

Report of Review of Copyright Collecting Societies'  
Compliance with their Code of Conduct  
for the Year 1 July 2019 to  
30 June 2020

The Hon K E Lindgren AM, QC

30 November 2020

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# Report of Review of Copyright Collecting Societies' Compliance with their Code of Conduct for the Year 1 July 2019 to 30 June 2020

## A. INTRODUCTION AND SUMMARY CONCLUSIONS

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1. This report of the Code Reviewer, the Hon K E Lindgren, AM, QC, is the seventeenth annual report of a Code Reviewer assessing the compliance with their voluntary Code of Conduct (Code) of the following seven collecting societies: Australasian Performing Right Association Limited ("**APRA**"), Australasian Mechanical Copyright Owners Society Limited ("**AMCOS**"), Phonographic Performance Company of Australia Limited ("**PPCA**"), Copyright Agency Limited ("**Copyright Agency**" and later "**CA**"), Audio-Visual Copyright Society Limited ("**Screenrights**"), Australian Writers' Guild Authorship Collecting Society Limited ("**AWGACS**") and Australian Screen Directors Authorship Collecting Society Limited ("**ASDACS**"). This "Compliance Report" assesses that compliance during the period 1 July 2019 to 30 June 2020 (the Review Period).
2. AMCOS is administered by APRA. Therefore, the practice is adopted of referring to APRA and AMCOS collectively as "APRA AMCOS" except where it is necessary or convenient to distinguish between them.
3. For the purposes of the review, each society reported to the Code Reviewer in respect of its activities covered by the Code during the Review Period. In some cases, their reports were accompanied by documents which provided the

evidence for the statements made in the text of their reports on compliance (Accompanying Underlying Documents).

4. The review and the opportunity to make submissions relevant to it were advertised: see **Appendix A** to this Report for the notice of the review and for details of the publication of the notice.
5. Certain organisations and individuals were individually notified by the Code Review Secretariat. The Secretariat has prepared and holds an alphabetical list of them. It is available for inspection on request, but it is so voluminous that, in the interests of convenience, it is not attached to this Report.
6. Importantly, a significantly revised version of the Code was adopted with effect from 1 July 2019, implementing recommendations of the review of the Code carried out by the Bureau of Communications and Arts Research (BCAR and BCAR Review) in the Department of Communications, Cyber Safety and the Arts (as the Department of Infrastructure, Transport, Regional Development and Communications was then named).
7. Therefore, the Code as so amended is the version that has operated throughout the Review Period and this is the first occasion on which the societies have reported on their compliance with the amended Code and on which I have reported on their compliance with it.
8. In implementation of a recommendation made in the BCAR Review, there is now a dedicated website for the Code with information and links to documents and information relevant to the Code, including “for publication” versions of

each of the societies' Annual Compliance Reports to me. That website can be visited at [www.copyrightcodeofconduct.org.au](http://www.copyrightcodeofconduct.org.au).

9. The collecting societies' reports to me indicate general compliance with the Code. At my suggestion made some time ago, their reports on compliance are structured by reference to the obligations imposed on them by clauses 2, 3 and 4 of the Code. Clause 2 is headed "OBLIGATIONS OF COLLECTING SOCIETIES", Clause 3 "COMPLAINTS AND DISPUTES" and Clause 4 "PUBLICITY AND REPORTING". The structure of their reports directs the attention of the societies to all of the obligations imposed on them by the Code.
10. The Code applies to all seven collecting societies, but Clause 2.9 applies only to declared collecting societies, that is to say, to Copyright Agency and Screenrights.
11. Often in the Report I have used words that make it clear that I am giving an account of what the particular collecting society asserts. It would be tedious to remind the reader of this in advance of every statement made in the Report. It should be understood, however, that in describing what the collecting societies do, I am inevitably relying entirely on their reports to me. I do not conduct an independent investigation of them. In saying this, I do not imply that I have reason to doubt the accuracy of what they report, but it is inescapable, and should be frankly acknowledged, that my paraphrasing of the societies' reports gives them a degree of opportunity of self-promotion. This does not apply so much to the "COMPLAINTS AND DISPUTES" section because, in that section, I am able to test the account given by the society against its correspondence and file notes relating to the complaints or disputes.

12. There have been more than the usual number of submissions made directly to the Code Reviewer in response to the published invitation. One can only speculate as to why this has been so, but the following matters may be noted.
13. First, as recorded at [70]-[71] and [77] of last year's report, as from 1 July 2019 APRA and PPCA introduced their "OneMusic Australia" (OneMusic) licence. It is convenient to note the background. The copyright in a musical work includes the exclusive rights to perform the work in public and to communicate the work to the public: see s31(1)(a)(iii) and (iv) of the *Copyright Act 1968* (Cth) (the **Copyright Act**). These rights are the concern of APRA. The copyright in a musical work also includes the exclusive right to reproduce a work in certain circumstances: see s31(1)(a)(i) of the Copyright Act. These rights are the concern of AMCOS.
14. The copyright in a sound recording includes the exclusive rights to make a copy of the recording, cause the recording to be heard in public and to communicate the recording to the public: see s85(1)(a), (b) and (c) of the Copyright Act. These rights are the concern of PPCA.
15. Consistently with their respective concerns, the members of APRA and AMCOS are composers, authors and publishers of music, whereas the licensors of PPCA are recording companies and performing artists.
16. In the absence of an opt-out by the copyright owner, APRA and AMCOS have the exclusive right to license the use of the musical works that constitute their repertoire. PPCA is a non-exclusive licensor of sound recordings: it is open to a person to seek a licence directly from the owner of the copyright in a sound recording rather than from PPCA.

17. In the case of a live performance, a licence from APRA alone is required. But in the case of the common playing of sound recordings in public, as in shopping centres, cafes, restaurants, gymnasias etc, a person needed to have a licence in respect of the music itself from APRA AMCOS and a separate licence in respect of the sound recording from PCCA or the rights owner.
18. Understandably, small businesses, in particular commonly failed to understand the need for two licences and complained about it. Indeed, having obtained a licence from either APRA AMCOS or PCCA, they would often resist attempts to persuade them to take out a further licence from the other collecting society.
19. This explains the advent, as from 1 July 2019, of OneMusic Australia, a joint licensing initiative of APRA, AMCOS and PCCA, the aim of which is to provide a single licence from a single source in respect of both music and sound recordings.
20. More will be said of this below when I address the reports from APRA AMCOS and PCCA.
21. It may be that the introduction of OneMusic has led licensees to give attention to their licensing position and to make a submission to the Code Reviewer.
22. A second potential explanation of the larger than usual number of submissions made directly to the Code Reviewer is the COVID-19 Pandemic. This has affected the activities of the collecting societies themselves and those of their members and licensees. The societies have either waived licence fees for the duration of the Pandemic or have taken other steps to ameliorate the situation. Again, it is understandable that licensees would check their licensing position with a view to eliminating or reducing their business outgoings.

