

AMPAG Submission to:

**the Senate Standing Committee on Community Affairs;
and
the Parliamentary Joint Committee (PJC) on Corporations and Financial
Services**



**Australian Charities and Not-for-profits Commission Bill
2012**

**Tax Laws Amendment (Special Conditions for Not-for-profit
Concessions) Bill 2012**

Contact

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AMPAG: Who we are

AMPAG, as the representative body of Australia's 28 major performing arts companies, gives its member companies a national voice and presence. It was formed in 1999 because the companies saw a critical need to work together on policy issues across their art forms including ones which affect artistic quality and cost/revenue dynamics.

AMPAG's mission is to promote awareness of the contribution of major performing arts to the community and to ensure that these companies are adequately supported by the government. By doing so, AMPAG helps guarantee their long-term success and their accessibility to all Australians.

AMPAG response

AMPAG welcomes direct recognition of performing arts companies' work in the area of international affairs in the current bill and is encouraged by the improved clarity and consistency of performing arts examples included in the explanatory memorandum. AMPAG has made numerous submissions in relation to the drafting of this bill. Our members were very concerned with the ambiguities embedded in the exposure draft legislation and the explanatory memorandum.

AMPAG understands the Government does not intend to negatively affect our companies' ability to raise donations to support the very valuable cultural work they undertake overseas. The benefit of this work both extends the skills and expertise of our artist and creatives, and develops our international cultural engagement and standing. It is vital that companies can raise DGR funds to underpin these activities without fear of transgressing legal provisions.

The examples 2.147 and 2.148 (on page 32 of the explanatory memorandum) illustrate how AMPAG companies can interpret the legislation on which they will rely for retaining DGR status on funds raised to support overseas scholarships, bursaries and other training and educational opportunities for talented Australians.

The examples state;

2.147 A fund, authority or institution established and maintained solely for the purpose of providing money for scholarships, bursaries or prizes to which section 30-37 of the ITAA 1997 applies needs only to be established in Australia, and does not need to operate solely in Australia, or pursue its purposes solely in Australia. This is consistent with the current law. [Schedule 1, item 2, subsection 30-18(4)]

2.148 The scholarships, bursaries or prizes can only be awarded to Australian citizens or permanent residents for pre-approved courses, and are monitored and properly assessed. The overseas component of the scholarship is by way of study of a component of certain courses only, so while it is likely that the overseas portion would be considered an activity which is merely incidental to the operations and purposes of the entity, or minor in extent and importance when considered with reference to the operations and purposes of the entity, this removes any doubt about the outcome

All AMPAG companies are developing international performing arts strategies and partnerships, some in the form of co-productions and others in the form of international touring. For example

- the Queensland Theatre Company is developing a five-year Asian strategy

- Bangarra, after a successful season in Europe and performing with The Australian Ballet in New York this year, will tour South and North America in 2012 and 2013
- Circus Oz is continuing to work toward building a sustainable international touring circuit with planned tours in the US in both 2012 and 2013.

Funding international tours is complex and the challenge is intensified by Australia's high dollar value. Circus Oz will be seeking to support their next international tours by raising donations that are eligible for DGR status.

The inclusion of overseas activity of a performing arts company in example 1.20: Minor and incidental activities are also a welcome addition and provides some clarity for many of our companies including the orchestra's where the ratio of international activities to Australian actives is relatively low although the terminology. The example states;

An orchestra is a deductible gift recipient. In one year, it undertakes over 100 concerts in Australia attended by over 200,000 people, as well as some educational activities and workshops.

The orchestra undertakes an overseas tour comprising of 10 performances, attended by 18,000 people.

This overseas tour would be considered to be incidental when considered with reference to the orchestra's operations and pursuit of purposes in Australia, and the orchestra would not lose its deductible gift recipient status.'

