Submission on

Private Ancillary Fund and Public Ancillary Fund Amendment Guidelines 2015

from

the Australian Major Performing Arts group

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To The Hon. Kelly O'Dwyer
Assistant Treasurer

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AMPAG Submission

Exposure draft of amendments to the Private Ancillary Fund Guidelines 2009 and the Public Ancillary Fund Guidelines 2011.

THE AUSTRALIAN MAJOR PERFORMING ARTS GROUP (AMPAG)

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 (see appendix 1).

The MPAs are Australia's iconic performing arts institutions and deliver value to government and its citizens. They rely on the partnership of support between private giving, stable government support and ticket sales.

MPAs' revenue profile

The MPAs create live performing arts performances of the highest standard with a further remit to build audiences, and develop the artform and the artist. They rely on revenue from different sources to sustain these outputs—government, private sector, ticket sales and related arts engagement activities.

Revenue from private giving, corporate sponsorship and fundraising events in the major performing arts sector continued to grow in 2014, increasing by 9.7 per cent to $78.6 million from $71.7 million in 2013. Of the total private sector revenue, 54 per cent ($42.2 million) was private giving (that is, philanthropy)—up $2.9 million on 2013.

Ensuring our major companies are stable and sustainable—as well as artistically vibrant and engaging—requires a careful balance and understanding of the important contributions each area of support makes to both the companies themselves and the cultural life of the country.

Government funding is relatively stable thanks to the MPA funding framework established in 2000. Ticket sales, while growing in recent years, are subject to market forces. MPAs' revenue from box office was significantly affected by the GFC.

While philanthropic support for the not-for-profit sector as a whole has still not recovered to the highs of 2009, philanthropic support for the MPAs has grown. It provides support that is essential for companies to deliver the breadth of programming initiatives and engagement opportunities that are part of their remit.

This, combined with relatively stable base government support, has helped to smooth out the less predictable ticket sales that are so susceptible to market forces.

Stimulating philanthropy

Government arts policy has considered a range of initiatives to help stimulate philanthropic support including establishing Creative Partnership Australia, an organisation set up to strengthen private sector support of the Arts.

Increasing the level of available funds is most likely to arise through relationships and partnerships that capture the interest and support of the philanthropist. Therefore, we would expect the government to ensure that any changes in legislative guidelines applying to PAFs would complement its ambition to grow philanthropic support for the arts—or at the very least, ensure that support does not diminish over time.

The MPAs therefore support changes to the guidelines that reduce red tape, maximise outcomes and encourage ongoing philanthropic activity.

We thank the Federal Government for providing AMPAG with the opportunity to comment on the exposure draft of amendments to the Private Ancillary Fund Guidelines 2009 and the Public Ancillary Fund Guidelines 2011.

Guideline 19

AMPAG supports all but one proposed amendment—that is, the change in minimum distribution thresholds. The focus of our response is limited to this issue, covered by Guideline19 in both the 2009 and 2011 schedules (see appendix 2).

We also note that changing the threshold has not been a policy issue raised with our members previously or in discussion with other charitable organisations— we are curious about why the government has proposed this reform at this time.

A quick scan of AMPAG members' 2014 private giving results identifies over 190 Charitable Trusts/Foundations' actions of support were directed to our companies. It is apparent then that Private Ancillary Funds (PAFs) are important sources of support for AMPAG member companies.

There is concern that amendment to Guideline 19 might reduce the distribution of funds from PAFs and there is also recognition that PAFs should be attractive to philanthropists. We would not support any amendment that might deter would-be philanthropists from establishing new PAFs.

A major deterrent to opening a PAF is the introduction of complexity and uncertainty around compliance issues in how they are managed. We understand the previous introduction of a set percentage for minimum distribution was done to create certainty and simplicity. Erosion of capital has not been a major concern to the sector. Philanthropy Australia has advised AMPAG that well managed funds are currently earning above the reserve cash rate with investment decisions are based on a long term view.

Changing the minimum distribution amount to the Reserve Bank cash rate or earnings after expenses introduces a level of uncertainty and introduces a greater emphasis on the short-term view. It promotes a closer relationship between the funds distributed and the current market conditions. A change in the distribution requirements will increase in red tape will affect all PAFs and while many PAF owners distribute more than the current minimum amount, the need to demonstrate compliance necessitates these fund owners running these calculations annually. Complexity has the potential to deter people from forming PAFs.