23. A third development has been the re-authorising of APRA by the Australian Competition and Consumer Commission (ACCC). The ACCC's Determination was issued on 13 July 2020 and came into effect on 4 August 2020. APRA's application had been made on 24 December 2018. On 15 May 2019 APRA applied for an interim re-authorisation which was granted on 27 June 2019. Submission were invited by the ACCC. Many, if not all, of those who have made submissions to the Code Reviewer had also made submissions to the ACCC. In fact, in some cases what seems to have happened is that the submitter made substantially the same submission to the Code Reviewer, but with reference to provisions of the Code.
24. In due course, when addressing the submissions I will have occasion to refer to this circumstance again. The roles of the ACCC and the Code Reviewer are, of course, quite different. What matters for present purposes is that it seems likely that the pendency of APRA's application before the ACCC over such a long period probably goes some way to explain the rather large number of submissions that were made directly to the Code Reviewer this year.
25. Fourth and last, there is the adoption as from 1 July 2019 of the amended Code referred to earlier. The publicity that was given to this may also have stimulated unaccustomed interest in the review of collecting societies' compliance.
26. I again record my thanks to Kylie Cooke who constitutes the Code Review Secretariat for her considerable help to me in bringing this Report to a conclusion.



## B. COMPLIANCE WITH CODE REQUIREMENTS OTHER THAN THOSE RELATING TO COMPLAINTS AND DISPUTES

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27. This section of the Report, structured society by society, addresses significant events, changes and developments during the Review Period by reference to the relevant clauses of the Code.

### Australasian Performing Right Association Limited (“APRA”) and Australasian Mechanical Copyright Owners Society Limited (“AMCOS”)

#### General

28. APRA AMCOS’s report on its compliance with the Code was furnished to me on 31 July 2020.
29. APRA AMCOS’s website is at <http://apraamcos.com.au>.
30. As noted at [2] above, APRA administers AMCOS, and has done so under an arrangement between the two societies since 1 July 1997.
31. APRA AMCOS have previously provided details of the history and constitution of each of them, as well as a history and copy of each licence scheme offered by them. The current report provides information covering the Review Period (but not the period since the expiry of it on 30 June 2020) and, where applicable, indicates where there have been no developments since the previous Report on Compliance.

## Legal Framework (Code, Clause 2.1)

32. APRA AMCOS state that they have not changed any of the principal characteristics of their membership structure during the Review Period.
33. The APRA Board has six writer directors, elected by the writer members, and six publisher directors, elected by the publisher members.
34. The AMCOS Board is elected by the members of AMCOS.
35. Being directly elected by the membership, the Boards of both societies are representative and accountable. A list of the current Directors on the APRA and AMCOS Boards is available on the corporate website referred to at [29] above.
36. Access to the following documents relating to, or becoming available in, the Review Period was provided by APRA AMCOS:
  - APRA AMCOS “Year in Review” (an annual summary of both societies’ performance, achievements and initiatives) for the 2018/19 financial year, by way of a link on the website;
  - APRA Statutory Accounts for the 2018/19 financial year;
  - AMCOS Statutory Accounts for the 2018/19 financial year;
  - An organisational chart showing the overall management structure as at 30 June 2020;
  - APRA AMCOS Privacy Policy; and
  - The Constitutions of both APRA and AMCOS.

37. As at 30 June 2020, APRA AMCOS had 314 employees (including casual compliance staff) in Australia and 30 employees in the APRA AMCOS office in New Zealand. APRA AMCOS report that the number of employees has decreased during the Review Period, as a result of both the adverse impacts to the business on a day to day basis and the expected substantial loss in licensing revenue arising from the COVID-19 pandemic. A comprehensive process of identification, consultation and agreement was undertaken between March and June 2020, resulting in headcount reductions achieved through voluntary redundancies, compulsory redundancies and fixed term contract end dates being brought forward.
38. Neither APRA nor AMCOS is a declared collecting society under the Copyright Act in respect of any of the statutory licences. Accordingly, neither is required to comply with the requirements of the *Guidelines for Declaration of Collecting Societies*. In practice, however, they report that they satisfy many of those requirements.

### **Members (Code, Clause 2.2)**

39. As at 30 June 2020, APRA had 108,092 [2019: 103,637] Australian and New Zealand members, comprising composers, authors and publishers. Of these, 104,185 [2019: 98,905] were local writer members, and 557 [2019: 575] were local publisher members. In addition, APRA had 2,514 [2019: 2,291] overseas resident writer members and 8 [2019: 8] overseas resident publisher members. Most Australian and New Zealand composers and publishers of music are members
40. As at 30 June 2020, AMCOS had 22,224 [2019: 20,544] Australian and New Zealand members, of whom 21,208 [2019: 19,339] were writers and 499 [2019:

514] were publishers. In addition, AMCOS had 511 [2019: 432] overseas resident writer members and 6 [2019: 6] overseas resident publisher members.

41. As at 30 June 2020, APRA AMCOS had 1,704 [2019: 1,581] Aboriginal and Torres Strait Islander (ATSI) members, which represented an increase of 7.2% [2019: 9.6%] during the Review Period. Although indigenous membership is still relatively low, APRA AMCOS state that they are committed to increasing awareness through their national indigenous membership strategy, overseen by the National Manager, Aboriginal and Torres Strait Islander (ATSI) Music Office.
42. APRA AMCOS state that their relationship with their members continues to be at the core of their operations, that communication with members is frequent, and that their Member Services staff are expert in advising members on their relationship with APRA AMCOS and on the music business generally. Members continue to be able to interact freely with APRA AMCOS, having direct access to all levels of management.
43. Members, overseas affiliates, Board Directors and the media are able to log in to a secure section of the APRA AMCOS website (<http://apraamcos.com.au/>) which provides a number of online services. In addition, APRA AMCOS produce a large amount of written material for members, all of which has been provided in previous reports to the Code Reviewer.
44. Royalty queries to the Membership Department are logged in on that Department's query tracking system which uses the societies' internal email to forward messages to relevant staff. This system ensures that complaints made by members are also logged and forwarded to the Head of Member Services.

45. During the Review Period, the Writer Services Department engaged in email correspondence with writer members on 53,018 separate occasions. The Publisher Services Department sent 17,976 emails to publisher members. In addition, over 2,603,167 emails were sent to members as part of email broadcasts to the members, which contained information including event notices, payment advices and APRA AMCOS publications.
46. Writer Services staff log member phone calls eight weeks per year; one week for APRA distribution related calls after each APRA distribution and one week for AMCOS distribution related calls after each AMCOS distribution. During the Review Period, Writer Services staff logged 144 phone queries following distributions.
47. During the Review Period, positive feedback was received in relation to the service provided by the Membership Department generally and also the 'Live Chat' service provided on APRA AMCOS's website. Records of the positive feedback were provided in the Accompanying Underlying Documents.