The inclusion of both Sydney Dance Company (SDC) and the Australian Chamber Orchestra (ACO) in Schedule 3 of the legislation is also warmly welcomed. It formally recognises the important and legitimate benefits arts companies working overseas bring to Australia and Australians. In addition, and no less important, it provides absolute certainty for potential donors to these companies that the overseas programs to which the gifts are directed are eligible for DGR status.

Recommendation 1

The inclusion of ACO and SDC in Schedule 3 is valued and should be preserved.

However there are two issues upon which AMPAG has concerns about the structure of the new rules which we wish to draw your attention:

- The use of deductible funds for international purposes disqualifies the fund for all donations – for at least the financial year but perhaps for all periods thereafter;
- AMPAG members are developing international partnerships and activities to advance the Australian company and artists. It seems that expenses incurred in this regard will disqualify the fund of the member for gift deductibility.

The proposed amendment recognises Sydney Dance Company (SDC) and The Australian Chamber Orchestra (ACO) but not other AMPAG members. It remains AMPAG's view that all not-for-profit companies listed on ROCO should be exempt.

The proposed legislative amendment to make "a fund, authority or institution" referred to in item 1 of table in subsection 30-15(2) subject to the "in Australia" condition proposed in 30-18 has the consequence that if an entity or a fund of an entity that is otherwise approved as a DGR will not qualify as such if the entity or the fund:

- operates solely in Australia; and
- it pursues its purposes solely in Australia.

The terms 'merely incidental' or 'minor' to describe allowable overseas activities remains at odds with performing art companies own perception of the role and place overseas expenditure and associated activities have in serving their core purpose. Undertaking overseas tours or other important overseas connections of AMPAG members, would not, it seems, qualify under these "sole purpose" rules – the examples in the Explanatory Memorandum are welcome but they do not carry the force of legislation, and are not sufficiently reassuring for our members to proceed with their international activities in the knowledge that the DGR status of donations made to the entity or the fund are preserved.

Further, the proposed amendments do not indicate whether the disqualification of deductibility is retrospective for the financial year and / or whether the withdrawal of DGR status is prospective and for how long it is withdrawn. You will appreciate that, for some of our members that are DGRs in themselves (all of the entity") this would be a devastating penalty for all donations received – many of which may not at all relate to the arts or the international aspect of the entity. Similarly, for those members who only have a fund, the proposed amendment seems to have the effect that all deductibility is precluded if any part of the fund is used to support their international activities.

We wonder how the change in status of deductions already made by donors would be put into effect by the ATO. For these reasons, we recommend a mechanism that might be used to address the mischief at which the legislative amendment is directed – whilst at the same time allowing our members to undertake their international activities with certainty. –

Recommendation 2

At a minimum, ends the law be made clear to show that the "misuse" of funds only applies to the extent of the funds "misuse" and for the financial year in which it occurred.

Recommendation 3

Replace subsection 30-18(5):

A fund, authority or institution covered by section 30-80 (international affairs deductible gift recipients) satisfies the conditions in this section if it satisfies the condition in paragraph (1)(a).

with the following amendment:

A fund, authority or institution covered by section 30-80 (international affairs deductible gift recipients) **or 30-100 (cultural organisations)** satisfies the conditions in this section if it satisfies the condition in paragraph (1)(a).

Or

The amendment could explicitly state that **undertaking activities overseas to promote the purposes of the establishment in Australia are "merely incidental to its operations and pursuit of purposes in Australia"**. The use of the term "merely" in this regard is concerning as are the comments in the EM surrounding the scope of the exception to the general "sole purpose" rule.

Our other preference is the additional inclusion of both Bangarra and Circus Oz on Schedule 3 and the introduction of a mechanism that allows companies registered on ROCO to make an application to the Minister for inclusion on Schedule 3. This may be needed when a company's donors require certainty or when a company's activities trigger an unintended ineligibility to DGR status for cultural activities otherwise in keeping with advancing Australia's international cultural engagement.

The four companies—Circus Oz, Bangarra, Australian Chamber Orchestra and Sydney Dance Company—have all shared the categorisation of 'International flagships' for the same period of time. This status informed their approach to cultural and audience engagement and the very structure of the companies themselves, with international touring as an important part of their operations.

