



**Australian Major Performing Arts Group**

Submission to

Senate Select Committee on Charity Fundraising in the 21<sup>st</sup>

Century

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## Introduction

The Australian Major Performing Arts Group (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 (see [appendix 1](#)).

AMPAG welcomes the opportunity to provide feedback to the inquiry. Not-for-profit entities are a vital part of the community's experience, growth and inclusiveness. While the focus of many NFPs is to protect and support the vulnerable, others exist to nourish the community in other ways—through sport and recreation, through conservation of the local environment and heritage, through religion, through multicultural activities, and, importantly, through arts and culture.

## The growing value and importance of fundraising in the arts

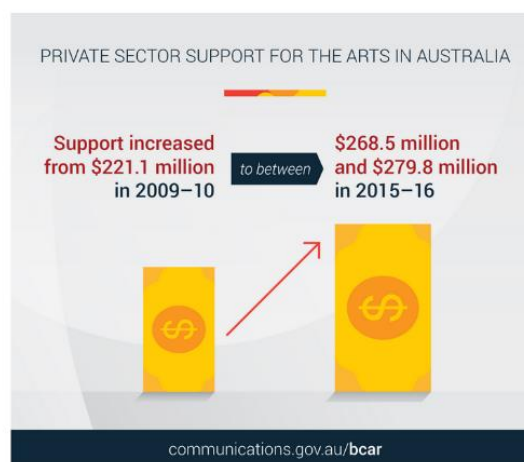
Fundraising is increasingly a critical source of revenue relied upon to support the performing arts sector in Australia, including MPAs.

AMPAG has been tracking the MPA's growth of funds raised through donations since 2001.

Donations income rose \$10.3 million or 23.4 per cent, to \$53.5 million in 2016, and now contributes 57 per cent of total private sector support<sup>1</sup>, up from 54 per cent in 2015. 2017 results (yet to be released) will continue this upward trend that saw donations overtake corporate sponsorship in 2010 as the major source of private sector income for the MPA companies.

The increase in donations has been driven by an increase in the number of donors; 2016 saw 43,485 individual donations, up 7,195 (19.8 per cent) on 2015 with a further increase reported in the 2017 survey

In 2017, the Department for Communications and the Arts in partnership with Creative Partnerships Australia produced *Private sector support for the arts in Australia*, which estimates the total level of private sector support for the arts in 2015–16



<sup>1</sup> Private support refers to financial support derived from philanthropy, sponsorship and fundraising events

The statistical background paper highlights the essential role of philanthropy and corporate sponsorship in the sustainability of the creative sector.

Overall private sector donations to the arts in Australia are estimated to have grown over a period of six years, from \$123.1 million in 2009–10 to between \$149.9 million and \$176.6 million in 2015–16.

These estimates cover a diverse range of arts organisations from small volunteer-run groups to considerably larger organisations, such as Australia's 28 major performing arts companies.

While like-for-like comparison between countries is not possible, Australia appears to compare well internationally. Broadly, the paper estimates that Australia's per-capita private sector support for the arts is higher than in Canada and similar to England, though lower than in the United States.<sup>2</sup>

### Increased reliance on philanthropic support in the arts

During the period that AMPAG has been tracking changes in MPA's fundraising, federal arts agencies and governments have encouraged an increasingly sophisticated approach to fundraising in the sector. Governments have also increased their expectations for arts organisations to reduce the extent to which they rely on government funding.

The leveraging of government investment in the MPAs has increased significantly over the past five years, from an additional \$1.85 for every government dollar invested in 2012, to an additional \$2.29 for every government dollar invested in 2017.

While MPAs have also successfully increased box office earnings, there is a need to balance ticket prices with access. Philanthropy has played a critical role, ensuring diverse access and participation as well as supporting growth in arts education, professional development of Australian artists and the art form. Philanthropists have also partnered with arts organisations and government to realise significant capital works that enrich the communities' experience of the arts and build critical infrastructure for the sector. (See AMPAG news articles providing examples of capital works supported by philanthropy appendix 2.)

*Given the tremendous public benefit generated by arts philanthropy, and the generosity that such support entails, it is incumbent on government to ensure that the fundraising regulatory framework is efficient and fit for purpose.*

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<sup>2</sup> <https://www.communications.gov.au/what-we-do/bureau-communications-and-arts-research/our-work/private-sector-support-arts>

## Summary of AMPAG recommendations

The sector needs a modern, light-touch approach that removes red tape from responsible compliant charities, stimulates public support and provides effective recourse for the public who have been negatively impacted by unscrupulous agents.

