



AUSTRALIAN MAJOR PERFORMING ARTS GROUP

Mr Chris Leggett
Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
Parkes ACT 2600

12 August 2011

Dear Mr Leggett,

'In Australia' Special Conditions for Tax Concession Entities

AMPAG is an umbrella association of 28 not-for-profit major performing arts companies (see Appendix A) from around Australia which receive subsidy from both State and Federal governments. The companies provide theatre, dance, ballet, circus, opera, orchestral and chamber music performances around Australia and internationally

A number of AMPAG companies are internationally renowned and have as part of their Government funding agreements requirements that each year a portion of their activity is conducted overseas. For example in 2009, 13 of our member companies presented 228 performances in 18 countries – Austria, Brunei, Canada, China, Denmark, England, Germany, Hungary, India, Laos, Malaysia, New Zealand, Scotland, Singapore, Switzerland, The Philippines, Vietnam and the USA. This year extensive tours have occurred in Europe, USA and Asia.¹

AMPAG supports the apparent policy intent of the draft legislation that is to ensure income tax exempt entities generally must be operated principally in Australia and for the broad benefit of the Australian community. Likewise, deductible gift recipients (DGRs) generally must be operated solely in Australia and for the broad benefit of the Australian community.

We believe it is appropriate to ensure that taxation concessions to charitable and not-for-profit organisations are properly targeted and that funds remitted overseas are not used for improper purposes.

AMPAG however has concerns about the Exposure Draft. We agree with the position forwarded by the Community Council of Australia (CCA) that the exposure draft, while seeking to prevent the improper use of tax concessions, goes beyond this in changing the definition of what is a not-for-profit entity more broadly and seeks to apply significant new rules on the way not-for-profits carry out their activities and distribute funds to achieve their charitable purpose.

AMPAG is further concerned that the draft legislation is in contradiction to current Government policy positions such as the Discussion Paper on the National Cultural Policy² (released 11 August 2011) and the Mitchell Review of Private Sector Support for the Arts³ (for which submissions closed on 8 July 2011), which is investigating mechanisms by which the Government can encourage private philanthropy to support arts activities. The two policy investigations are intimately linked.

The National Cultural Policy Discussion paper sets out Goal 3 as being:

To support excellence and world-class endeavour, and strengthen the role that the arts play in telling Australian stories both here and overseas.

¹ See <http://www.ampag.com.au/International>

² National Cultural Policy Discussion Paper, Department of Prime Minister and Cabinet, Office for the Arts

³ Review of Private Sector Support for the Arts in Australia Discussion paper, Private Sector Support Review Team, Office for the Arts, Department of the Prime Minister and Cabinet

It goes onto to say:

“More than ever before, Australia is connected with the rest of the world. On the one hand, this means Australian artists, cultural organisations and cultural products need to compete on the world stage. On the other hand, it means that Australians have expanding access to a broader range of arts and cultural content from around the world which competes in Australia with our own culture.” (p.18)

There is an explicit acknowledgement here about the fact that many subsidised arts organisations including AMPAG members perform overseas – often to great acclaim - and that this is part of their overall business planning.

The Mitchell review discussion paper states:

“The review will identify any barriers or impediments that may exist in Australia with respect to private sector support for the arts. The findings of this review will assist in the development of policy options with respect to enhancing the private sector’s contribution to the arts. The review will also be an important element in the development and implementation of a national cultural policy.” (p.2)

It also goes on to note: *“Private sector support is a significant component of income for many arts organisations and contributes to the sustainability and growth of the arts and culture sectors”* (p.3)

AMPAG would contend that with the Government intent on promoting overseas touring and competition and also on promoting private sector support of the arts that it may not be unrealistic to assume that there will be expectations – and even Government support – to encourage arts companies to fundraise to support overseas activities in the future. An unintended consequence of the new “In Australia” provisions would be to actively work against this.

“In Australia”

AMPAG companies are all listed under the Register of Cultural Organisations (ROCO)⁴. Under this an organisation is considered ‘in Australia’ if:

- Its establishment, control, donors and assets are predominantly in Australia; and
- its purposes and/or beneficiaries are in Australia.

There is also a requirement to ensure that donations made to the organisation’s public fund are used only for the organisation’s principal purpose eg classical music performances, theatre productions. Companies rely heavily on fundraising to support their activities – in fact there has been a dramatic increase in private giving (from individuals, trusts, foundations and private ancillary funds) in the past 10 years.⁵

Under the Proposed Changes as per the Exposure Draft it appears that DGRs must:

- Operate solely in Australia
- Pursue their purposes solely in Australia; and
- Donate money only to DGRs

In this instance ‘solely in Australia’ has been interpreted as requiring DGRs to be established and operated only in Australia (including control activities and assets) and must have their purpose and beneficiaries only in Australia. Whilst the exposure draft contemplates incidental activities outside of Australia, there is no definition of ‘incidental’.

AMPAG members clearly operate within the proposed ‘in Australia’ definition and any overseas activities such as tours and workshops we would contend are incidental or complementary to their Australian mainstage performances and work. However we are concerned that future policy

⁴ The Register of Cultural Organisations was established in 1991 to assist cultural organisations to attract private sector support by offering donors the incentive of a tax deduction

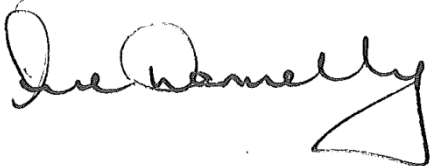
⁵ In 2001, private giving made up 25 per cent of total sponsorship and donation revenue but by 2010 this proportion had increased to 46 per cent – see http://www.ampag.com.au/About_Us/Achievements

developments, as noted above, could be contrary to your proposed changes and thus place the companies in an invidious position.

Increasingly we live in a global world and there are examples of successful international arts companies spending large amounts of time away from their home base in order to fulfil their objectives and ensure economic sustainability. We would caution that your proposals do not actively work against what may be expected, by Government, of subsidised arts companies in the future.

We trust you will consider our feedback and suggestions. Should you have any queries regarding our submission, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Susan Donnelly'. The signature is fluid and cursive, with a large initial 'S' and a distinctive triangular flourish at the end.

Susan Donnelly
Executive Director

APPENDIX A – List of AMPAG Member Companies & their location

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