#### **International relations**

48. APRA AMCOS's International Department is responsible for the reciprocal representation agreements with other societies administering performing and mechanical rights around the world.
49. The International Department undertakes the following activities:
  - overseas royalty distributions for performing rights to members;
  - administration of the non-exclusive mandates granted to APRA AMCOS in respect of certain publishers' repertoires for multi-territory digital services on a Pan Asian basis;
  - monitoring the use of APRA repertoire overseas;

- making claims for missing payments and researching members' notifications and enquiries relating to overseas use and payments; and
- acting as the conduit for communications between APRA AMCOS and their respective affiliated societies, the umbrella representative bodies CISAC and BIEM, as well as dealing with WIPO.

50. In the most recently audited financial statements (which are for the 2018-19 financial year), APRA collected more than AUD\$45.7m for the use of Australian and New Zealand repertoire overseas. AMCOS collected over AUD\$1.4m. [2019: AUD\$1.1m] These amounts do not include revenues collected from APRA AMCOS's licensing of certain publishers' repertoires to multi-territory digital services as that revenue is included in the APRA AMCOS digital revenue results.
51. During the Review Period, APRA distributed over \$50.7m [2019: \$36.5m] in performing right distributions from affiliate societies to APRA members by 12 monthly distributions. This amount was comprised 531 [2019: 221] individual distribution records from 58 [2019: 41] affiliate societies. AMCOS distributed over \$972.6k [2019: \$1.05m] in mechanical distributions from affiliate societies to AMCOS members across 4 quarterly distributions. This amount consisted of 82 [2019: 82] individual distribution records from 27 [2019: 25] affiliate societies
52. In addition, during the Review Period, the International Department was involved in a number of regional and international activities, details of which are included in the "Education and Awareness" section below.

## **Opt Out and License Back**

53. APRA continues to provide members with the opportunity to 'opt out' and to request that their entire repertoire be assigned to them for all territories, in respect of all or particular usages, or to 'license back' specific works for specific usages in Australia and/or New Zealand.
54. During the Review Period, APRA received and approved of 5 license back applications and no opt out applications. A copy of all information and forms relating to opt out and license back, including the plain English information guides, are available on the APRA AMCOS website.
55. As previously reported, in 2016 the AMCOS Board approved a variation to the opt out provisions in the AMCOS Input Agreement, to offer increased flexibility to its members in the way in which they are able to withdraw rights from AMCOS for digital music services. For digital music services that operate internationally, AMCOS members are permitted to withdraw their digital reproduction rights specifically in relation to nominated services, rather than for all services within particular categories of usage as used to be the case. Put simply, upon giving AMCOS sufficient notice, members can elect to negotiate directly with particular international digital music services.

## **Member Benefits Program**

56. APRA AMCOS have developed an extensive benefit program for their full Australian members that can assist with their careers as songwriters/composers, including exclusive information, advice, services and benefits. Information on the members' program is provided on the website.

## Licensees (Code clause 2.3)

57. APRA AMCOS has large licensing departments dedicated to liaising with licensees and potential licensees. The two main areas of licensing operations are: OneMusic (previously General Licensing and Business & Events Licensing) and Media Licensing.
58. OneMusic, a joint licensing project between APRA and the Phonographic Performing Right Association (PPCA), aims to provide a single licensing solution for music and recordings in Australia. It was launched on 1 July 2019 for new business licensing, with renewals of existing APRA and PPCA licences beginning from 1 September 2019.
59. Collectively, OneMusic and Media Licensing administered approximately 114,000 businesses and events in Australia and New Zealand during the Review Period. APRA AMCOS report that a decrease in the number of licensees can be attributed to the ongoing terminations and relicensing efforts associated with OneMusic.
60. The fees paid to APRA AMCOS by licensees vary according to the licence scheme applicable to the particular circumstances of use.

### **OneMusic**

61. The OneMusic licensing department administers the vast majority of licences. APRA AMCOS report that since 1 July 2019, OneMusic has licensed both APRA AMCOS rights and PPCA rights under a single licence.
62. Licensees, have access to 'plain English' Licence Information Guides tailored to their industry type (the information guides are required by the ACCC's



conditions of authorisation), and are able to get a quote and take out a licence online via the OneMusic website. Licensees can also complete licence applications by submitting information for processing by the OneMusic licensing department. Links to each Licence Information Guide can be found on the OneMusic website. Similarly, information on other licences still administered by APRA AMCOS can be accessed on their website.

63. During the Review Period, the OneMusic and Finance (Credit Management) Department engaged in more than 652,044 contacts with licensees, including by letter, email and telephone calls. A breakdown of the statistics has been included in the APRA AMCOS report at **vol 1 tab 9** of the Accompanying Underlying Documents.
64. During the Review Period emails of appreciation from licensees and/or potential licensees were received in relation to the services provided by the Licensing Departments, details of which have been provided by APRA AMCOS.

### **Media Licensing**

65. The Media Licensing Department covers four key areas of licensing: *Broadcast Licensing; Digital Licensing; Recorded Music Licensing; and Key Industries* (previously part of Business & Events Licensing).
66. *Broadcast Licensing* includes commercial and community radio, the ABC and SBS and subscription and commercial television. In total, approximately 845 [2019: 965] licensees were administered by the Department during the Review Period. The Department also administers "Production Music" (AMCOS-controlled Production Music is music specifically written and recorded for inclusion in all forms of audio and audiovisual productions). There were 602

[2019: 678] Australian production music clients licensed during the Review Period.

67. *Digital Licensing* includes video on demand services, digital subscription music services, music downloads, ringtones and general websites. In total, approximately 470 [2019: 419] licensees of this category were administered during the Review Period.
68. *Recorded Music Licensing* includes CD sales, business to business applications, dance schools and videographers. In total, approximately 528 [2019: 704] licensees of this kind were administered during the Review Period.
69. *Key Industries* include schools, universities and colleges licensing, government, airlines, dramatic context, funerals and Eistedfoddau. Approximately 10,200 key industry licensees were administered during the Review Period.
70. Clients of the Media Licensing Department are, for the most part, aware of their copyright and licensing obligations.

#### **Information provided to Licensees**

71. APRA AMCOS's website contains a Licensee section with information in relation to the various licences and with contact details for the relevant Licensing Department, including links to public performance licence now being administered through *OneMusic*.: <http://apraamcos.com.au/music-customers/>
72. APRA AMCOS state that information made available to licensees and potential licensees differs according to the nature of the particular licence. For example, sophisticated national broadcasters and telecommunications companies generally require less information than small business operators who have less

exposure to copyright law and limited access to specialist legal advice. The level of information provided takes these factors into account.