To achieve this AMPAG recommends:

1. As a priority, the federal government should change the Australian Consumer Law to cover charities with the Australian Charities and Not-for-profits Commission (ACNC), which already collects all the details on charities, to be the actual regulator.
2. State and federal governments should develop a charities' information passport to centralise reporting to a single agency for multiple uses.
3. Before extending ACNC's public release of individual charities' data, there is a need for close sector consultation to determine;
  - what public and sector benefit would be gained, and
  - the optimal format in which the data should be released.
4. The government's charity framework should extend beyond reducing red tape to actively consider new ways to stimulate and optimise charities' capacity to attract private sector earnings to enable them to advance their charitable purpose.

AMPAG supports;

- a) preserving tax-free status for income raised by charities,
- b) an exemption from Capital Gains Tax (CGT) for testamentary gifts, extended to all gifts of property to DGRs and non-DGR tax-exempt bodies,
- c) an extension on the entitlement to receive refunds for franking credits to other NFP entities that are exempt from income tax under section 50-45 of the *Income Tax Assessment 1997 Act*,
- d) the removal of the current legislative requirement that GST be charged on charity auction transactions and on fundraising events,
- e) amend Division 30 of the Income Tax Assessment Act 1997 (ITAA 1997) (DGR legislation) to remove specific dollar limits to the maximum value of minor benefits, and create a regulation that outlines the percentage cap that determines the maximum value allowed.

5. A charities regulatory impact assessment should be conducted on any newly proposed legislation or legislative amendments that might impact the charities sector **before** being tabled in parliament.
6. The Charities Act 2013, combined with the ACNC guidelines on allowable charity advocacy, should be relied upon to determine charities' allowable advocacy compliance.
7. Government should amend the current exemption encompassing the arts in the Electoral Amendments draft bill to;  
*'the expression of the views, or the communication, broadcast or research, is exempt for satirical, academic or artistic purposes'.*

## Australian charities' framework

The current framework of fundraising regulation creates unnecessary problems for charities and organisations who rely on donations from Australian supporters;

### Charity Framework — Desirable Characteristics

AMPAG supports a fundraising framework that:

- reduces red tape and streamlines reporting to place minimal costs on NFPs to allow better direction of their resources to philanthropic objectives
- removes current regulatory duplication—especially if that includes duplication across jurisdictions
- streamlines requirements, including reporting, to provide consistency and minimise compliance costs, including across state and federal jurisdictions
- provides NFP entities with certainty about their rights and responsibilities
- is proportional to the size and complexity of NFP entities, and to the public monies and risks associated with NFP entities
- protects the not-for-profit sector's right to advocacy to advance their charitable purpose; this is essential
- optimises tax deductibility settings to maximise charities' capacity to attract donations and direct their income to support their charitable purpose.

Australia's current framework fails to meet these expectations, and it is the community that ultimately is the poorer for it.

The sector needs a modern, light-touch approach that removes red tape from responsible compliant charities, and provides effective recourse for the public who have been negatively impacted by unscrupulous agents.

### Fundraising Compliance

- **Multiple fundraising jurisdictions**

Different fundraising rules and regulations across the various state and territory jurisdictions, all of which impose their unique registration and reporting requirements, generate red tape and confusion, with little or no measurable public benefit.

Many of our members operate in multiple states and collect funds online. While the ACNC has worked with states to reduce red tape, they have no authority over state jurisdictions, and change has been slow. A centralised and uniform fundraising registration process to cover all states and territories, managed by ACNC, is strongly supported.

The fundraising laws are no longer fit for purpose. They do not adequately support fundraising across state and territory borders or through digital platforms. If we want

to collect funds from donors outside our state (or territory), we must work through seven different laws and sort through issues such as establishing if and when a licence is needed; how long it is valid for; what must be reported; and how and when it is to be reported. The process is burdensome. This cumbersome regime is a disservice to the charitable generosity of our donors. It wastes our precious resources that could otherwise be used to advance the artistic reach and vibrancy of the Australian performing arts sector.

For example, Circus Oz currently has licences in two states (Vic and NSW). One licence would cut the administrative burden in half and lessen the 'mental load' of having to hold that knowledge across the lifetime of the organisation. The current framework is discouraging; a national 'umbrella' licence would allow us to decide on the spot to run a donor campaign wherever we happen to be working at the time.

Deloitte Access Economics concluded in their February 2016 *Cutting Red Tape: Options to align state, territory and Commonwealth charity regulation, Final Report*, which was commissioned by the ACNC, 'Fundraising regulation has not kept pace with new forms of fundraising, particularly as online campaigns for funds have grown using third party websites. The current arrangements treat fundraising as an activity isolated to one state or territory, when, in reality, even small organisations may attract interest nationally and internationally through online channels, such as crowdsourcing websites.'

