



Australia's Charities and Not-for-profits

Written Submission

The Options Paper, Australia's Charities and Not-for-profits sets out proposed replacement arrangements for charities in Australia. The paper outlines policy directions proposed by the Government to introduce effective replacement arrangements that reduce the burden of regulation on the civil society sector.

The paper is being released to seek feedback from charities and interested parties on the proposed replacement options. Comments and feedback will inform development of the replacement arrangements. A summary of written submissions will be provided on the Department's website in September 2014.

Please use this submission template to provide your feedback on the proposed replacement arrangements for charities in Australia.

Completed submissions are to be sent by 20 August 2014 to:

consultationwithcharities@dss.gov.au (preferred method) OR

Civil Society and Programme Delivery Policy Branch

Department of Social Services PO BOX 7576

Canberra Business Centre, ACT 2610

Submissions received after 20 August may not be considered.

Unless otherwise stated, the information and feedback you provide may be used for publishing purposes. Please state if you do not wish for your comments to be published.

Instructions for completing the Submission Template

- Download and save a copy of the template to your computer.
- Refer to the *Options Paper, Australia's Charities and Not-for-profits* for context and discussion questions.
- You do not need to respond to all of the questions.
- Please keep your answers relevant to the topic being addressed, we ask that submissions be limited to two pages.

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If submitting on behalf of a company or organisation

Name of organisation: Australian Major Performing Arts Group

Stakeholder category: peak body_ Performing Arts

State/Territory: NSW

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The Australian Major Performing Arts
response to

Options paper for
Replacement Arrangements following the abolition of the Australian Charities and Not-
for-profits Commission

Date 20 August 2014

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Who is AMPAG?

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, listed below, comprises 28 not-for-profit companies ranging in size from Opera Australia and Sydney Symphony Orchestra to mid-sized companies like the 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 had a combined turnover (in 2013) of over \$477 million (ranging from \$4.8 million to \$100 million) with net assets of \$163 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) averages at around 35 per cent although there is a wide variation across the group.

AMPAG members

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

AMPAG has responded to previous reviews and consultation papers on the formation of the ACNC and the not-for-profit sector during 2011–2013. In our response to the current discussion paper we wish to continue to emphasise our principal concern relating to proposed reforms—that is, that such reforms should not introduce any increase in compliance costs to performing arts organisations—whether financial, or in terms of staff, time and other resources. We welcome government policy that increases state and federal reporting harmonisation and simplifies reporting and compliance requirements for the not-for profit sector.

Please find our response to the discussion questions below.

AMPAG Response

Do you believe that these proposed requirements will be less time consuming than current requirements?

At this point there is marginal improvement as the MPAs were in transition, already reporting to ASIC and then providing basic information to the ACNC. The ACNC provided greater flexibility to register changes with ACNC personnel willing to enter updates over the phone. There has also been greater flexibility in who from the company is allowed to speak with the ANC to update the organisation's details including office bearers compared to the ATO environment.

The ATO processes are rigid and this has caused communication difficulties for new company representatives to get their IDs processed as the ATO will only speak to the public officer or registered person, and the process of updating these representatives in practice is slow.

The directive that companies should maintain certain information on a website is not onerous if such information and timing for such posts is standard to that already required for companies' annual reports and the organisation already maintains a website.

What changes would your organisation need to make to meet the new requirements?

Companies will need to make their website part of their compliance framework. This is a departure from established protocols and would require more rigour and assurance processes to be set up around the web update process.

The model refers to 'consideration given to exemption of multiple reporting requirements'. This seems to suggest the imperative to reduce red tape has been diluted. This indicates government authorities are less compelled to coordinate data collection. There should be a strong and clear remit to reduce duplication of reporting requirements.

The MPAs are not-for-profits. They have previously and in 2014 have continued to report to ASIC and ACNC at 31 December.

The Australia Council requires quarterly financial reports, members are audited and then these final reports are lodged with ASIC and the Australia Council —as such the reporting to government is all year round. Joint lodgement of financial report at year end to both agencies generates a level of duplication government could address.

Do you foresee any impediments to charities complying with these requirements?

The MPAs have a company structure that should enable them to manage these requirements with little interruption— however, a number of charities would have problems keeping their websites up to date, and some may not have websites. Our smaller performing arts companies run very lean organisations with minimal administrative staff, and with little capacity to accommodate increased reporting.

Do you believe these requirements will provide transparency? If not, what changes would you make?

Transparency is only feasible if there is a prescribed format for financial reporting. Bespoke reporting can mean financial data from one charity is unable to be compared to another.

The proposed changes remove the centralisation of data storage—this will make the data less transparent and increase the level of difficulty in conducting sector analysis than if data is collected centrally and in a standardised way.

AMPAG recommends that no financial data on the MPAs or any other charities or not-for-profits should be released publicly by government agencies other than that released in the annual audited accounts, and then, only released once the accounts have been published.

2. Determining Charitable Status

Which of these options do you believe best guarantees the independence of the decision making process?

There is likely to be a conflict of interest experienced within the ATO when determining charitable status and determination of eligibility for related tax concessions, as the ATO is responsible for raising revenue. These settings are unlikely to directly affect the MPAs as they are already, in the main, registered charities. However, a few are statutory bodies and may become not-for-profit companies. We would be concerned if conflicts of interest were to complicate their registration processes.

Independence is best guaranteed through the current ACNC. However, of the two approaches presented here, it would appear the process that offers the greatest independence in decision making is via a panel with panel members neither employed directly nor answerable to the Tax Commissioner.

Are there any other considerations that should be taken into account when these functions are undertaken?

What is not clear in the options outlined above is who is responsible for the selection of panel members and how will this process remain independent and in the best interests of the charities sector.

It is also noted that charities' recourse to appeal via the Administration Appeal Tribunal varies greatly across the sector—such a process can be costly, technical and prejudice smaller charities or charities with very little capacity or human capital to dedicate to the process of appeal. The appeal process needs to be accessible, independent, equitable and affordable.

3. Proportionate Compliance Framework

Are there any reasons why the approach may not work?

AMPAG agrees that charities and not-for-profits should enjoy a rebuttable presumption of virtue although there are questions as to the ATO's capacity to adopt such an approach.

A current issue that is not addressed in this proposal is the variations in state laws in relation to charities. It is strongly recommended that the harmonisation of state fundraising laws be prioritised to remove both the paper work and general confusion that exists when charities operate in multiple jurisdictions.

Currently MPAs as not-for-profit companies and registered charities are required to comply and report to the ATO, APRA and ASIC as well as the separate state/territory charities' offices, the Australia Council and RoCO. This results in inefficiencies and a significant compliance burden. A better route would be to work towards harmonising state/territory legislation/regulation and have it all administered by one regulator.

4. Transitional Arrangements

What other transitional arrangements might be required?

We would like to understand what the role and brief of the proposed National Centre for Excellence is well before changes in the reporting environment are made. The centre should have a lead role in facilitating the shift in charities' reporting regulations and ensure charities are well informed and supported.

Are there things the Department could undertake to assist charities with this transition?

Charitable companies have been updating their details with ACNC but not with ASIC. Government should take responsibility for data updates to be done between ACNC and ASIC rather than require companies to have to update ASIC themselves.

What factors should be considered in relation to the timing of the new arrangements?

Charities should be given time to prepare for the new reporting regime, whatever that is.