



Parliamentary Joint Committee on Intelligence and Security

Submission to Review of the Foreign Influence Transparency Scheme Bill 2017

To the Committee,

Executive Summary

The provisions the *Review of the Foreign Influence Transparency Scheme Bill (Bill)* in this Bill are extremely broad and have major implications for arts organisations that communicate with federal government representatives or associated bodies that receive donations, support or have any kind of agreement (written or unwritten) with anyone (individual, organisation, etc.) overseas.

AMPAG is concerned about the breadth of key terms like; '**foreign principal**', '**on behalf of**', and '**political and governmental influence**'. The Bill potentially ensnares many federal funded arts organisations who develop international partnerships to contribute to Australia's artists vibrancy, international cultural exchange and diplomacy. It also runs the risk of placing a political frame around cultural engagement that seeks to build relationships that are specifically positioned to sit outside politics.

It is our understanding that the Bill, in its current form, will require every arts organisation in receipt of federal funding and engaged in international activities of any sort, to register and keep up to date every foreign **principal** along with details on the nature of that engagement in accordance with the Bill.

The penalty for failing to do so is high. It is a criminal offence for a person who is liable to register not to be registered under the scheme. Criminal offences also apply for failing to fulfil responsibilities under the scheme or providing false or misleading information in purported fulfilment of responsibilities, and for destroying records. Ignorance of the scheme is explicitly not a defence. The registration process seems quite onerous and includes details of communications and copies of materials produced. There is also provision for registration charges to be made by the commonwealth. There are exemptions for humanitarian aid, diplomats, religious organisations and for commercial or business pursuits, but none for not-for-profit arts organisations or charities.

The Australian Major Performing Arts Group AMPAG is very concerned that many arts organisations will be unnecessarily caught up in this Bill. Arts organisations will be required to report on their international activities even though none of these activities undermines Australia's democratic processes or public discourse. These activities do, however, generate significant public good through developing Australia's artistic vibrancy, build cultural understanding and friendships between countries.

The Bill will generate significant red tape, further burdening arts organisations that are already operating with very lean margins. It introduces significant penalties in the case of non-compliance that will require new risk management procedures for arts companies. None of this will help address the problem the legislation is seeking to address.

In addition, the major performing arts companies (MPAs) are closely monitored by the Australia Council for the Arts and, given the majority are also charities, they also comply with the Charities Act 2013 and are monitored by the Australian Charities and Not for profits Commission (ACNC). The current regulatory framework requires detailed disclosure that more than adequately delivers public transparency and accountability.

The legislation is too broadly drafted

- High risk of ensnaring arts organisations
- Generates significant red tape
- May compromise the non-political people to people engagement that we seek to foster through cultural collaboration and diplomacy

Recommendation

A further exemption should be added to Division 4 to ensure arts and related cultural activities are excluded.

Who We Are

The Australian Major Performing Arts Group, or AMPAG, is the umbrella group for Australia's 28 major performing arts companies (MPAs) who inspire millions through theatre, circus, contemporary dance, classical ballet, classical music, opera, musicals and comedy. (A full list of members can be found in Appendix 1.)

What is the role of the MPAs

MPAs are designated jointly as 'Majors' by the federal and state governments. It is their role to develop their art form, its artists and audiences in Australia as state, national and international flagship companies.

MPAs are all not-for-profit registered charities or government statutory bodies that successfully leverage state and federal government investment at an average ratio of 2:1. They are efficient and effective. MPAs' overall employment of Australians has grown year on year over the last three years.

The MPAs play a leadership role in the arts sector. This encompasses a commitment to the creation of professional development opportunities to advance the arts and Australian artists and foster a vibrant and sustainable culture.

MPAs International Engagement

Many MPAs are international cultural flagships for Australia that help to build foreign cultural engagement through collaboration, residencies, workshops and overseas performances. They also advance public diplomacy through providing sophisticated forums in which to nurture inter-government, business and arts' relationships here and abroad. They work closely with, but are completely independent from Australia's embassies and consuls, who also support the MPAs' efforts in foreign fundraising and securing foreign sponsorship support.