*AMPAG's priority is to fix the regulatory burden specifically around fundraising.*

We agree with the solution put forward by Justice Connect and #fixfundraising partners to #fixfundraising as follows:

**Recommendation 1** Change the Australian Consumer Law to cover charities with the Australian Charities and Not-for-profits Commission (ACNC), which already collects all the details on charities, to be the regulator. That creates the right environment for the states to repeal their state-based legislation which has become pure red tape.

This solution will deliver Stronger, Smarter, Simpler laws to support us (charities), and fundraisers and donors through:

1. clarification and minor amendment to the Australian Consumer Law: to ensure its application to fundraising activities is clear and broad
2. repeal of fragmented state and territory laws: repeal state and territory laws, and allow state and territory regulators to focus instead on regulating conduct using the Australian Consumer Law or other general laws to act against misconduct
3. guidance (code) to improve conduct (regulators and self-regulatory measures): A short, plain English, mandatory code of conduct for all fundraisers, supported by the work of self-regulatory bodies.

- **Multiple agencies**

Given many charities, including arts organisations, receive government grants, there should be additional reporting efficiencies considered across fundraising and other government reporting requirements.

**Recommendations 2** AMPAG supports the development a charities' information passport to centralise reporting to a single agency for multiple uses.

This idea was put forward when the ACNC was first proposed. This would enable other government agencies to collect data from a centralised portal, creating further efficiencies for the charities.

For example, MPAs already report their performance quarterly to the Australia Council. As listed organisations on the Registry of Cultural Organisations (ROCO), they report fundraising activity every six months to the Department for the Arts, they lodge full financial audited reports and directors' reports annually with the ACNC; and various acquittals to state funding agencies and the ATO. The MPAs work closely with the governments' arts agencies and represent extremely low risk to the consumer, yet must also manage reporting their fundraising compliance across different state fundraising rules.

In 2011, one NSW-based member company advised that the regular reporting they are required to do 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).

In 2018, little has changed. They report to ACNC instead of ASIC, and Arts NSW is now known as Create NSW.

- **ACNC public release of charities' data**

All AMPAG members publish their annual reports and are transparent about their activities. We, therefore, do not have a great concern about data being available per se. However, the format in which the data is available could be an issue.

AMPAG is concerned by recent media reports that the ACNC is planning to publish more data on charities in an effort to better inform consumers' choice of charities to



be supported without first consulting the charities sector. No details have been provided as to what data will be gathered and in what format nor has there been any consultation with the sector.

**Recommendation 3** Before extending ACNC's public release of individual charities' data, there is a need for close sector consultation to determine;

- what public and sector benefit would be gained and
- the optimal format in which the data should be released.

If data becomes a shorthand league table comparing figures, such as overheads or reach across a very disparate group of charities, there is a very real risk of creating false perceptions on the comparative impact, value and efficiency of individual charities. This could unfairly alter donor behaviour or complicate the messaging charities need to present to prospective donors, even though they are reputable and well managed, effective organisations.

### Beyond Red Tape

AMPAG notes here key positions advanced by AMPAG in previous reviews relating to tax deductibility as it applies to charities and donations.

**Recommendation 4** The government's charity framework should stimulate and optimise charities' capacity to attract private sector earnings to enable them to advance their charitable purpose

Government can stimulate and optimise charities capacity to earn private sector earnings through;

1. continuing to preserve tax-free status for income raised from business activity directed back into the organisation to support the organisation's charitable purpose,
2. an exemption from Capital Gains Tax (CGT) for testamentary gifts, extended to all gifts of property to DGRs and non-DGR tax-exempt bodies to avoid the detrimental effect of the estate incurring CGT on the gift,
3. an extension on the entitlement to receive refunds for franking credits to other NFP entities that are exempt from income tax under section 50-45 of the *Income Tax Assessment 1997 Act*
4. the removal of the current legislative requirement that GST be charged on charity auction transactions and on fundraising events, such as charity dinners, where the funds raised are eligible for DGR. *(We recommend an amendment to the GST laws to ensure that amounts eligible for income tax deductions as gifts will also be treated as gifts under GST law and not be subject to GST.)*

5. amend Division 30 of the Income Tax Assessment Act 1997 (ITAA 1997) (DGR legislation) to remove specific dollar limits to the maximum value of minor benefits, and create a regulation that outlines the percentage cap that determines the maximum value allowed for any minor benefit received by an individual donor.  
*(Noting this amendment would still prohibit tax deductibility on the value of the minor benefits.)*

### Future legislative changes

**Recommendation 5** A charities regulatory impact assessment should be conducted on any newly proposed legislation or legislative amendments that might impact the charities sector **before** being tabled in parliament.