### **APRA AMCOS relationship with relevant trade associations**

73. APRA AMCOS report that they continue to work hard to maintain relationships with various bodies representing major licensee groups, including television and radio broadcasters, record companies, internet service providers, small businesses, hotels, restaurants, fitness centres and educational institutions, and that during the Review Period they have supported the activities of several of those bodies (including the Australian Hotels Associations, Clubs Australia and Restaurant & Catering Association) by way of sponsorships.
74. In addition, APRA AMCOS consult regularly with relevant trade associations in relation to the introduction of new licence schemes or material variations to existing licence schemes. They say that this approach is demonstrated by the successful negotiation of new licence schemes with relevant industry bodies.

### **Tariff Reviews**

75. APRA AMCOS have previously provided detailed information in relation to the history and development of all significant existing licence scheme tariffs.
76. As at the end of the Review Period (30 June 2020), APRA AMCOS were in the process of consulting with OneMusic licensees and renewing or establishing licence arrangements with a number of major media licensing services: Facebook, YouTube, Netflix, Spotify, Apple Music, Apple TV+. Amazon Prime Video, Amazon Music and Disney+.

### *OneMusic Licence Consultations*

77. Under OneMusic, APRA AMCOS and PPCA offer a single licence to virtually all music users who require both APRA AMCOS and PPCA licences for the public performance of music. Since the last report, the consultation process for 18 of the licence proposals has been completed, with consultation for 2 licence schemes and 4 tariffs ongoing. As noted earlier, OneMusic launched on 1 July 2019 for new business licensing, and renewals of existing APRA and PPCA licences began from 1 September 2019.

### *Free TV*

78. Free TV (as the industry body for Australian commercial television operators) terminated its licence with APRA as at 31 December 2018. Free TV and APRA referred the matter to APRA's ADR process and have agreed to a confidential binding arbitration with the hearing completed in late November 2019 and the award (decision) was delivered in March 2020. The parties agreed an interim licensing arrangement during the arbitration process.

### *Foxtel*

79. Following on from APRA's renegotiation of its licence with Fox Sports during the previous review period, AMCOS's licences with Foxtel and Fox Sports were both renewed in October 2019.

### **Multi-Territory licensing (formerly Pan Asia Licensing)**

80. The aim of APRA AMCOS's multi territory licensing is to co-operate with music publishing rightsholders in order to establish a simple one-stop shop for multi-territory licensing schemes for digital, online and mobile usage, covering the largest number of territories for the largest possible repertoire of musical works.

81. Rightsholders give APRA AMCOS non-exclusive rights in certain repertoire of its musical works. APRA then licenses that repertoire to digital service providers in its mandated territories and undertakes the ongoing invoicing, processing, claiming and distribution for online service types.
82. APRA AMCOS's Multi Territory Licensing commenced across the Asia Pacific region in July 2013 and currently represents Universal Music Publishing, Hillsong Music Publishing, Concord Music Publishing, Mushroom Music Publishing, Downtown Music and Songtrust Music, Origin Music Publishing, Native Tongue Music Publishing, Cooking Vinyl, Ultra Music Publishing and STIM (APRA's Swedish sister society).

### **Disaster Relief**

83. During the Review Period, APRA AMCOS report that they have continued their policy regarding Disaster affected licensees, which was introduced as a response to various natural disasters that occurred in 2010.
84. APRA AMCOS's actions, intended to alleviate financial pressure on affected businesses, including deferring licence fee renewals, extension of payment periods, and corporate donations to relief appeals.
85. APRA AMCOS staff use online, print and broadcast media sources to remain actively aware of possible areas that may be affected by disaster and monitor events closely to establish the appropriate course of action.

### *2019/20 Bushfires*

86. APRA AMCOS report that the fires that devastated areas of Victoria, New South Wales, South Australia and Tasmania had an adverse impact on many of

their members, licensees and staff. At the onset of the crisis over the summer of 2019/2020, APRA AMCOS quickly identified the need to provide support to staff, members and licensees in regions that were impacted by the fires.

87. On 6 January 2020 APRA AMCOS and OneMusic wrote to more than 60,000 licensees and posted messages on social media to advise that the disaster relief policy had been enacted and accounts for licensees within declared natural disaster zones would be held for a minimum of three months. Businesses undergoing relicensing through OneMusic were also advised that their current licence would be extended on a complimentary basis for 12 months.
88. In addition, a series of initiatives were established to support members from offering advances on royalties and small contributions from the cultural fund for bushfire relief fundraisers, to offering complimentary licences for fundraising events. While the financial impact to APRA AMCOS of this activity was minimal, the message of support has been important in terms of building goodwill.

#### *COVID-19 pandemic*

89. In March 2020, APRA AMCOS again moved quickly to support members, licensees and staff in response to the COVID-19 pandemic.
90. APRA AMCOS's 420 staff across Australia and New Zealand were successfully transitioned to a work from home arrangement from 17 March 2020. All Departments and Teams worked quickly and efficiently to ensure both intra and inter-departmental workflows remained effective and to date there has been little to no discernible impact on service delivery to members.

91. APRA AMCOS and OneMusic responded extremely quickly to COVID-19 lockdown measures issued by the Australian Government on 23 March 2020. Accounts were placed on hold based on industries identified by the Federal government to close or limit trading due to social distancing restrictions, with 'on hold' meaning pausing all licensing activity, correspondence, all invoicing and payments including those managed by external debt collectors. Communications were carried out via email, phone and social media.
92. As of 30 June 2020, approximately 25,000 accounts were still being held in industries affected by closures and restrictions to trade. Any business outside of the industries identified as impacted by COVID-19 that have advised of their closure have also been put on hold. A fee relief will be applied to these industries and businesses during 2020 and 2021 when restrictions are lifted by State and Federal Governments.
93. Further, in response to the impact on members' lives and their significantly reduced capacity to earn in the wake of the COVID-19 pandemic, APRA AMCOS continues to work with industry partners to lobby government to secure immediate and short-term financial stability for both members and the ecosystem of individuals and businesses that surround them. Several measures were initiated to provide an ongoing flow of income to our members.
94. The annual Live Performance payment was brought forward from November to May; an expansion of live performance reporting was introduced to include streaming; recoupable advance payments were offered to writer members where hardship was experienced; and APRA AMCOS launched The Sustainability Fund to provide direct financial support to songwriter and composer members in the creation of new music. Active members worldwide, at any career stage and working in any musical genre were eligible to apply for a \$2,000 grant.

95. Detailed information relating to the APRA AMCOS response to the bushfires and the COVID-19 pandemic has been supplied to me in the Accompanying Underlying Documents at **vol 1 tab 11**.

