



Inquiry into the Australian Charities and Not-for-profits Commission Exposure Draft Bills

Submission to:

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House Standing Committee on Economics
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About the Australian Major Performing Arts Group

AMPAG, established in 1999, is the peak body for Australia's major performing arts companies. Our core membership comprises 28 not-for-profit companies ranging in size from Opera Australia and the Sydney Symphony Orchestra to mid-sized companies like Australian Chamber Orchestra, Queensland Theatre Company and West Australian Ballet and smaller ones such as the Circus Oz, Bangarra and Australian Brandenburg Orchestra. We interact with and support the wider cross section of the subsidised small and medium performing arts industry. See Appendix A for a list of AMPAG members.

The 28 member companies have a combined turnover (in 2011) of over \$430 million (ranging from \$4.6 million to \$67.5million) with net assets of approximately \$139 million. Box office is the key source of income but the companies also depend on donations and sponsorship, as well as some commercial activities. Government subsidy (state and federal combined) tends to be from 10–20 per cent, except for the symphony orchestras which have a higher government component.

Entitlement to register

We note the exposure draft moves to a more principled approach in determining types and subtypes in section 25-5. AMPAG expressed the view in its submission to the previous draft legislation that the definition of entitlement to register with the newly formed ACNC should align with the definition of charity. Further, in the December 2011 review on the definition of charity, AMPAG called for the definition of charity to be expanded to include 'arts and culture' as a charitable purpose. We understand that the draft statutory definition of charity will be circulated for comment either later this year or early next. Once it has been agreed, we hope that the allowable definitions will be fed into the ACNC Act so that there is no contradiction or confusion for qualifying organisations.

That said, we believe it is better for the 'type' of charity be less restrictive (as opposed to the limited list that occurred in the previous draft) as 'Entity with another purpose that is beneficial to the community'. However, the current draft's move to a less specific approach raises concerns regarding what guidance the ACNC will rely upon to determine whether an organisation can be registered.

We believe it is especially important that arts and cultural organisations are defined as allowable charities because we understand that the role of registration processes such as the Register of Cultural Organisations (ROCO) might be superseded in the future, in which case it is imperative that the

values or recognition of qualifying organisations under ROCO is taken up within the legislation in some way.

It may be argued that there is no need because current entities recognised by the ATO as charitable will automatically be eligible for registration with the ACNC. However, in the longer term, new entities seeking registration or current registrations seeking to avoid being deregistered may be required to identify the public benefit they provide from first principles. Therefore, we ask:

What will the ACNC rely upon to verify such activities are of public benefit?

Will ROCO criteria be adopted as a matter of course or will it be at the discretion of the ACNC to determine which criteria will be applied to the public benefit test?

This then raises the question of who determines the community benefit of an arts organisation that might be applying for the entitlement to register with the ACNC— the Commissioner or the Arts Minister? Currently, to register on ROCO, the Minister responsible for the Arts and the Treasurer approve new appointments to the Register. Therefore, we ask:

If the Commissioner is solely responsible for deciding which organisations are eligible to register with the ACNC, will the Arts Minister play a role in this process for arts and cultural organisations?

Will the Commissioner seek advice from government ministers if the decision is outside the Commissioner's or the Advisory Board's experience/knowledge?

Recommendation

To clarify the methodology the ACNC will use to determine what activities are beneficial in the longer term, we recommend the introduction of a schedule attached to the legislation or some other method that can be easily updated (as opposed to prescriptive legislation) that refers to specific recognised public benefit activities.

Red tape

AMPAG welcomes specific reference in the explanatory memorandum to this draft Bill to streamlining NFP reporting:

The Commissioner of the ACNC will cooperate with other government agencies to oversee a simplified and streamlined regulatory framework for not-for-profit entities.

However, will the ACNC Commissioner also cooperate with other state government agencies to simplify reporting? We understand the original intention of the ACNC legislation was to simplify reporting across jurisdictions,

but as the Bill stands this is not spelled out. AMPAG would like that reassurance, given the vast amount of reporting required by governments for our major performing arts companies. Those that operate nationally, especially, are required to spend an inordinate amount of time and resources fulfilling various government reporting obligations. We note that in May 2012, the Government announced that the detailed content requirements of the financial reports would be set out in regulations, which would be subject to further consultation, and that this consultation process will commence shortly. We look forward to responding to that consultation to underscore our commitment to pursuing streamlined reporting.

