



Submission to: Senate Standing Committee on Economics
August 29 2008

Re: Inquiry into disclosure regimes for charities and not-for-profit organisations

Recommendations and main points:

1. The Committee should acknowledge that the non-profit companies in the arts operating under triennial funding agreements with the Australia Council for the Arts have rigorous accountability for both business and cultural outcomes, and have demonstrated capacity for high governance standards.
2. Further, the Committee should recognise that State and Federal Government policy has explicitly encouraged charities in the arts to make significant surpluses based on box office and corporate sponsorship revenues. This policy was to build reserves designed to give financial resilience; capacity to extend audience access; and investment in new artistic work.
3. The Committee should avoid "one size fits all" recommendations for reporting and accountability in the charities and non-profit sector because of the wide diversity of business models and the strong chance of unintended consequences, with new regulation designed to solve problems in one part of the sector having a deleterious effect in another.
4. The Committee should consider the use of Government funding to aid charities and non-profits to build their management and strategic capacities (and thereby fulfil their charitable missions more effectively).
5. The Committee should consider relaxation of the rules limiting Deductible Gift Recipient (DGR) status because of the difficulties they cause in creating long term relationships with donors and potential donors. In modern philanthropy donors expect explicit information on outcomes and a close relationship with the recipient company, which is difficult to achieve with rules that limit direct contact with philanthropists in live performance based companies.
6. The Committee should recommend legislation for the formula used by charities and companies on the Register of Cultural Organisations to calculate whether they are exempted from GST on various charges, including on tickets to live performance by charities and ROCO companies: the charities involved depend on private rulings and an ambiguous formula with high compliance costs.

Background:

7. Australian Major Performing Arts Group is the umbrella association for the 28 major performing arts companies which entertain and enrich millions of people every year in music, drama, dance, opera and circus. The membership list is at *Attachment 1*

8. Most of the companies are charities, structured as companies limited by guarantee but three of the companies are statutory corporations and one is the department of a university. These are registered for tax deductibility of gifts through the Register of Cultural Organisations under the [tests set for that Register](#) and report donations on a six monthly basis. They are income tax exempt.
9. The Australia Council for the Arts Securing the Future Report has details of income and expenditure for the companies, the split between government funding, box office and sponsorship, and philanthropic donation. It also tracks main stage audiences and touring and education work. See www.australiacouncil.gov.au. The Council is also making a submission to this inquiry.
10. In addition to main stage seasons and regional and international touring, the companies undertake access activities through free performances, concessions for elderly or student audiences, education programs and collaboration with social welfare and health programs. They also have development of young and emerging artists as a core activity and produce and present new Australian work. Given the diversity of art forms and communities they operate in, the mix of activities varies widely.
11. Largely 35 per cent of revenue is from State and Federal government investment, with about 65 per cent from box office, sponsorship and other commercial activities, and donation. However subsidy rates vary widely with companies in larger cities, or with significant national presence earning nearly 90 per cent of their revenues from private sources and subsidy rates approaching 80 per cent in smaller cities.

Current accountability regime

12. In addition to the statutory reporting to ASIC (or state parliaments in the case of the statutory corporations) the companies work with Tripartite Agreements with the Federal Government (through the Australia Council for the Arts) and the relevant state government.
13. These outline key elements of a business and artistic plan set by the individual company (but reviewed with the Australia Council and state funding agency involved). These plans lead to outcomes which achieve the requirements for categorisation as a major performing arts company and also set some specific audience and artistic goals for their art form and the specific company. Details of the categorisation and expectations of the companies are at the For Politicians page of www.ampag.com.au under the heading of [The Major Performing Arts Board - Categories and Governance](#)
14. Since the Major Performing Arts Inquiry and adoption of triennial funding agreements in 2000 the companies have worked to improve their strategic planning capacity. Although there is still work to be done in streamlining accountability, the companies have substantially integrated reporting requirements designed for the Tripartite Agreements into their management reporting systems (incorporating reporting with quarterly accounts and Board reports). In addition to quarterly accounts and the Annual Return, the companies report on a set of Key Performance Indicators which include audience access and artistic vibrancy.
15. Companies still have to report separately for project funding which adds to compliance costs. They have developed systems which can show outcomes for specific programs based on philanthropic funding particularly for young people and schools.

