



AMPAG's response to the Exposure Draft of the Australian Charities and Not-for-profits Commission Bill 2012

Background

AMPAG, established in 1999, is the peak body for Australia's major performing arts companies and by default for the wider cross section of the subsidized small to medium performing arts industry. Our core membership (see Appendix A) comprises 28 not-for-profit companies ranging in size from Opera Australia and Sydney Symphony Orchestra to mid-sized companies like Australian Chamber Orchestra and Queensland Theatre Company and smaller ones such as the West Australian Ballet and State Theatre Company of South Australia.

The 28 member companies have a combined turnover (in 2010) of over \$400 million (ranging from \$3.4 million to \$66 million) with net assets of \$109 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 8–20 per cent, except for the symphony orchestras which have a higher government component.

The role and regulation of NFPs

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.

In 2007 the Australian Tax Office classified 177,109 organisations as not-for-profits. Of those, the Australian Bureau of Statistics regarded 41,008 as economically significant. Religious organisations accounted for 21.4 per cent (8786) of all not-for-profit organisations, **followed by culture and recreation organisations, which accounted for 20.1 per cent (8258).**¹

AMPAG has responded to the previous reviews and consultation papers on the not-for-profit sector held during 2011 and early 2012, and we have aired many of our concerns in those, especially in the response to consultation paper, *Scoping study for a national not-for-profit regulator*.

¹ http://www.ourcommunity.com.au/general/general_article.jsp?articleId=103

As we emphasised in that response, our principal concern is any increase in compliance costs to performing arts organisations—whether financial, or in terms of staff, time and other resources.

We would support the Australian Charities and Not-for-profits Commission (ACNC) regulating the governance of NFPs, as long as it:

- places 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
- 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.

The National Compact and the ACNC

It is also important that the ACNC's principles and goals align with those of the National Compact between the government and the not-for-profit sector.

The National Compact outlines eight priorities for action:

1. Document and promote the value and contribution of the not-for-profit sector.
2. Protect the not-for-profit sector's right to advocacy irrespective of any funding relationship that might exist.
3. Recognise not-for-profit sector diversity in consultation processes and sector development initiatives.
4. Improve information sharing, including greater access to publicly-funded research and data.
5. Reduce red tape and streamline reporting.
6. Simplify and improve consistency of financial arrangements including across state and federal jurisdictions.
7. Act to improve paid and unpaid workforce issues.
8. Improve funding and procurement processes.

These priorities were devised after a long and rigorous process of consultation, and AMPAG believes to preserve their integrity, they must be reflected in the legislation, principles and policies of the ACNC.

AMPAG's responses to the Bill

AMPAG provides its response to some of the specific provisions set out in the Exposure Draft of the ACNC Bill below.

Part 1-2—A Guide to this Act

The Commissioner

This Act establishes a national regulator for the not-for-profit sector (including charities). The regulator is the Commissioner of the Australian Charities and Not-for-profits Commission (the ACNC). The Commissioner of the ACNC will provide not-for-profit entities with a point of contact with government and will provide them with access to information about the sector and educational and guidance materials (including through the Commissioner's website).

Other functions of the Commissioner include the following:

- (a) registering not-for-profit entities;
- (b) promoting the good governance, accountability and transparency of such entities;
- (c) monitoring not-for-profit entities to ensure compliance with this Act;
- (d) investigating not-for-profit entities to ensure compliance with 5 this Act;
- (e) enforcing this Act;
- (f) cooperating with other government entities, in order to further the object of this Act.

Comment: AMPAG is concerned that not enough emphasis has been placed on minimising duplication, reducing red tape and simplifying reporting regulation. We would expect the performance of the ACNC in reducing red tape and streamlining reporting is monitored against the goal of the National Compact (see above).