For example, Circus Oz started touring internationally in 1980. In the ten years from 1980 to 1990 the company did five international tours. Since then Circus Oz has undertaken international touring in every single year. Continuing international tours is crucial for the company to maintain critical mass—the combination of Australian capital city Big Top seasons, regional Australian touring and international touring gives the company the capacity to maintain a full-time ensemble of artists and support staff, and foster the company's artistic vibrancy.

Circus Oz made surpluses in the past from international tours that have supported the company's Australian work. However, in the current environment (with a high Australian dollar) international tours do not always break even. They do, however, make a significant and consistent contribution to the wages of the ensemble—a fixed cost that the company must cover whether the ensemble is performing or not—and they maintain the company's international foothold.

Circus Oz is currently in the process of appointing a candidate to a newly created position to increase its efforts to secure donations for a range of activities, including the possibility of these donations supporting the company's touring program.

Similarly Bangarra Dance Company has toured extensively overseas since _____. The company's structure has been shaped by the expectation, as an international flagship company, that they should not only share the creative expression and stories of Australian's Indigenous people in our cities and regional areas, but that it showcases the richness of our Indigenous culture and creativity to the world.

That Circus Oz and Bangarra have not been listed as international touring organisations appears to be an oversight. While international touring in 2010 was affected by the world's economic slump resulting in unusually low levels of international activity by all AMPAG companies, in 2011 the proportion of Bangarra and Circus Oz international performances to Australian performances was from 21–26 per cent—the same ratio range as the Australian Chamber Orchestra and Sydney Dance Company.

To exclude Bangarra and Circus Oz from Schedule 3 creates troubling ambiguities and uncertainty for both companies.

Other companies such as Belvoir, Musica Viva and The Australian Ballet remain committed to International touring but their large Australian performance schedule means the proportion of their overseas activity to Australian-based activity at this time is well below 20 per cent. However, international touring remains important to the companies and the fund raising emphasis for any AMPAG company may change over time.

International touring has been a key priority for The Australian Ballet since the formation of the company 50 years ago. In that time, the company has performed in 88 cities and 39 countries. In the early years, the company was funded to be an international ambassador for Australia. Today the company is still an important cultural ambassador overseas with its most recent tour contributing a significant component of Australia's UN Security Council campaign. These tours also validate the international reputation of the Ballet and, more generally, the national performing arts. The company's link with the rest of the world through

touring is an important platform for the retention and development of our artists and for benchmarking all aspects of our operations against global standards.

International tours increasingly require additional funding and this comes from the private sector sponsors and, even more importantly, donors. The Australian Ballet's tour to New York City in June 2012 was made possible through individual donations of approximately \$1 million coupled with more than \$350K from sponsors. Any threat to the DGR status of such contributions is a threat to overseas touring by the best of Australian performing arts.

It is therefore prudent for companies such as The Australian Ballet or Queensland Theatre Company, once its Asian focus has matured, to have a mechanism to seek application for listing within Schedule 3 under the category of the international affairs. This would remove any ambiguity and address a potential infringement that may limit their capacity to raise DGR funds for legitimate overseas cultural activities.

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- 4/ Endorsement of 'designated international touring organisations' such as the Sydney Dance Company and Australian Chamber Orchestra being excluded from the 'in Australia' provisions as long as they spend 75% of their time on activities in Australia.
- 5/ AMPAG calls for the immediate addition of Bangarra and Circus Oz as 'designated international touring organisations' and the possibility of future applications by other member companies for inclusion should circumstances make this prudent to do so.
- 6/ In monitoring those companies on Schedule 3 it AMPAG recommends that the a company's activities be considered as a whole and not limited to a crude proportional measurement between local and foreign performance numbers in isolation.

For further information contact

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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
West Australian Ballet	Western Australia
West Australian Opera	Western Australia
West Australian Symphony Orchestra	Western Australia