16. AMPAG tracks trends in corporate sponsorship and private donation for the sector through an annual survey to boost knowledge about the changes in corporate and community behaviour. This year the Survey was extended to look at the direct costs of philanthropic fund raising. The data showed that the costs of earning the revenue had fallen sharply to 16.3 per cent, despite a 10 per cent rise in spending on fund raising – a good return on investment in professional development and more staff, as well as a commitment to setting high standards of information for donors. See <http://ampag.com.au/current-issues/downloads/>.
17. The Boards of Directors of these companies have worked to improve governance and reporting generally with many installing Board reviews as a regular part of their agendas. They are building Board agendas around strategic planning goals as well as the more traditional concerns about fund raising and support of management. They have been aided by pro-bono work by corporate specialists in areas including risk management and also specific grants from the Major Performing Arts Board of the Australia Council for professional development of senior managers.
18. The AMPAG companies also report against a set of Governance principles devised in consultation with the Australia Council and based on the ASX Corporate Governance Guidelines for listed companies. They do so on a voluntary “if not, why not” basis. These principles are Attachment 2. These have complemented the companies’ work in strengthening the Boards and management’s ability to use Board skills effectively.
19. Companies comply with the Australian Tax Office rules on tax deductibility, state rules for fund raising, and also calculate exemption from GST on ticket charges according to a formula in a private ruling.

Issues

20. The AMPAG companies operate under stringent reporting and accountability requirements designed to implement the recommendations of the Major Performing Arts Inquiry and the ensuing communiqué of the Cultural Ministers Council.
21. To meet these requirements companies have not only had to improve their business and strategic management skills, but invest heavily in financial and management systems to allow continuous reporting. The companies have turnovers between \$3 million and \$68 million.
22. Although the new model has worked for the major companies, there are considerable dangers in assuming that it can be adopted for other business structures and smaller non-profits. It is AMPAG’s experience that arts companies with smaller turnovers would have considerable difficulty in running the reporting and tracking systems necessary to comply.
23. Improvements in governance have been aided by developing a network among the companies and their Boards. This has meant developing seminars where case studies can be examined and presentations for Board members as well as more informal contact between Boards. This has allowed adoption of the Governance principles on a voluntary basis by the companies.
24. One-off grants by the Australia Council to fund investigation of risk management or professional development coupled with pro-bono arrangements with accounting and management consulting companies have been significant in building governance strength. These one-off grants and pro-bono arrangements allow the company to

develop highly specific reporting and analytic systems for their businesses, and to retain the essential element of good governance – that Boards strategically manage their company’s direction and take responsibility for the outcomes.

