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Dear Sir/Madam

AMPAG would like to thank you for the opportunity to comment on the draft governance standards.

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 comprises 28 not-for-profit companies ranging in size from Opera Australia and the 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 SA—see Appendix A.

One of the most important considerations is that the draft governance standards are consistent across regimes and jurisdictions—so that our member organisations are only reporting against one set of governance standards. In particular, AMPAG seeks clarification on the demarcation between corporations law and ACNC governance legislation and to be advised if any changes to the Corporations Act is being considered.

We would also like to make the point that our member companies are primarily companies with limited guarantees and statutory authorities. Their structure is one of CEO and employees, overseen by a board of directors. Most do not have a membership structure. We would therefore like clarification of DRAFT GOVERNANCE STANDARD 2: ACCOUNTABILITY TO MEMBERS. It states it applies to, among other types of organisation, companies limited by guarantee. The current draft reads as though it were specifying that all companies limited by guarantee have a membership structure. Nowhere in the draft Governance Standards are the duties of directors mentioned. But, as we pointed out in our submission to the Treasury's *Consultation Paper: Review of not-for-profit governance arrangements*, our member companies must be accountable primarily to their boards (which have been set up to pursue the objectives of the organisation) and to their funding bodies. How does this governance standard interact with those set out in the Corporations Act where specific duties of directors are outlined? Will there be an accompanying bill that changes the Corporations Act so that it complies with these standards?

We would like to know how the ASIC standards that our members currently report against compare with the new ACNC governance standards. It is unclear in the consultation paper,

where they differ, which standards have been brought across unchanged, and how any transition will be managed. One of our members pointed out that the governance standards currently enforced by ASIC have been developed in conjunction with common law rulings and a degree of self-regulation through ASX requirements. He queries whether the ACNC was, effectively, reinventing the wheel without incorporating the benefit of any common law experience.

Some of our members with more complex structures would like clarification about how the governance standards would work with them.

### **Sydney Symphony case study**

Sydney Symphony has a structure—required by the Australia Council when the orchestra was divested from the ABC—where Sydney Symphony Limited (SSL), a company limited by guarantee, is the holding company of Sydney Symphony Holdings Pty Ltd (SSOHPL), a normal proprietary company.

SSOHPL is the registered charity with the ACNC, not SSL. Presumably, therefore, SSL is the ‘responsible entity’ in charge of managing the affairs of the registered entity. The group entities share the same Directors.

How will the governance standards work in this regard?

We would be grateful for your advice.

Yours sincerely



Bethwyn Serow  
Executive Director

## **Appendix A: List of AMPAG Member Companies & 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