#### **Distribution of Remuneration and Licence Fees (Code, Clause 2.4)**

96. The most recently audited financial statements for the year ended 30 June 2019 show that APRA AMCOS's total combined net distributable revenue for that year was \$471.8m [2019: \$420.2m]. Further information regarding APRA AMCOS's performance is contained in the 2018/19 APRA AMCOS Year in Review, which is available on the APRA AMCOS website.
97. APRA and AMCOS distribute royalties quarterly, with the exception of the APRA Performance Returns distribution, which usually occurs annually. However, during the Review Period, two performance returns distributions were performed, with the November 2020 distribution brought forward to May 2020 in response to members experiencing financial hardship as a result of the COVID-19 pandemic.

#### **Distribution Rules and Practices**

98. APRA and AMCOS maintain, and make available on the website, comprehensive Distribution Rules and Practices. During the Review Period APRA AMCOS published a 'plain English' information guide summarising its Distribution Policy, including how undistributed funds are dealt with.
99. APRA and AMCOS update their Distribution Rules and Practices from time to time, in accordance with their Constitutions. APRA AMCOS regularly consult with their Boards and other key industry groups in relation to changes to



Distribution Rules and Practices, considering the views of each membership, objective data regarding performances, the approaches of affiliated societies to the process and methods of distribution.

100. APRA AMCOS has a large Membership department whose staff are trained to deal with members' (and others') enquiries, including in relation to distribution. The Boards of APRA and AMCOS both have a Membership and Distribution Committee that deals with, among other things, requests by members for distributions in relation to "unlogged performances". This committee also deals with complaints from and disputes between members. Members are strongly encouraged to resolve disputes between them using Resolution Pathways, APRA AMCOS' external Alternative Dispute Resolution facility.
101. The APRA Distribution Rules were updated in the Review Period to remove the rule which downgraded the value of LPR claims where a work was deemed to have been performed for less than one minute.
102. The APRA Distribution Practices were updated in the year ending June 2019 to:
  - Update the list of Background Music Suppliers for whom APRA performs a direct distribution
  - Provide details about partially payable distributable events
  - Provide details about the expanded analysis applied to Video On Demand data
  - Remove reference to APRA staff reviewing the top 1,000 unmatched YouTube videos
  - Provide a detailed list of Streaming Services included in the distribution
  - Detail that the threshold for inclusion in a streaming distribution was lowered from 100 streams to 50 streams

- Update the distribution policy for Facebook licence fees, to reflect that revenue is now distributed directly to data collected from Facebook
- Include a section to detail the creation of a new 'Childcare Centres' distribution pool
- Update the distribution policy regarding Community radio, whereby data provided by AMRAP is now included to supplement reporting received from broadcasters

103. The AMCOS Distribution Rules were updated in the Review Period to:

- Reflect the change in policy regarding Joint ARIA Licences, whereby the AMCOS share was previously used to fund industry schemes but is now distributed to members
- Update the Music On Devices distribution practice, whereby a small deduction is made from this line of business to fund industry schemes, with the balance distributed to members
- Include a section to detail the creation of a new 'Childcare Centres' distribution pool

104. The AMCOS Distribution Practices were updated in the Review Period to:

- Remove reference to AMCOS staff reviewing the top 1,000 unmatched YouTube videos
- Provide a detailed list of Streaming Services included in the distribution
- Detail that the threshold for inclusion in a streaming distribution was lowered from 100 streams to 50 streams
- Record the updated distribution practice for Commercial Radio licence fees, where data is now extracted from APRA's radio data
- Update the distribution policy for Facebook licence fees, to reflect that revenue is now distributed directly to data collected from Facebook

- Include a section to detail the creation of a new 'Childcare Centres' distribution pool

### **Investment in Systems Development**

105. As detailed in previous reports, in 2014 APRA AMCOS commenced a core system replacement project to ensure a best-in-industry service offering in the years ahead. The first release of the system, the *Amplify* platform, went live on 1 July 2019 as part of the OneMusic launch. APRA AMCOS have since made a strategic decision to shift their focus from the second release of the core system replacement project to innovation and delivering new services at speed, in response to what writers, publishers and industry stakeholders were asking for. As at the end of the Review Period, 14 of 17 major strategic business initiatives had been delivered, representing a significant long-term value proposition. These initiatives included technology for improved data ingestion and matching and improvements to the Amplify platform for licensees and the OPUS portal.
106. In July 2020 APRA AMCOS delivered an Earnings Insights Portal, accessed via the Writer Portal and Publisher Portal, as well as the backend services required for the new Member Mobile Application. The new features include:

#### *Publisher and Writer Portals*

- Login/Admin Portal for IDM (Identity Management)
- User/Member Management within Admin Portal
- User/Member Management within the Publisher Portal
- Earnings Insights Integration within the Publisher and Writer Portal

## *Earnings Insights*

- *Dashboard/Landing Page:*
  - o *Earning Overview section with interactive proportion and trend graphs.*
  - o *Earnings by Category section (Publisher Member)*
  - o *Quick access to recent distribution reports*
  - o *Distribution Calendar and Frequently Asked Questions*
- *Access to Reports from Domestic and International Distributions from the past seven years, with filter/sort functions*
- *Distribution Report Overview, via interactive visual graphs and sortable lists*
- *'All Works' listing page to view all earning works in each report, with search/sort functions*
- *Publishing Activity Selection (Publisher Member)*

107. A new APRA AMCOS website and mobile app are planned for delivery in the next Review Period.

### **Collecting Society Expenses (Code, Clause 2.5)**

108. The APRA accounts show that its operating expenses are deducted from total gross revenue.

109. Commission on revenue pays AMCOS's expenses. The commission rate depends on the source of the revenue.

110. According to the most recent audited financial statements, for the year ended 30 June 2019, APRA AMCOS achieved a group expense to revenue ratio of 12.9% [2019: 13.6%].

## Governance and Accountability (Code, Clause 2.6)

111. The Annual Report of each of APRA and AMCOS contains the matters set out in clause 2.6(e) of the Code.
112. The relationship between APRA and AMCOS and their respective Boards of Directors is governed by each company's Constitution and Charter of Corporate Governance. The Boards have both established Audit and Governance Sub-Committees, which continue to meet at least six times a year and which concentrate exclusively on issues relating to Corporate Governance.
113. The APRA AMCOS management also has an internal Corporate Governance Committee, comprising the Chief Executive and Executive Leadership Team. The Committee meets regularly to discuss matters relating to the day to day operation and management of the two societies. This Committee deals with policy setting and other matters relating to Human Resources and Industrial Relations, risk management, infrastructure, general administration, and regulatory compliance.
114. APRA AMCOS also have an internal "Staff Code of Conduct" and a "Service Provider Code of Conduct", both of which complement the Code: the Staff Code sets out the standards according to which staff are expected to treat one another; the Service Provider Code sets out APRA AMCOS's commitment to shared professional standards. A copy of each has been provided to the Code Reviewer.
115. APRA AMCOS maintain complete financial records which are audited each year, and a statement by each company's auditors is included in its Annual Report.