25. Imposition of further rules and regulation based on a “one size fits all” approach runs the risk of turning companies into “box tickers” complying with requirements rather than actively using accountability requirements to improve their businesses.
26. AMPAG recommends investigation of support for other charities in developing management and planning capacity.
27. In Australia much production of work for the stage and concert hall is by the non-profit sector, most designated as charities or on the Register of Cultural Organisations. They operate independently of the State Government or Local Government controlled venues in major cities and the regions.
28. Unlike equivalent companies in the United States of America or Europe, the Australian major producer companies are heavily reliant on box office for operating and strategic developmental funds – where they generate surpluses this will often be the result of increased box office revenue. These surpluses are crucial for innovation in new work and for investment in developing young and emerging artists. The model for the majority of the cultural charities and non-profits, a model incorporating presentation of main stage work, touring to regional and suburban areas, education programs, art form development and access for disadvantaged group, is uniquely structured around a business plan based on ticket and subscription sales – and therefore subject to commercial risk.
29. This structure was reinforced after the introduction of the Tripartite Agreement with Federal and State Governments explicitly encouraging building of box office, sponsorship and philanthropic revenues as well as encouraging generation of surpluses through the Reserves Incentive Scheme (which gave matching grants for amounts transferred to reserves from operating funds).
30. For most audience members, there is an understanding that the arts companies are non-profit operating for the advancement of culture and that ticket sales are contributing to the non-profit operations of the producing company. In their strategic planning Boards routinely balance the priorities to maximise audiences with the responsibility to present more risky or unknown work which will further develop Australian arts and artists.
31. Philanthropic interest in the major performing arts companies has grown considerably in recent years with a 116 per cent in revenue from this source over the 2002-07 period and including a 45 per cent jump last year to \$17.9 million.
32. This has followed a commitment to developing skills in seeking and servicing philanthropy and a growth in the education, access and artist development projects where philanthropy can be particularly effective in experimentation and development of innovative approaches. However the revenue is less than 15 per cent of box office revenues. Although prospects of further growth are excellent as more donors realise the impact their gifts can have on building stronger communities in Australia and creating innovative art it will not replace box office any time soon.
33. It is unlikely that this uniquely Australian model combining commercial risk and cultural development to achieve non-profit and charitable goals would change without further injections of Government funding.

34. While developing philanthropic streams of revenue the companies have noted the problems of developing long term relationships with donors in the live performance sector. Modern donors want to see accountability of the company, and to see the impact of their giving against agreed goals and outcomes: but the most effective way to do so in a live performance company is to bring donors into performances, introduce them to artists, and to introduce them to senior artistic leaders. Many of these activities are difficult to introduce in a regime where the ATO interprets invitations to company events, catering at company performances and private performance as “benefits” which negate tax deductibility of gifts.
35. AMPAG has further information on where ATO rules designed to limit deductibility to genuine giving are proving inadequate in an environment of strategic and investment focused philanthropy which it can supply to the Committee.
36. Charities operate under some exemptions to the Goods and Services Tax. For the arts companies this means examining costs of each performance to check whether it meets the 75 per cent formula. AMPAG has argued for some time that the compliance costs of working with this rule are too high, as a result of its ambiguity, for the small sums of money involved. There are also potential risks due to the sector using a private ruling to govern its practice in meeting obligations where subsequent court decisions or a change in Tax Office view could undermine its authority.
37. AMPAG suggests that the Federal Government could legislate to regularise the formula and remove uncertainty about its standing. Again AMPAG can supply details of the suggested changes. The companies believe legislating a simpler formula for calculation of the exemption will provide greater certainty in this vital area, and considerably reduce the burden of calculating costs. AMPAG can provide further details of the effect of the formula on the ticketing and accounting system tracking in the arts area.



Attachment 1 to AMPAG Submission to Senate Committee on Economics

www.ampag.com.au

The AMPAG Chair is Mr Derek Young, also Chair of Melbourne Theatre Company, who leads a Board of Directors drawn from the Chairs of member companies. They are John Conde AO, Tim Cox AO, David Crawford, Ian Kowalick, Bret Mattes, and Joan Sheldon AM.

Contact Executive Director Helen O'Neil on 02 9241 2168 or 0417 230 540
Her email address is oneilh@ampag.com.au.
AMPAG is based at Level 3, 10 Hickson Road The Rocks NSW 2000.

AMPAG Member companies:

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

Artistic and Music Leaders in AMPAG companies (and their Australia Council categorisation)