Recommendation

To ensure that the original intention of the ACNC is honoured, we suggest that the Bill includes the provision that reporting will be simplified across all jurisdictions—and that the ACNC will work with state and federal government agencies to ensure this occurs.

Reporting thresholds

In our previous submission to the ACNC Implementation Design consultation paper, AMPAG called on the lifting of thresholds that define small, medium and large organisations. We noted, for example, that the threshold for large corporations registered with the Office of the Registrar of Indigenous Corporations is \$5 million. The charitable purpose for our member organisations is to provide world-class performing arts, by creating a rich and vibrant cultural life for all Australians. The costs of doing so can be extremely high, even though the administration of many of these organisations is run on a shoestring budget. Our own membership fees are based on thresholds for total income (including box office, philanthropy and government funding) of \$20 million for large organisations, \$10 million to \$20 million for medium organisations and up to \$10 million for small organisations.

Recommendation

Given the thresholds remain at very low levels (small: revenue less than \$250,000, medium: \$250,000–\$1 million, large: \$1 million +) we would suggest the thresholds are set out in an attached schedule rather than enshrined in the legislation, to allow for increases in CPI etc. Plus we would urge the ACNC to inform government of the appropriateness of thresholds over time.

Assistance and Information

AMPAG also welcomes the emphasis on assistance and information. However, the introduction of new legislation can introduce ambiguities as we have seen in the past with work place relations, OHS and so on. It may not be achievable at a policy level but the principle that information provided is clear, unambiguous and **can be relied upon** offers greater certainty, reduces risk and increases compliance.

Recommendation

Given the nature of government policy changes overtime, we suggest the insertion of the word 'freely' and 'that can be relied upon'.

2 (b) iii) assist registered entities in complying with and understanding this Act, by *freely* providing them with guidance and education *that can be relied upon*.

Appeals

AMPAG welcomes the appeals process spelled out in the legislation. However, pursuing an appeal through the AAT can prove to be financially prohibitive for small charities. Therefore we ask:

Given that, other than appealing first directly to the Commissioner, it seems the only form of appeal enshrined in legislation is the appeals tribunal, what protections would ensure a level playing field in court?

Conclusion

AMPAG is pleased that the ACNC draft Bill spells out its commitment to introduce a simplified regulatory framework. As a member of the Community Council of Australia (CCA), we support the submission it has made to this inquiry, appreciating the fact that the CCA looks at the big picture of the NFP sector, while AMPAG is concerned with the performing arts segment. We especially agree with the CCA's position that the compliance burden is not only wasteful; it is also often counter-productive to the achievement of government policy goals and serves no useful risk management role.

We would also reiterate that it is important that the ACNC work with the NFP sector—including the arts sector—in determining how best to provide support and guidance, especially to those organisations with limited capacity to navigate complex reporting requirements.

We would like to assure the Committee that the performing arts sector is vitally concerned about the NFP reform process. We would also like to remind the Committee that AMPAG, as the umbrella organisation for the major performing arts companies, has responded to all calls for submissions. We list them in Appendix B.

We look forward to the ACNC becoming a dynamic one stop shop, as promised, providing a 'report once and use often' approach to regulation and compliance across all levels of government.

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

Appendix B

AMPAG submissions to NFP reform process

The following submissions can be found here: <http://ampag.com.au/Charity>

Scoping study for a national not-for-profit regulator (February 2011)

Better targeting of not-for-profit tax concessions (July 2011)

A definition of charity (December 2011)

Exposure draft for a national not-for-profit regulator (December 2011)

Governance Arrangements for the Not-for-profit sector (January 2012)

ACNC implementation design (February 2012)

Charitable fundraising regulation reform (April 2012)

'In Australia' Special Conditions for Tax Concession Entities—Exposure Draft (May 2012)