116. During the Review Period APRA AMCOS prepared additional detailed information at an anonymised or aggregate level about the accounting and distribution of licence revenue and reporting of expired undistributed funds. The APRA and AMCOS 'Transparency Reports' for the financial year ended 30 June 2019 were provided to the Code Reviewer.

### **ACCC Authorisation**

117. As reported previously, APRA's membership, licensing, distribution and international arrangements are all the subject of an "authorisation" by the ACCC. In granting the authorisation in 2014 that expired on 28 June 2019 and previous authorisations, the ACCC confirmed that the conduct and arrangements for which APRA sought re-authorisation were likely to result in a public benefit which would outweigh the likely public detriment.
118. APRA reports that it has complied with all the ACCC's conditions of authorisation.
119. APRA lodged its application for a new authorisation on 24 December 2018. APRA sought re-authorisation for a period of 5 years subject to the same conditions that applied under its existing authorisation.
120. On 5 June 2019, the ACCC issued a draft determination proposing to re-authorise APRA's arrangements for a period of 5 years, subject to the same conditions imposed in 2014 and some additional conditions relating primarily to issues of transparency.
121. Given that the re-authorisation assessment process was ongoing, on 27 June 2019 the ACCC granted APRA an interim authorisation on the same terms as

the existing authorisation until such time as the new authorisation was determined.

122. On 13 July 2020, the ACCC released a final determination granting conditional authorisation to enable APRA to continue its arrangements for the acquisition and licencing of performing rights in musical works for a further four years. The conditions of authorisation primarily focus on improving the transparency of APRA's licencing and distribution arrangements.

### **Staff Training and Development (Code, Clause 2.7)**

123. APRA AMCOS report that their staff at management level continue to be comprehensively trained regarding the Code.
124. The Executive Leadership Team meets several times per week to discuss matters relating to policy and strategy development and assessment. At these meetings issues relating to service and staff performance and training are regularly addressed.
125. In addition, the wider senior management team meets in the week following each scheduled Board Meeting, providing a cross-departmental opportunity to discuss interaction with stakeholders and wider communities and of reviewing company policies. At these meetings, the Code (including the complaints procedures and the review process) is regularly discussed.
126. Senior Manager, Manager and Team Leader forums are held at regular intervals throughout the year at which the Chief Executive and Executive Leadership Team address the middle and frontline management teams. They provide an opportunity for the latter to raise any concerns, suggestions or initiatives directly with the senior leadership, and for the Chief Executive to

share information about business and membership trends and concerns, and to set performance expectations. In addition, other members of the senior management team are invited to address these groups.

127. The Music Licensing and Membership divisions usually hold staff training conferences at least once per year, however the COVID-19 pandemic has meant that conferences could not go ahead as planned.
128. All departments in APRA AMCOS conduct regular departmental staff meetings which provide important opportunities to discuss Code related topics, including; client service, conflict management and time management and the procedures for identifying and dealing with complaints.
129. APRA AMCOS also hold company-wide staff briefings throughout the year. The briefings focus on the respective needs and expectations of general staff, middle and senior management and also the expectations of the organisation. The focus of the training sessions has in the past covered the Code, ACCC authorisation and the CLEF Project, as well as performance within and between departments and with external stakeholders. With most APRA AMCOS staff working from home, staff briefings are currently being held every 2-4 weeks to ensure staff are being kept up to date.
130. APRA AMCOS have provided details of the induction and training sessions that the Human Resources department provide for staff. The Code and internal Staff Code of Conduct are central components of the induction program that all new staff attend when they join the company. As well as the induction sessions conducted by Human Resources personnel, roles with a high level of client and/or member contact also receive additional training from within the relevant departments in relation to handling complaints and the complaints procedure.



131. APRA AMCOS has developed a “brand blueprint” which further outlines their purpose, values and “personality”.
132. APRA AMCOS report that their website continues to include a “live chat” facility so that responses to urgent enquiries can be provided in real time. The staff who respond to live chat enquiries are required to attend two, two-hour training sessions to understand the live chat service guidelines and to ensure that the highest level of customer service is offered via this channel. A copy of the guidelines have been provided previously. In June 2020, digital chat assistance technology ‘APRABot’ was implemented within the live chat facility, which has resulted in up to 76% of simple queries being handled in real time by this technology.
133. APRA AMCOS assert that they are committed to taking a proactive approach to staff development and wellbeing, with such internal programs including:
- Higher Education Assistance Program
  - Leadership Development Program
  - Mentoring & High Potentials Program
  - Buddy Program
  - In-house Training Programs
  - BeSpoke Coaching (leadership presence and presentation skills)
  - Employee Assistance Program
  - Purchased Leave Scheme
  - Employee Wellbeing Program comprising seminars on resilience, stress management, work-life balance and dealing with change
134. Under the *Workplace Gender Equality Act 2012*, APRA AMCOS continue to submit their annual report to the Workplace Gender Equality Agency (WGEA), outlining their performance against a set of standardised gender equality

indicators. A copy of the most recently filed report is available on the APRA AMCOS website and, as required by the Copyright Act, staff and members are notified of the report each year.

135. APRA AMCOS's internal "Wiki" facility continues to form the basis of staff training and is a key information source for all staff. All new APRA AMCOS staff are trained in accessing and using the Wiki facility which contains policies relating to Client Service, Human Resources, Work, Health & Safety and Departmental Organisation Charts.

### **Education and Awareness (Code, Clause 2.8)**

136. APRA AMCOS report that they devote "considerable resources" to the education of members, licensees, industry associations and members of the public, regarding the matters set out at Cl 2.8 (a) of the Code. APRA AMCOS have provided a list of the numerous organisations and associations with which they have an ongoing relationship.
137. APRA claims that, as Australia's oldest and largest collecting society (incorporated in 1926), it is in a position to have developed extensive materials and expertise in relation to education and awareness matters. APRA AMCOS participate and contribute to the following education and awareness initiatives:
- Various Grant Programs, Sponsorships, Competitions and Promotions
  - Indigenous Member Strategy
  - Aboriginal and Torres Strait Islander (ATSI) Music Office
  - Ambassador Program
  - Events
  - Member Advisory Group Development
  - SongHubs and SongMakers programs
  - Sounds Australia & Live Music Office; and

- Various industry related organisations and programs
- Seminars and public forums

138. In their report, APRA AMCOS provide updates and information on their educational activities in detail under the headings “Member Education”, “Licensee Education”, “International Relations”, “Government Relations” and “APRA AMCOS Website & Social Media”.