MPA international collaborations, co-productions and exchange of principal performers are examples of cultural reciprocity that benefit the Australian performing arts companies and their audiences, as well as their international partners. These activities increase our capacity to create a diverse range of vibrant work for Australian audiences and allow Australian creative expression to reach new international audiences. They also facilitate the exchange of creative practice, and organisational skills and innovation between Australian artists and their colleagues overseas.

It is also widely recognised that the arts offer unique opportunities to reflect Australia's values and identity as a stable, sophisticated and creative nation that is both culturally diverse and socially cohesive. Cultural ties promote positive images of our multicultural community, offer forums for fostering people-to-people, business-to-business and government-to-government relationships, improve market access for Australian cultural exports and promote Australian tourism and education. They set aside commercial and political tensions, and in a world where rising populist nationalism has the potential to create distrust and hostility between cultures, the ability of the arts to build people-to-people understanding and respect becomes even more important.

International arts engagement is often enabled in part by direct government funding and philanthropy leveraged from each participating organisation's respective country. Arts organisations, being separate from government and not for profit means the exclusions currently provided in Division 4 of the current Bill do not cover activities undertaken by the MPAs and other NFP arts organisations.

Examples of international arts activity by Australian arts organisations

- The HANDA opera on Sydney Harbour— a major culture event that takes place every March— receives vital funding from a Japanese philanthropist
- Black Swan State Theatre Company's 2016 production of *The Caucasian Chalk Circle* was produced in association with The National Theatre of China
- The Sydney Symphony Orchestra—five decades of building and strengthening cultural ties between Australia and Asia
- In 2015, a new partnership was established with West Australian Symphony Orchestra (WASO), China Philharmonic Orchestra (CPO) and Australia China Business Council
- The Melbourne Sydney Orchestra has been working closely with the Special Region of Yogyakarta in Indonesia and the Australia-Indonesia Centre (AIC) to strengthen our diplomatic, cultural and artistic relationships
- Opera Queensland took its co-production with New Zealand Opera of *La Cenerentola (Cinderella)* to Germany for six performances in Leipzig in 2018
- Circus Oz's landmark tour, which took place mid-2017, was the first time that Circus Oz has performed in China, but it also completed a circle that started in 1983 with the Nanjing Acrobatic Troupe's cultural exchange
- Malthouse Theatre took two shows to Edinburgh last year, and their *Picnic at Hanging Rock* co-production with Black Swan Theatre Company has returned to the Barbican this year. Queensland Theatre took *Seven Stages of Grief* to the UK last year
- Sydney Dance Company has just returned home after a whirlwind tour in South America
- Richard Tognetti, Artistic Director of the Australian Chamber Orchestra, has recently announced a three-year residency at the Barbican in the UK
- The theatre production '*Things I know to be True*' has returned to the UK stage this year as a result of a very successful collaboration between State Theatre Company of South Australia and UK theatrical innovators, Frantic Assembly, that began in 2016
- The classical music, dance and opera companies regularly welcome guest artists and creatives from overseas, and reciprocal activities occur for Australian artists and creatives, including those working within MPA companies.

These examples are just a handful of international engagements advanced through the arts with companies who all regularly receive federal funding and report on their activities to federal government and their agencies. Their capacity to pursue these activities is in part linked to their federal funding agreements and on occasion specific additional project funding.

For example, arts companies regularly seek financial assistance to support international activity through Department of Foreign Affairs and Trade (DFAT) as well as the associated country-to-country chambers. Many non-MPAs not-for-profit arts organisations also receive international engagement support through this fund and from the Australia Council for the Arts.