This requirement would strengthen the quality of draft legislation and reduce the extent to which limited charitable resources are diverted to defend the charity's operations efficiency against poorly drafted legislation.

### Government red tape and advocacy

The ACNC is the proper overseer to ensure NFP's advocacy is consistent with their purpose. Clarity and simplicity support efficient and effective compliance.

**Recommendation 6** The Charities Act 2013, combined with the ACNC guidelines on allowable charity advocacy, should be relied upon to determine charities' allowable advocacy compliance

There has been considerable parliamentary and public debate focused on the surreptitious influence of vested interests on our democracy. We support measures to ensure the integrity of our democratic system. However, it is essential that the not-for-profit sector's right to advocacy in support of their charitable purpose should not be unduly limited and should not incur additional red tape or compliance uncertainty.

### Current draft legislation that may negatively impact arts charities and the broader charities' framework

AMPAG is concerned that the current draft changes to the Electoral Legislation Bill will materially increase reporting and monitoring of NFP artistic expression and advocacy for the charitable purpose that the organisation was set up to advance. This could draw valuable resources away from both the creation and dissemination of the art, as well as from fundraising efforts.

The Bill's exemption for the arts is inadequate. It reads:

- (g) *the expression of the views, or the communication, broadcast or research, is solely for genuine satirical, academic or artistic purposes.*

It is not uncommon for works of art, including performing arts across all art forms, to express views or to communicate and inspire public debate or insight on issues of social importance, and in turn, issues of social importance carry a high probability of being before electors in an election at some time.

Determining where an artist's artistic intent ends and political or social intent begins is not clear-cut. Introducing a law that requires such a distinction is inappropriate.

A clear and effective exemption of artistic works is critical if we are to avoid:

- limiting artistic expression and exploration
- introducing additional red tape in a bid to monitor and mitigate risk
- triggering additional compliance requirements.

**AMPAG Recommendation 7** The effectiveness of exemption (g) is critical to the performing arts sector. This must be addressed by amending the definition of political purpose clause (g) as follows:

*(g) the expression of the views, or the communication, broadcast or research, is exempt for satirical, academic or artistic purposes.*

We also support the Advisory report on the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 Recommendations 1 and 2:

Committee Report Recommendation 1 (2.33)

The Committee recommends the Government reconsider introducing the term 'political purpose' into the *Electoral Act 1918*, having regard to potential confusions with the *Charities Act 2013* in which the term has a different meaning.

Committee Report Recommendation 2 (2.34)

The Committee recommends that the Government consider amending the definition of 'political expenditure' to define the type of expenditure which constitutes expenditure undertaken to influence voters to take specific action as voters, so as not to capture non-political issue advocacy.

AMPAG also notes the charities sector's call for all charities to be exempt from this legislation.

Appendix 1

**Australia's Major Performing Arts Companies**

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

**Associate Member**

Victorian Opera

## Appendix 2

### Examples of capital works supported by philanthropy

#### Queensland's \$5.5m Bille Brown Theatre transformation



05 Jul 2018

Queensland Theatre is set to open their own 351 seat home theatre in October.

The Bille Brown Studio is undergoing a multi-million-dollar transformation and in October will take on a new life as the 351-seat Bille Brown Theatre – a state-of-the-art corner stage, designed to be the perfect place for stories, artists, and most importantly – audiences.

The Minister for the Arts, the Hon. Leeanne Enoch visited the Bille Brown Theatre marking three months until it will be the home of playwright David Williamson's new work, *Nearer the Gods*.

This is another major coup for Queensland Theatre, which under the artistic leadership of Sam Strong is kicking serious goals. In 2017 Queensland Theatre reached its largest audience ever in the 50-year history of the company - over 188,450 saw a Queensland Theatre show in 55 theatres around the world and the season included the highest grossing show ever in Queensland and a 20-year high for season ticket holders.

The company is making good on Strong's ambition to lead from Queensland – Launching the Bille Brown Theatre is a major part of this commitment.

"The Bille Brown Theatre is a once in a generation transformation for Queensland Theatre. It's a rare opportunity to build the ideal theatre experience from the ground up," said Strong.