Arvo Volmer/ Jim Koehne
Adelaide Symphony Orchestra
State Flagship

Francois Klaus
Queensland Ballet
State Flagship

Paul Dyer
Australian Brandenburg Orchestra
Specialist

Michael Gow
Queensland Theatre Company
State Flagship

Richard Tognetti
Australian Chamber Orchestra
International company

Stephen Phillips
State Opera South Australia
Specialist

Stephen Page
Bangarra Dance Theatre
International

Adam Cook
State Theatre Co South Australia
State Flagship

Kate Cherry
Back Swan Theatre Company
State Flagship

Noel Staunton
Sydney Dance Company
International

Mike Finch
Circus Oz
International Company

Gianluigi Gelmetti /Wolfgang Fink
Sydney Symphony Orchestra
National Flagship

Neil Armfield
Company B
Specialist

Cate Blanchett/Andrew Upton
Sydney Theatre Company
National Flagship

Oleg Caetani/ Huw Humphries
Melbourne Symphony Orchestra
National Flagship

Sebastian Lang-Lessing/ Simon Rogers
Tasmanian Symphony Orchestra
State Flagship

Simon Phillips
Melbourne Theatre Company
National Flagship

David McAllister AM
The Australian Ballet
National Flagship

Carl Vine
Musica Viva Australia
Specialist

John Bell AM
Bell Shakespeare
Specialist

Richard Hickox/Stuart Maunder
Opera Australia and Australian Opera and Ballet
Orchestra
National Flagship

Johannes Fritzsich/ Tom Woods
The Queensland Orchestra
State Flagship

Chris Mangin
Opera Queensland
State Flagship

Ivan Cavalleri
WA Ballet
State Flagship

Jo Beaumont
Orchestra Victoria
National Flagship

Richard Mills AM
WA Opera
State Flagship

Michael Kantor
Malthouse Theatre
Specialist

Paul Daniel (from 2009)/ Marshall McGuire
West Australian Symphony Orchestra
State Flagship

Attachment to AMPAG submission to Senate committee on Economics



MAJOR PERFORMING ARTS BOARD

PRINCIPLES OF CORPORATE GOVERNANCE AND GOOD PRACTICE RECOMMENDATIONS FOR MAJOR PERFORMING ARTS SECTOR

Good corporate governance structures encourage companies to create value and provide accountability and control systems commensurate with the risks involved.

1. **Lay solid foundations for management and oversight**
Recognise the respective roles and responsibilities of board and management.

The company's framework should be designed to:

- Enable the board to provide strategic guidance for the company and effective oversight of management
- Clarify the respective roles and responsibilities of board members and senior executives in order to facilitate board and management accountability to both the company and its stakeholders
- Ensure a balance of authority so that no single individual has unfettered powers

Recommendation to achieve good practice

The board should adopt a formal charter that details its principal functions and responsibilities and also a formal statement of delegated authority to management. Disclosing the division of responsibility assists understanding of the respective accountabilities and contributions of board and management.

There should be an induction procedure for new directors, and all directors should be made aware of their legal duty to act in the best interests of the company (whatever its exact corporate structure is) and provided a copy of the company's constitution, board charter and statement of delegated authority.

The board should ensure that it has input into, and final approval of, the company's corporate strategy and performance objectives. The board should monitor implementation of the corporate strategy and ensure appropriate resources are available. The Board should consider, and have final approval of, the proposed performance program and budget for the following year and be provided by management with sufficient information to be able properly to evaluate the risks (financial, artistic, contractual, health and safety, reputational) inherent in the proposal.

The board should receive and review regular comprehensive reports on all key business areas. The board should give prior approval to any material capital expenditure, or any material variation from budgeted expenditure.

Directors should be made aware of their duties to act as per the Corporations Law in the best interests of the company (whatever the actual corporate structure of the organisation).

2. Structure the board to add value

Have a board of an effective composition, size and commitment to adequately discharge its responsibilities and duties.

The board should be structured in such a way that it:

- Has a proper understanding of, and competence to deal with, the current and emerging issues of the business, including the management of risk
- Can effectively review and challenge the performance of management and exercise independent judgement

Recommendation to achieve good practice

The Chair is responsible for leadership of the board, for the efficient organisation and conduct of the board's function and for the briefing of all directors in relation to issues arising at board meetings.

Corporate performance is enhanced when there is a board with appropriate competencies to enable it to discharge its mandate effectively. Therefore, there should be a formal and transparent process for selection and appointment of non-executive board members that evaluates skills, experience and expertise of potential members.

