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The Senate Standing Committee on Community Affairs
The Parliamentary Joint Committee (PJC) on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

By email: community.affairs.sen@aph.gov.au; corporations.joint@aph.gov.au

Australian Charities and Not-for-profits Commission Bill 2012 – *Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012*

Live Performance Australia Response

About Live Performance Australia

Live Performance Australia (LPA) is the industry association representing employers' in the Australian Live Entertainment Industry.

Our Membership is extremely broad, encompassing over 360 Members across all areas of the industry. Membership ranges from performing arts companies, to arts venues, to music promoters, to industry service providers and many others. Our Membership is drawn from both the commercial and subsidised sectors of the industry.

We are aware that the Australian Major Performing Arts Group (AMPAG) has alos written to the Committee on this matter, It is worth noting that our membership overlaps with AMPAG membership base, as nearly all AMPAG Members are also Members of LPA.

LPA's main focus in this submission is therefore the large number of our small to medium company members who have gift deductibility status and conduct activities overseas and may therefore be affected by the proposed changes. The touring activities of our small to medium sector Members can and do shift over time, so it is difficult to provide an an exhaustive list of those who tour internationally.

That being said, a preliminary survey of prominent companies that tour overseas regularly and may be adversely affected by the Bill includes:

- Circa
- Australian Dance Theatre
- Chunky Move
- Lucy Guerin Association

- Australian Art Orchestra
- Arena Theatre Company
- Windmill Theatre
- Back to Back Theatre
- Urban Theatre Projects
- Polyglot

Our Response

In May 2012, LPA supported AMPAG's submission to the Exposure Draft.

We shared the fundamental concern raised within the AMPAG submission, namely that the potential impact of the proposed amendments on the arts sector would be a negative unintended consequence, and does not serve the objectives of the amendment (namely, to address potential tax avoidance, and the potential for income tax exempt entities to be used for terrorist financing and/or money laundering).

We do not believe it is the Government's intention to inhibit the international touring work of arts companies, or negatively impact Australia's cultural engagement and standing overseas. In order to undertake international touring work, it is important for many companies to undertake fundraising activities without fear of losing their Deductible Gift Recipient status.

To avoid this outcome, we supported the AMPAG proposal that organisations on the Register of Cultural Organisations should be subject to an exemption to the 'in Australia' special conditions, in a similar manner to entities on the Register of Environmental Organisations.

This approach does have some precedent. Treasury has acknowledged that some activities conducted overseas can contribute to Australia's broad public benefit and exemptions to the proposed 'in Australia' special conditions may be warranted in those circumstances. For this reason, exemptions will apply to entities that are deductible gift recipients under the category of 'international affairs', and to entities on the Register of Environmental Organisations (provided appropriate integrity requirements are met).

LPA maintains that cultural activity should form another category of potential exemption from the proposed 'in Australia' special conditions, and that the Register of Cultural Organisations provides an administratively effective mechanism to assess potential exemptions. All of the LPA member organisations identified above are on the Register of Cultural Organisations, as are all AMPAG Members.

We are disappointed that this approach will not be adopted, and we believe that without a broad based exemption on this or some other administrative basis, some of our members risk losing their DGR status, despite not being legitimate targets of legislative change.

Despite these concerns, we do welcome elements of the Draft Bill and Explanatory Memorandum which contain provisions and some useful guidance, which may allow some companies to secure the desired exemption.

On those grounds, and in concurrence with AMPAG, we welcome the following:

- The inclusion of the Australian Chamber Orchestra (ACO) and the Sydney Dance Company (SDC) in Schedule 3 of the Draft Bill, as organisations conducting 'international affairs', and therefore exempt from the proposed 'in Australia' special conditions. These specific listings are welcomed and should certainly be retained. As AMPAG have stated in their submission to the Standing Committee, this listing provide absolute certainty for potential donors to these companies, that funds donated are tax deductible.

  Further, we support Recommendations 5-6, made by AMPAG in their submission to the Standing Committee.

  Specifically, those recommendations are:

  - That Bangarra and Circus Oz be deemed 'designated touring organisations', and that a mechanism be developed to enable other companies (whether AMPAG, or small to medium arts companies to make an application to also be deemed 'designated touring organisations', should it be appropriate to a company, and the activity they undertake.

  - In monitoring the companies listed in Schedule 3 of the Bill, that 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. This may be especially important for small to medium sized companies who may be included on the list. These companies are nimble and fluid in their activities, which can vary from year to year, and can sometimes include extensive international touring.

LPA has some concerns that 'designated touring organisations' including (but not limited to) the ACO and the SDC should be subject to a '75% test' (with at least that much of their time being required to be spent on activities in Australia).

LPA has members that spend more than 25% of their time engaged in international touring, yet are certainly still Australian companies and who undertake very valuable cultural activity. Such companies should not be inhibited, or prevented, from fund raising to support those activities, or lose their DGR status if they choose to do so. It should also be noted that the major expense of any company engaging in international touring, is the payment of their Australian artists and Australian touring party. In that sense, the majority of the expenditure is directed towards Australians, and is in one sense still 'in Australia'.

Beyond the inclusion, and potential expansion, of 'designated touring companies' in Schedule 3, LPA also welcomes clause 1.130 of the Explanatory Memorandum which states:

> *"A deductible gift recipient does not fail the 'operating solely in Australia' and 'pursuing purposes solely in Australia' if the overseas activities are merely incidental to the operation and pursuit of the entity's purposes in Australia, or the overseas activities are minor in extent and importance when considered with reference to the operations and pursuit of an entity's Australian activities."*

Examples 1.18 – 1.20, regarding minor and incidental activities are particularly useful, and provide guidance which should ensure the majority of international activity undertaken by our subsidised sector Members does not threaten their deductible gift recipient status.

We do concur with AMPAG, though, that the terms 'merely incidental' or 'minor' do not sit well with how an arts company may perceive its international touring activity. It is also true that international touring activity may be substantial in the context of a company's overall activity, yet that company may still remain resolutely an Australian company, engaging in valuable international cultural work, for which DGR status should apply if the company chooses to raise funds in support of that work

For the reasons stated above, LPA retains a strong preference for the suggested approach of utilising the Register of Cultural Organisations to create a general exemption for arts companies. Although we appreciate that the Draft Bill and Explanatory Memorandum do provide guidance which may shield some of our Members from unintended consequences of the legislation, we do not believe that it goes far enough.

The guidance around the listing of the ACO and the SDC in Schedule 3 is extremely useful, although we are in agreement with AMPAG that this principle could be expanded, and applied (or made available for application) to a wider range of companies including but not limited to Circus Oz and Bangarra. For example, AMPAG have cited that such an application may be appropriate for the Australian Ballet or the Queensland Theatre Company in the short to medium term. Again, we support this proposition.

If you require further information regarding this submission, or if LPA can be of any assistance in furthering the argument for an exemption based on the Register of Cultural Organisations, please do not hesitate to contact me on (03) 9614 1111, or sdaley@liveperformance.com.au.

Yours sincerely

Suzanne Daley
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