvoir	New South Wales
Black Swan State Theatre Company	Western Australia
Circus Oz	Victoria
Malthouse Theatre	Victoria
Melbourne Symphony Orchestra	Victoria
Melbourne Theatre Company	Victoria
Musica Viva Australia	New South Wales
Opera Australia	New South Wales
Opera Queensland	Queensland
Orchestra Victoria	Victoria
Queensland Ballet	Queensland
Queensland Symphony Orchestra	Queensland
Queensland Theatre Company	Queensland
State Opera South Australia	South Australia
State Theatre Company of South Australia	South Australia
Sydney Dance Company	New South Wales
Sydney Symphony	New South Wales
Sydney Theatre Company	New South Wales
The Australian Ballet	Victoria
Tasmanian Symphony Orchestra	Tasmania
Western Australian Ballet	Western Australia
West Australian Opera	Western Australia
West Australian Symphony Orchestra	Western Australia

APPENDIX B

The relevant parts of the draft legislation

Determination

The kinds of determinations the Minister may make are limited to arts organisations whereby

(a) the fund or organisation is a *touring arts organisation; and

(b) the Arts Minister considers that the fund or organisation meets the requirements specified in the regulations for the purposes of this subsection.

The legislation states:

Meaning of **touring arts organisation**

(3) A fund, or an organisation that maintains a fund, is a ***touring arts organisation*** if it:

(a) is a *cultural organisation that is entered on the register of cultural organisations; and

(b) has the principal purpose of **promoting the performing arts**;

(c) meets the requirements specified in the regulations for the purposes of this subsection.

Requirements in the regulations for the purposes of the above subsection state:

30-19.02 Requirements for determination by Arts Minister in relation to a fund or an organisation that maintains a fund

(1) For subsection 30-19(2) of the Act, this regulation sets out requirements relating to a fund, or an organisation that maintains a fund.

(2) The fund or organisation must:

(a) apply to the Arts Minister for the making of a determination under subsection 30-19(2) of the Act; and

(b) make the application in a form approved by the Arts Minister for this paragraph; and

(c)include in the application:

(i) the information required to meet the requirements in sub regulations (3) to (8); and

(ii) any other information that is sufficient to allow the Arts Minister to consider whether to make the determination.

(3) The fund or organisation must:

(a) have a genuine need to conduct one or more activities outside Australia in order to give effect to its purposes; and

(b) enhance Australia's international reputation in the performing arts.

Examples: The following are circumstances that show a need to conduct one or more activities outside Australia:

(a) a purpose of the fund or organisation is to promote the arts in one or more places outside Australia;

(b) equipment or expertise necessary to give effect to the purposes of the fund or organisation is located outside Australia.

(4) The fund or organisation must take reasonable steps to obtain evidence showing that:

(a) the activities it has conducted outside Australia **have been a genuine attempt to achieve its purpose**; and

(b) the activities it is conducting outside Australia **are an effective means of achieving its purpose**.

(5) If the fund or organisation works with another person (however described) that:

(a) is located in a country in which the fund or organisation conducts an activity; and

(b) works with the fund or organisation on the activity;

(c) the fund or organisation must take reasonable steps to obtain evidence showing that it effectively interacts and coordinates the conduct of the activity with that person.

(6) The fund or organisation must not have engaged in conduct, or failed to engage in conduct, in circumstances in which the conduct or failure may be dealt with under an Australian law:

(a) as an indictable offence (whether or not the law also permits it to be dealt with as a summary offence); or

(b) by way of a civil penalty of at least 60 penalty units.

(7) If the fund or organisation is a registered entity under the *Australian Charities and Not-for-profits Commission Act 2012*, it must be in compliance.

(8) If the fund or organisation is not a registered entity under the *Australian Charities and Not-for-profits Commission Act 2012*, it must have reasonable processes in place:

(a) to ensure that it is giving effect to its purposes as set out in its governing rules; and

(b) to manage the risk of a breach of its governing rules; and

(c) to manage the risk of fraud or misconduct by an entity responsible for the management or administration of the entity.