"The transformed Bille Brown Theatre will provide the hub from which we can continue to share the work of Queenslanders with the rest of the country – I'm also incredibly proud to be opening the new theatre by personally directing the latest play by Australia's greatest storyteller, **David Williamson**."

“Finally, the theatre will be a very welcome addition to Brisbane’s arts infrastructure. It will be the city’s first corner stage - creating the uniquely intimate experiences that contemporary audiences crave. It will also form the centre from which we can engage more with regional Queensland, as well as increasing the resources that we can commit to small to medium companies and independent artists,” said Strong.

The total cost of the renovation project is \$5.5 million. Of that, \$4 million has already been raised through a \$2 million grant from the State Government. The company has embarked on an ambitious fundraising campaign to raise the final \$1.5 million and has already raised over \$1 million from enthusiastic and generous donors.

Arts Minister Leeanne Enoch praised Queensland Theatre’s efforts to leverage the Queensland Government investment and lock in final funding for the Bille Brown Theatre. “Queensland Government’s \$2 million investment will help give Queensland Theatre the space it needs to foster Queensland artists, present innovative new work and take a leadership role in partnering with some of our smaller companies,” Minister Enoch said. “This government continues to advocate for the arts and supports Queensland Theatre as it secures additional investment.”

## Musica Viva moves into slick new national office

by *Elsabeth Parkinson* on September 25, 2017 *Limelight Magazine*

The new premises at Green Square boasts administrative space, a performance and recording studio, and a production suite.

After almost 30 years of managing national operations from premises in Surry Hills, Musica Viva Australia has officially moved into their new office in Sydney's fast-evolving Green Square precinct.

At the heart of the new construction – which has been conceived as a hub for Australian music – is the Janette Hamilton Studio, a purpose-built space named for the supporter who made it possible. “The Janette Hamilton Studio will provide much needed space for Musica Viva artists to rehearse, workshop and record their work,” said Create NSW CEO Michael Brealey. “It is also the organisation’s plan, as of January 2018, to make this studio available on a cost-neutral basis to independent artists and ensembles who are crying out for affordable creative space.”



Adam Hall @ The Velvet Players taking the new Janette Hamilton Studio for a spin. Photo © Keith Saunders

With an eye to the evolving nature of the music industry the premises will also include a digital production suite. “Named for visionary leader Kim Williams AM, a new digital production suite will enable future generations to become involved in music, minimising the limitations of geographic distance,” he said.

The suite is one of several dedications in honour of Musica Viva’s supporters. The boardroom will bear the name of the Berg family, the resource centre will recognise Board Director Kathie Grinberg, and the Tribe Room will honour the company’s first Patron, Ken Tribe.



“A new building is always exciting,” Charles Graham, Musica Viva’s Chairman. “But this building stands for so much more than bricks and mortar,” he says. “It also fulfils the early dreams of [Musica Viva] founder Richard Goldner, and stands as testimony to those who have carefully nurtured Musica Viva over the past 72 years. Thanks to their prudent stewardship, we are in the fortunate position of an arts organisation that owns its main office, enabling us to take the artistic risks that keep the company vibrant today in its presentation of 2000 events a year.”

“A family of wonderful supporters has also enabled us to secure a grand piano from our partners at Theme and Variations Piano Services,” said Graham. “With thanks to Nora Goodridge and Bob and Ruth Magid, it will bear a plaque in tribute to their mother, Ira Magid, an accomplished pianist and long-time supporter of Musica Viva.”



Michael Brealey, Tony Berg AM, Mary Jo Capps, Charles Graham and Michael Katz. Photo © Keith Saunders

The Goldner String Quartet – also named for the organisation’s founder – was the first ensemble to perform in the new premises, officially opening the building with a string quartet by Australian composer Matthew Hindson. ‘Little big band’ Adam Hall and the Velvet Players, from the Musica Viva in Schools programme, also gave the Janette Hamilton Studio a try-out to an audience of Musica Viva’s friends and supporters.

“Musica Viva holds a special place in the arts landscape as an organisation deeply committed to bringing live music to audiences of all ages and stages, regardless of where they might live across this vast country,” Brealey said. “Luckily for all of us, the benefits of this far-sighted wisdom will be enjoyed for many generations to come.”

## Belvoir:

From Belvoir’s Annual report 2006

Company B sprang into being out of the unique action taken to save the Nimrod Theatre building from demolition in 1984. Rather than lose a performance space



in inner city Sydney, more than 600 arts, entertainment and media professionals as well as ardent theatre lovers, formed a syndicate to buy the building. The syndicate included nearly every successful person in Australian show business. Company B is one of Australia's most celebrated theatre companies.