Section 5-10 Entitlement to registration

Type of registered entity

Charitable purpose

Subtype of registered entity

Advancement of culture (including Australian Indigenous culture and customs)

Comment: All arts should be covered by this subtype, including visual arts, dance, theatre, music, literature, film, cross-disciplinary endeavours. AMPAG therefore suggests that the subtype is amended to:

Advancement of arts and culture (including Australian Indigenous arts, culture and customs)

Type of registered entity

Encouragement of community entertainment

Subtype

Encouragement of animal racing

Encouragement of art

Encouragement of games or sport

Encouragement of literature

Encouragement of music or musical purposes

Comment: This type and the subtypes appear to exclude theatre, dance, physical theatre, film and any kind of new media artistic endeavour. Therefore, we suggest extra subtypes be included, such as:

Encouragement of all performing arts, such as theatre, dance, physical theatre

Encouragement of film and new media artistic endeavours

AMPAG is also concerned about which type or subtype would represent an organisation such as itself. AMPAG is, essentially, a peak body, representing the interests of its member organisations and undertaking a range of functions such as awareness raising and education, lobbying and advocating, representational activities, networking activities etc. There are hundreds of similar bodies that represent the interests of their members, which don't appear to be covered in the types and subtypes of organisations listed under section 5-10. The relationship they have with their member organisations is neither as employees nor employers. Therefore, we suggest a new Type be created:

Advance and further the interest of members

Section 10-20 Dealing with an application for registration

(5) The notice given by the applicant must be in the approved form.

Comment: Will the applicant have to refer to Part IVC of the *Taxation Administration Act 1953* to discover the 'approved form'. It would be better if it could be included here.

10-60 Review of revocation of registration

Comment: AMPAG is concerned that adequate grounds and processes for review and appeal are in place if an organisation objects to its registration being revoked.

Division 55—Reporting

Comment: The reporting requirements are clearly spelled out, including additional reporting that may be required by the Commissioner. But it is unclear from this section how the reporting could supersede that required by other jurisdictions or systems, or how it might cut red tape for smaller organisations.

55-5 Registered entities must give annual information statements

(1) A registered entity must give a statement (an information statement) for a financial year to the Commissioner in the approved form.

Note: The Commissioner may approve different approved forms for small, medium and large registered entities.

Comment: Will the different approved forms be discretionary for the Commissioner, or will they be prescribed in the Act? If the former, what will be the parameters?

Part 6-1 The Advisory Board

170-10 Membership

The Advisory Board is to consist of at least 2, but no more than 8, members (other than ex-officio members) with the following:

- (a) expertise relating to not-for-profit entities (including charities);
- (b) experience and appropriate qualifications in relation to either law, taxation or accounting.

Comment: AMPAG would like to ensure that the concerns of the arts and cultural sectors, so often ignored in discussions about the NFP sector, are fairly represented. We would therefore urge the government to specify that members and ex-officio members are drawn from all major 'industries' in the NFP sector.

The Community Council for Australia

As a member of the CCA, AMPAG supports its submission to the NFP Reform team. We would especially endorse the following recommendations from the CCA submission:

- The independence of the ACNC must be enshrined in legislation. This includes a capacity to recruit staff and develop its own operations and procedures to ensure the ACNC reflects an understanding of the sector and a commitment to the invaluable role of not-for-profit organisations in Australia. (recommendation 1)
- Other government and regulatory agencies should be encouraged to draw on the reports and information collected by the ACNC subject to appropriate approvals from both the ACNC and the NFPs involved. (11)
- Enforcement should be a last resort following education, investigation and deliberate attempts to address non-compliance through negotiated resolution. (17)
- CCA supports 'graduated' and 'proportional' enforcement, with clear guidance for organisations about their obligations, right of appeal and responsibilities. (18)
- Organisations must have a right to protect the privacy of their donors (22)
- The vast majority of not-for-profit reporting should be self-report consisting of brief compliance statements from a responsible person within the organisation against guidelines and principles. (26)
- A step-by-step guide should be made available for all organisations transitioning to the new regulatory regime. A reasonable transition period should exist to test the impact of the ACNC on red tape reduction and better regulation. (28)
- The ACNC should establish a principles-based governance compliance requirement that provides guidance rather than prescribing set governance arrangements (drawing on good practice in the United Kingdom and elsewhere). (33)
- For larger organisations, one annual financial report should meet all the ACNC requirements. (39)
- Any requirements to report on fundraising or commercial activities should be incorporated into the one financial report. (40)

APPENDIX A

List of AMPAG member companies and 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