Linking this important source of charitable support to the market may also introduce additional volatility in funds distributed and increase financial uncertainty for charities. The current rules, which set a minimum percentage distribution help deliver long-term stability.

Anecdotally our members advised that many individual supporters with PAFs are motivated by deep and very considered desire to support charitable works. It is not unusual for philanthropists to distribute more than the minimum amount legally required. However we do not have the full data set to analyse PAF behaviour.

Both Philanthropy Australia and the Community Council for Australia have indicated to AMPAG an overall preference that status quo be maintained for required annual distribution rates—that is, no change to the minimum distribution levels.

AMPAG's recommendation

Without clear modelling to demonstrate the likely impact of the proposed amendment, our members are concerned that it may create uncertainty for charities and complexity in the management PAFs.

Combined with the fact that it is not a policy position proposed from within the sector itself, we default to a conservative approach that the status quo be retained. We therefore recommend that the amendment to Guideline 19 should not proceed for the reasons given, which overall may lead to unintended consequences that could dampen philanthropic support for Australia's charitable sector.

Item 7 Schedules 1&2

Schedule 1—Amendments to the Private Ancillary Fund Guidelines 2009

Guideline 19

Omit "5 per cent", substitute "the ***minimum annual distribution percentage***".

Guideline 19.1

Before Guideline 19.1, insert:

19.1A The ***minimum annual distribution percentage*** is the lesser of:

- the average of the Reserve Bank of Australia's target for the cash rate, which is the overnight money market interest rate, over the previous *financial year (expressed as a percentage); or
- the rate calculated using the following method statement (the result of which is to be expressed as a percentage):

Method statement	
Step 1.	Work out the *market value of the fund's net assets as at the end of the previous *financial year.
Step 2.	Subtract from the amount worked out under step 1, the market value of the fund's net assets as at the end of the financial year before the previous financial year.
Step 3.	Add to the result of step 2, any expenses the trustee has been notified of that Commissioner is satisfied do not comply with these Guidelines.
Step 4.	Divide the result of step 3 by the market value of the fund's net assets as at the end of the previous *financial year.
	Note: The result of step 3 will generally be the fund's net investment earnings or returns (according to accounting concepts) for the previous financial year less any reasonable expenses. It is this amount that will need to be distributed under this method.

Guideline 19.1 (not including the note)

Omit all the words after "year" (first occurring), substitute "if any expenses of the fund in relation to that financial year are paid directly or indirectly from the fund's assets or income.

Guideline 19.1 (note)

Omit all the words after "minimum annual distribution is", substitute "the amount calculated under Guideline 19. If any of a fund's expenses are paid out of the fund's assets or income, its minimum distribution is $11,000 or the amount calculated under Guideline 19, whichever is greater."

Amendments to the Public Ancillary Fund Guidelines 2011

Guideline 19

Omit "4 per cent", substitute "the ***minimum annual distribution percentage***".

Guideline 19.1

Before Guideline 19.1, insert:

19.1A The ***minimum annual distribution percentage*** is the lesser of:

- the average of the Reserve Bank of Australia's target for the cash rate, which is the overnight money market interest rate, over the previous *financial year (expressed as a percentage); or
- the rate calculated using the following method statement (the result of which is to be expressed as a percentage):

Method statement	
Step 1.	Work out the *market value of the fund's net assets as at the end of the previous *financial year.
Step 2.	Subtract from the amount worked out under step 1, the market value of the fund's net assets as at the end of the financial year before the previous financial year.
Step 3.	Add to the result of step 2, any expenses the trustee has been notified of that Commissioner is satisfied do not comply with these Guidelines.
Step 4.	Divide the result of step 3 by the market value of the fund's net assets as at the end of the previous *financial year. *Note: The result of step 3 will generally be the fund's net investment earnings or returns (according to accounting concepts) for the previous financial year less any reasonable expenses. It is this amount that will need to be distributed under this method.*

Guideline 19.1 (not including the note)

Repeal all the words after "year" (first occurring), substitute "if any expenses of the fund in relation to that financial year are paid directly or indirectly from the fund's assets or income."

Guideline 19.1 (note)

Repeal all the words after "minimum annual distribution is", substitute "the amount calculated under Guideline 19. If any of a fund's expenses are paid out of the fund's assets or income, its minimum distribution is $8,800 or the amount calculated under Guideline 19 whichever is greater."