**ARTS LAW CENTRE OF AUSTRALIA**

*Submission to the Joint Standing Committee on Electoral Matters Inquiry into the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017*

**January 2018**

# ABOUT THE ARTS LAW CENTRE

The Arts Law Centre of Australia (**Arts Law**) welcomes the opportunity to provide comment on the Copyright Amendment (Service Providers) Bill currently being considered by the Senate’s Environment and Communications Legislation Committee.

Arts Law is Australia’s only community legal centre for the arts sector. Our area of expertise is the provision of legal advice regarding intellectual property (**IP**) matters affecting artists and arts organisations. Arts Law provides business advice, professional development resources, education and advocates on law and policy reform for the benefit of the creative sector.

Artists in the Black (**AITB**) is a specialist program at Arts Law and facilitates legal advice and information about legal issues for Aboriginal and Torres Strait Islander artists and communities. We also advocate on issues relating to cultural appropriation. Our experience is that Indigenous Cultural Intellectual Property (**ICIP**) does not have adequate protection under copyright law and that Indigenous artists are in a sadly unique and vulnerable position in relation to enforcing IP rights in their works which are often of significant cultural and community value.

Arts Law is a non-profit organisation which derives no direct financial benefit from the trade in the works and IP rights of the artists we advise. This positions us to provide independent comment, though clearly with artists’ interests foremost in our reasoning.

**Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (the Bill)**

Arts Law has reviewed the Bill and makes the following comment:

#### Legislative purpose for the Bill

The Explanatory Memorandum **(EM)** states a key reason for introduction of the Bill:

The Bill introduces new measures to improve transparency and accountability in relation to political donations.

Foreign interference in the electoral process in Australia is a key concern for the proposed amendments in the Bill, along with what is argued in the EM to be the rise of new political actors not caught by existing law, but who seek to influence electoral outcomes.

Community organisations, such as Arts Law and arts organisations we serve are potentially covered by the provisions contained in the Bill and may be required to register and report as Third Party Campaigners with the Electoral Commission.

Arts Law is concerned with the Bill on two grounds:

1. Any potential hampering of artistic freedom posed by the definition of ‘political purpose’ contained in the Bill, and
2. The administrative burden that would potentially be faced by Arts Law and other arts organisations.

#### Uncertainty about what activities and organisations are covered by the legislation

The definition of ‘political purpose’ in the EM includes:

***political purpose*** means any of the following purposes:

 (a) the public expression by any means of views on a political party, a candidate in an election or a member of the House of Representatives or the Senate;

 (b) the public expression by any means of views on an issue that is, or is likely to be, before electors in an election (whether or not a writ has been issued for the election);

 The operation of the Bill is limited in terms of arts in the following way:

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

Many artistic works focus on issues of contemporary relevance that could be captured by clauses (a) and (b) of the definition of ‘political purpose’ reproduced above – such as asylum seeking, terrorism and climate change. This potentially means that theatres, film production companies, book publishers and galleries would be considered to be engaging in what is a ‘political purpose’ and therefore come under the compliance obligations contained in the Bill. It is not clear what the exemption clause (g) of the ‘political purpose’ definition for ‘expression of views… solely for genuine … artistic purposes’ captures. We believe that there are many works which are genuinely artistic, but which also have political purposes. Certain types of artists have always engaged in political activism, and few would doubt their artistic merit or intent – for instance Charles Dickens and his frequent discussion and criticism of various laws and practices of Victorian England. His works were aimed at and did play a role in informing the public of social concerns and are acknowledged as having played a role in legislative amendment in various areas including labour laws and debtors’ laws and are recognised to this days as literary/ artistic works.

Arts Law, as a community legal centre focused on the rights of artists and arts organisations, undertakes a variety of activities including provision of legal advice to individual creators and resources to support the trade in their works, as well as advocacy work to promote laws and regulatory frameworks that will support artists in their creative endeavours. We respond to issues on their merit for artists and artists’ organisations, not based on a political party or individual politicians, so do not believe we are captured by clause (a) of the definition of ‘political purpose’ above, but perhaps we would be covered by (b), but are not sure, as we’re not sure that political issues we comment on are ‘before electors in an election’. If our work did include activities that could be construed as for a defined ‘political purpose’ we are not sure the dollar amount of our activities would come under the proposed legislation and therefore if we would be captured by its operation.

#### Silencing of artistic expression

Arts Law does not agree with the conclusion in the EM that the Bill’s provisions do not contravene Article 19 of the International Covenant on Civil and Political Rights - the rights to freedom of opinion and expression. As stated above we believe the Bill if adopted would have a chilling effect on artistic expression, and that this is contrary to the interests of Australia as a democracy which allows the discussion of issues. Art plays a critical role in the dissemination and discussion of issues of community interest. We do not believe that this artistic expression has unsettled electoral processes in Australia. Nor do we believe that artists should be made to hesitate in discussing political issues – discussion, including criticism, of political stances is not mutually exclusive to artistic expression – certain artists have always engaged in political discussion.

The Bill would make theatre companies, publishers, film production companies and others think twice before commissioning works of a political nature

#### Inconsistency with existing legislation

Arts law is a registered charity. We operate under the *Charities Act 2013,* section 12of which allows charities to undertake advocacy work consistent with their charitable purpose, including ‘promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth.’

We support AMPAG’s view in this regard, and urge for an introduction of an additional exemption in the Bill for this advocacy work undertaken by charities to be an exempt category of activity and therefore not to come under the operation of the Bill.

#### Compliance Burden

As a registered charity, Arts Law already complies with the operational and reporting obligations imposed by its registration with the ACNC. Our records are publicly viewable and transparent. The purposes of our community centre are clearly articulated, and we do not believe are directed to subverting electoral processes. We stand up for Australian artists and their rights. We are alarmed at both the legal uncertainty and the administrative cost and burden attempting to comply with the terms of the Bill would represent.

The impact of the Bill if legislated will be to place another layer of compliance on us and on other arts organisations and charities. We believe this is inconsistent with the commitment to reducing administrative red tape frequently articulated by the government – and that it will serve no discernible public interest.

# CONCLUSION

Arts Law has had the benefit of seeing the submissions drafted by AMPAG and Justice Connect and shares the concerns articulated by those organisations. We do not support the provisions of the Bill that impact on artists and art organisations and their ability to exercise the right to freedom of expression contained in international human rights law, to which Australia is a signatory. In relation to our own activities, Arts Law advocates on issues independently. We do not advocate to promote the elevation or demotion of a particular political party or politician. We participate in the public contest of ideas to seek regulatory setting that will provide adequate protection for Australia’s creators. We believe this is a positive contribution we make to the Australian community that does not harm electoral activities in Australia.

Apart from a principled position that we reject attempts to stifle artistic freedom, we are also very concerned at the very real administrative uncertainty and burden that will be put on the many different organisations that are active in the artistic community under the Bill. Many of these organisations exist on very slim margins and this burden will diminish their capacity to undertake the work for which they exist.

We submit to government that for these reasons the draft Bill should be urgently amended to remove its operation from the arts sector. Government should amend the draft legislation so that it achieves the stated policy objectives contained in the EM.

 

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