The issue

All the activities mentioned above would require the support of a *foreign principal* as defined in section 10 of the Bill, which states;

'foreign principal means:

- (a) a foreign government

- (b) a foreign public enterprise
- (c) a foreign political organisation
- (d) a foreign business
- (e) an individual who is neither an Australian citizen nor a permanent Australian resident.'

Section 11 of the Bill defines undertaking activity on behalf of a foreign principal as:

- (1) A person undertakes an activity **on behalf of** a foreign principal if the person undertakes the activity:
- (a) under an arrangement with the foreign principal; or
 - (b) in the service of the foreign principal; or
 - (c) on the order or at the request of the foreign principal; or
 - (d) under the control or direction of the foreign principal; or
 - (e) with funding or supervision by the foreign principal; or
 - (f) **in collaboration with the foreign principal.**

The activities of MPA companies who collaborate with foreign arts companies or individuals (some of whom are also subsidised by their own government) under this Bill would, we believe, be considered as engaging in activities 'for the purpose of political or governmental influence', because Section 12 of the Bill defines activities for the purpose of political or governmental influence to include an activity that influences, directly or indirectly, any aspect (including the outcome) of, among other listed areas:

- 1 (b) a process in relation to a federal government decision;

And this is further clarified

A federal government decision includes:

- 3(d) **Commonwealth entity (within the meaning of the Public Governance, Performance and Accountability Act 2013) or a subsidiary of a Commonwealth entity (within the meaning of that Act);**

Section 14 provides a table that outlines when communication activity in Australia requires the entity or individual to register the nature of their activity with the foreign principal as follows:

Activities in Australia for the purpose of political or governmental influence	
Activity	Foreign principal
Parliamentary lobbying: (a) in Australia; and (b) for the purpose of political or governmental influence	(a) a foreign public enterprise; or (b) a foreign political organisation; or (c) a foreign business; or (d) an individual
General political lobbying: (a) in Australia; and (b) for the purpose of political or governmental influence	any kind of foreign principal
<u>Communications activity:</u>	<u>any kind of foreign principal</u>

Activities in Australia for the purpose of political or governmental influence

Activity**Foreign principal**

(a) in Australia; and

(b) for the purpose of political or governmental influence

Section 13 states that:

- (1) A person undertakes **communications activity** if the person communicates or distributes information or material.
- (2) For the purposes of subsection (1), a reference to information or materials includes information or materials in any form, including oral, visual, graphic, written, electronic, digital and pictorial forms.

What constitutes *communication activity* is very broadly defined and captures legitimate communication on the value and need for support in federal funding acquittals and new applications, or to outline valuable policies that, if developed, would generate additional arts activities for the public good. **We believe international art activities and relationships could be captured by this legislation.**

It follows that the MPAs' foreign partners or relationships have the potential to influence the local decision to fund the activity, given it is often the overseas invitation or offer to provide matched foreign government funding in support of a creative collaboration between the local and foreign partners that gives evidence on the merit of an application for additional Australian federal grant funding.

In practice, none of these activities are remotely connected to the underhand political influences that the Bill sets out to capture. However, it is our understanding that the Bill, in its current form, will require **every arts organisation in receipt of federal funding** and engaged in international activities of any sort, to register and keep up to date every foreign principal along with details on the nature of that engagement in accordance with the Bill.

The penalty for failing to do so is high. It is a criminal offence for a person who is liable to register not to be registered under the scheme. Criminal offences also apply for failing to fulfil responsibilities under the scheme or providing false or misleading information in purported fulfilment of responsibilities, and for destroying records.

It is imperative that the bill be amended to ensure arts originations are not negatively impacted for carrying out their arts practice or purpose or related purposes.

Therefore, AMPAG recommends an additional exclusion for arts activity be added to Division 4 of the Foreign Influence Transparency Scheme Bill 2017.

For further information please contact:

Bethwyn Serow

Executive Director AMPAG

Bethwyns@ampag.com.au

Tel. 02 9253 5351

Appendix 1: AMPAG members

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