139. I will not set out the detail here but the following is a summary:

- Member Education – 305 events conducted and attended by 5,525 members ;
- Publisher Members – Portal Reference Groups and Publisher Pulse seminars;
- Licensee Education – attendance at a number of industry association functions and events and production of a large volume of written material for licensees;
- International Relations – involved in a number of regional and international activities;
- Government Relations – continued to develop their profile with State and Federal governments, Oppositions and Departmental staff both to increase the general awareness of APRA AMCOS’s breadth of operation and to lobby on specific relevant issues; and
- Social Media – Facebook, Twitter, Instagram and LinkedIn: increased followers; YouTube: increased views; all platforms allow greater and more time-sensitive means of communications.

140. As previously reported, the APRA AMCOS website provides broad information about the services provided to members and licensees. The website is at the heart of the organisation’s digital communications strategy and also provides information of interest to the wider public. The site contains a vast amount of

information about copyright in general, and the activities of the two societies in particular. Among other things, members of the public can search the website to check composer details of particular works within the APRA repertoire.

141. Traffic to the APRA AMCOS website dipped slightly during the Review Period, from 386,281 to 379,410. Sessions decreased from 763,704 to 714,282; and page views decreased to 3,166,902 from 3,405,087 in the previous year. The website saw some growth, with users spending more time on our site, on average 5.25 minutes in the Review Period, compared to 5.21 minutes last year; and viewed 4.43 pages per session compared to 4.46 pages per session last year.
142. The *OneMusic* website (<https://www.onemusic.com.au/>) was launched on 1 July 2019. The website contains general information about *OneMusic*, an FAQ section, plain English guides to each of the licence schemes, downloadable PDFs of *OneMusic* licence agreements, and the opportunity for licensees to get a quote for many of the licence schemes online. The website also links to the *OneMusic* eCommerce portal, which enables all licensees to pay their licence fees online and some licensees (according to their industry) to obtain their licence through the portal at a time convenient to them.
143. The *OneMusic* website began in its the first year with a total of 130,352 users and 199,192 sessions. During this period 528,994 pages were viewed while users spent an average of 3.03 minutes on the website.
144. Increasing importance has been placed on social media as an effective means of communication, and enabler of connection within communities. Social media is a key component of APRA AMCOS's communications strategy. Social media utilised includes Facebook, Twitter, Instagram, YouTube and LinkedIn. APRA AMCOS social media presence allows greater and more time sensitive

means of communications, especially with members. Again, in the Review Period, there has been growth in followers on Facebook, Twitter and Instagram; and increased engagement.

145. During the Review Period APRA AMCOS gained an additional 758 page “likes” (followers) on Facebook, bringing the total Facebook page “likes” to 32,729. Twitter followers totalled 21,738, a slight increase on the previous review period. Instagram saw an increase in followers to 14,976 followers, up from 12,340 at 30 June 2019. YouTube views reached 253,700 views. OneMusic’s Facebook page amassed 417 page likes in the first year.

### **Complaints and Disputes (Code, Clause 3)**

146. This subject is dealt with in a separate section, “COMPLAINTS AND DISPUTES”, below.

### **Publicity of the Code and Reporting of Compliance with it in the Annual Report (Code, Clause 4)**

147. APRA AMCOS report that they have kept their members and licensees updated with information regarding the Code, in particular by maintaining relevant information including a copy of the Code on their website.
148. As reported elsewhere in this Report, the collecting societies have amended the Code and launched a new standalone website for the Code (<https://www.copyrightcodeofconduct.org.au/>).
149. The amendments and the new website are both initiatives that were undertaken in response to the recommendations of the BCAR, which recommended:

- increased clarity around the role of the Code;
- improved transparency around collecting societies' operations; and
- strengthened governance arrangements for collecting societies and the Code

150. Prior to this Review Period, compliance reports were provided to the Code Reviewer on a confidential basis. As a result of the review, societies are now publishing their compliance reports, with any confidential material (such as correspondence between a society and a complainant) redacted.
151. In addition, on their own website APRA AMCOS invite any interested person to make submissions to the Code Reviewer as part of the annual compliance process.
152. Of course, APRA AMCOS's annual report to the Code Reviewer is itself directed to its compliance with the Code.

### **Monitoring, Review and Amendments (Code, Clause 5)**

153. APRA AMCOS report that they constantly explore opportunities for obtaining more accurate information of music usage in an attempt to improve the accuracy of distributions made to writers, publishers and affiliates.
154. The Distribution Department receives music performance reports from radio and television stations, streaming and download services, concert promoters, members and many other types of users of copyright music.
155. Further, APRA AMCOS continue to invest significantly in music recognition software, with the cooperation of licensees, to ensure accurate distribution of royalties for the performance of music. The Online Portal for Uploading Songs

(OPUS) reporting system also enables writers and publishers to upload audio files directly to APRA AMCOS' database so that they can be matched with music used in advertisements. OPUS utilises music recognition technology to provide accurate and efficient tracking of jingle play on television and radio.

## Copyright Agency Limited ("Copyright Agency")

156. Copyright Agency merged with Viscopy on 1 December 2017. It had managed Viscopy's services under a services agreement since 2 July 2012. Viscopy members are now Copyright Agency members, and Copyright Agency is now the licensor for the artwork licences that it previously managed for Viscopy.
157. Copyright Agency's report on its compliance with the Code was furnished to me on 31 July 2020.
158. Copyright Agency's website is at <https://www.copyright.com.au>.

### General

159. Copyright Agency is a company limited by guarantee and has more than 37,000 members. They include writers, artists, surveyors, publishers and other collecting societies.
160. In its report to the Code Reviewer, Copyright Agency has categorised its operations as follows:
  - in accordance with its appointments by the Australian Government:
    - management of the statutory licences for educational and government use of text, images and print music, including negotiation, collection and distribution of fair compensation for content creators; and
    - management of the artists' resale royalty scheme; and
  - in accordance with the authority of its members, and with the oversight of the

Copyright Tribunal, formulation and management of 'voluntary' licensing arrangements, principally for the business sector."

161. Copyright Agency reports annually to the relevant Minister (currently the Minister for Communications, Cyber Safety and the Arts) in accordance with statutory obligations in the Copyright Act and in the *Resale Royalty for Visual Arts Act 2009* (the **Resale Royalty Act**). Its annual reports are tabled in Parliament and are available on the Copyright Agency website.
162. As a declared collecting society, Copyright Agency also operates in accordance with the Australian Government guidelines for "declared" collecting societies.
163. In 2019–20 Copyright Agency responded to the challenges of COVID-19 by:
  - making a special allocation of \$500,000, through the Cultural Fund, to support writers, visual artists, publishers and creative organisations affected by COVID-19
  - bringing forward the allocations from the Cultural Fund for 2020–21
  - agreeing to requests from the school and university sectors to pause surveys
  - assisting our members to respond to requests from schools
  - assisting the Australian Society of Authors and the Australian Publishers Association to develop the Storytime arrangements that have enabled the recording and online delivery of children's stories by libraries and schools
  - providing flexible payment plans to licensees in the education and commercial sectors



## **Legal Framework (Code, Clause 2.1)**

164. Copyright Agency states that during the Review Period it complied with its obligations under the legislation and other documents referred to in clause 2.1 of the Code.
165. On its website, Copyright Agency publishes the following documents related to governance:
- Constitution;
  - Corporate Governance Statement;
  - Customer Services Charter;
  - Privacy Policy;
  - Dispute Management Procedures;
  - Complaints Management Procedures;
  - the Code;
  - the Australian Government Guidelines for Declared Collecting Societies;
  - the Attorney-General's Declaration of Copyright Agency for Part VB of the Copyright Act; and
  - the Copyright Tribunal's Declaration of Copyright Agency for Div 2 of Part VII of the Copyright Act.
166. Copyright Agency's in-house legal team continues to oversee compliance issues, monitors relevant legal and regulatory developments, and implements any necessary or desirable changes to its policies or practices.