It is important that the board be of a size and composition that is conducive to making decisions expediently with the benefit of a variety of perspectives and skills. The size of the board should be limited to encourage effective decision-making.

Non-executive directors should be appointed for specific terms, subject to re-election. Reappointment should not be automatic. Boards may wish to consider a maximum period of tenure for non-executive directors and a fixed period of appointment for board office-holders.

3. Promote ethical and responsible decision making

Clarify standards of ethical behaviour required of company directors and key executives and encourage observance of these standards.

Recommendation to achieve good practice

Good corporate governance ultimately requires people of integrity. Confidence in the company can be enhanced if it clearly articulates the practices it intends directors and executives to follow. Therefore, companies should establish a code of conduct.

4. Safeguard integrity in financial reporting

Have a structure to independently verify and safeguard the integrity of the company's financial reporting.

The structure would include review and consideration of the accounts either by the audit committee, which should report to the board, or by the board itself.

Recommendation to achieve good practice

To ensure truthful and factual presentation of a company's financial position, the board should require the CEO and finance manager to attest in writing that the company's financial reports present a true and fair view of the company's financial condition and operational results and are in accordance with relevant accounting standards.

The audit committee, if there is one, should have a formal charter and should include at least one member with financial expertise (as demonstrated by relevant qualifications and financial management experience at senior management level in the public or private sector). If the board itself is the audit committee, then at least one non-executive board member should have financial expertise.

The audit committee, if there is one, or the board if it is the audit committee, should on a regular basis consider the effectiveness of the external auditors and the implications for succession that may arise from that consideration.

5. Recognise and manage risk

Establish a sound system of risk oversight and management and internal control. Systems should be designed to identify, assess, monitor and manage risk.

Recommendation to achieve good practice

The board should establish policies on risk oversight and management. The policies should cover oversight, risk profile, risk management, compliance and control, and assessment of effectiveness.

The board may wish to retain responsibility for risk management, or delegate it to the audit committee, or establish a separate "risk committee".

The effectiveness of the company's implementation of its risk management system should be reviewed at least annually.

The board should recognise the inherent potential conflict between the CEO and artistic director in managing day-to-day issues and establish an appropriate system for controlling and managing this issue.

6. Encourage enhanced performance

Fairly review and actively encourage enhanced board and management effectiveness.

Individual and collective performance should be regularly and fairly reviewed.

Recommendation to achieve good practice

Develop and implement a process for performance evaluation of the board, its committees, individual directors and key executives. This performance evaluation should be undertaken at least annually.

The company should implement induction procedures designed to allow new board appointees to participate fully and actively in board decision making at the earliest opportunity.

The board should be provided with the information it needs to efficiently discharge its responsibilities. This includes artistic information, financial information, audience and market information, and risk analysis.

7. Remunerate fairly and responsibly

Ensure that the level and composition of remuneration is sufficient and reasonable and that its relationship to corporate and individual performance is defined.

Recommendation to achieve good practice

Companies should adopt remuneration policies that attract and retain talented and motivated employees to encourage enhanced company performance.

Remuneration levels should be fairly based with reference to industry norms and should take into account KPI outcomes.

The board should have input into remuneration levels for the CEO, the Artistic Director and any executive reports whose responsibilities materially influence the company's strategy, operations and financial performance.

8. Recognise the legitimate interests of stakeholders

Legal and other obligations to all legitimate stakeholders.

Recommendation to achieve good practice

Companies have a number of legal and other obligations to stakeholders, such as employees, clients/customers, governments and the community as a whole. The board should establish procedures to guide compliance with legal obligations (eg. OH & S) and other stakeholder obligations.

To ensure the company's legal obligations to government funding agencies are met, the Board should establish procedures to ensure timely provision of the required information, which includes the company's financial situation, its performance and its governance. The material should be factual, and presented in a clear and balanced way, i.e. disclosing both positive and negative information.

The Board should also ensure it has an effective communication strategy for advising government funding agencies about any material changes in the company's circumstances.

6 December 2004