## **Members (Code, Clause 2.2)**

167. Membership of Copyright Agency is free and is open to all eligible creators, owners and controllers of copyright in Works and Published Editions (as

defined in the Copyright Act) and to anyone who owns or controls the resale royalty right (see below).

168. Applications for membership can be made online and are approved by the Senior Management Team, under delegation from the Board, and are reported to the Board.
169. Copyright Agency states that it continues to adopt a range of policies and processes aimed at ensuring that its members are treated fairly, honestly, impartially, courteously, and in accordance with its Constitution and membership agreements. It has a "Service Charter", induction training for new staff and periodic updates for all staff on the requirements of the Code.
170. In its report to the Code Reviewer, Copyright Agency gives details of its communications with its members and potential members, including:
  - information on the Copyright Agency website about membership arrangements, distributions of licence fees and payments and its Constitution (available on its website);
  - updates in its regular monthly member communications;
  - social media posts;
  - broadcast and one-on-one communications about changes to membership, distribution or payment arrangements;
  - responding to enquiries in accordance with the Service Charter;
  - providing secure online member accounts which enable members to review their membership, distribution and payment details; and
  - information in its annual reports, which are published on the website.

## Licensees (Code, Clause 2.3)

171. Under this heading, Copyright Agency reiterates what it has said in relation to members as recounted at [158] above, substituting “licensees” for “members” and “licence agreements” for “membership agreements”.
172. Information on the Copyright Agency website about licensing includes:
- plain English guides for different types of businesses;
  - pay-per-use plain English guides;
  - information for media monitoring organisation customers;
  - data processing protocols for schools, universities TAFE; and
  - information in annual reports to the Minister.
173. Copyright Agency reports that it has data access arrangements with the Copyright Advisory Group to the Education Council (CAG) and Universities Australia (UA) to provide access to data from surveys in schools, universities and TAFEs. The survey records are ‘processed’ by Copyright Agency to extract information relevant to estimating the overall extent of content usage under the statutory licence, in accordance with data processing protocols agreed with CAG and UA. This information is taken into account (together with other matters) in licence fee negotiations.
174. Information is published about non-statutory (‘voluntary’) licences (‘blanket’ and pay-per-use) on the corporate website and on the RightsPortal website ([rightsportal.com.au](http://rightsportal.com.au)) and via other channels, including seminars, trade shows, trade publications and in response to specific enquiries.
175. The terms of the licence agreements are reviewed regularly to ensure that they are written in plain language, correspond with Copyright Agency’s mandate, and reflect feedback from licensees.

176. Further, Copyright Agency states that its policies, procedures and conduct in connection with the setting of licence fees are fair and reasonable.
177. For the statutory licences for education and government, Copyright Agency mostly deal with bodies or departments representing a class of licensees (such as Universities Australia, Copyright Advisory Group to the Education Council for most schools and TAFEs, and the Department of Infrastructure, Transport, Regional Development and Communications for the Commonwealth) rather than individual licensees.
178. Copyright agency also have individual licence agreements with more than 1,000 other education providers, such as registered training organisations, and with licensees for its voluntary licences.
179. Copyright Agency reports that it is currently engaged in proceedings in the Copyright Tribunal of Australia [the **Copyright Tribunal**] with:
- with Universities Australia, regarding the application of the education statutory licence to universities; and
  - with three media monitoring companies – Meltwater, Isentia and Stream – regarding licensing arrangements for media monitoring.
180. Copyright Agency acknowledge the role of industry associations with which they have dealings. These include Public Relations Institute of Australia, Australian Local Government Association, Association of Corporate Counsel, Early Childhood Australia and Independent Tertiary Education Council Australia.

181. There were no new relevant terms and conditions for consultation with industry associations in 2019–20.
182. Copyright Agency reports that where licensees requested further information in connection with negotiation of licence fees, that information was provided.
183. In the Review Period, no requests for ADR were received. However, Copyright Agency engaged in a mediation with Universities Australia in August 2019, in accordance with orders made by the Copyright Tribunal.

#### **Distribution of Remuneration and Licence Fees (Code, Clause 2.4)**

184. On its website, Copyright Agency publishes its Distribution Policy; its Distribution Schedule; payment timetable (when payments are made to members' bank accounts following processes such as their confirmation of entitlement to an allocation, or approval of a new member application); information sheets about individual distributions, and information regarding deductions before distribution.
185. Copyright Agency distributes payments in accordance with its Constitution and Distribution Policy.
186. Copyright Agency informs members of changes to distribution policies and processes, via a range of channels, including one-on-one communications, group meetings, the corporate website, information sheets for each major distribution, and the eNewsletter entitled '*Creative Licence*'.
187. Copyright Agency reports that during the Review Period it did not receive any requests regarding rights payments, apart from any requests associated with legal proceedings in the Copyright Tribunal.

188. Also in the Review Period, Copyright Agency consulted with members and their representative associations about a change in policy regarding allocations to books, that will come into effect in late 2020.
189. Copyright Agency's distribution policy, and information sheets about individual distributions, are in Plain English.

### **Collecting Society Expenses (Code, Clause 2.5)**

190. Copyright Agency reports that the operating costs associated with managing the statutory and voluntary licence schemes continue to be met from its revenue. In some cases, the deduction is a fixed percentage but in most cases the deduction represents the actual and projected costs relevant to the particular licence scheme.
191. Copyright Agency publishes information about deductions on its website. Members also receive itemised information about deductions with each payment. In addition, it publishes information about expenses, including the expense to revenue ratio for each financial year, in its Annual Report.
192. Copyright Agency's Board of Directors approves the society's annual operating budget and reviews the budget at each Board meeting.
193. Copyright Agency's Constitution allows it to deduct up to 1.5% of revenue for application to cultural or benevolent purposes. Its Board approves the amount to be allocated for these purposes. Copyright Agency publicly invites applications for cultural support. The Board approves the successful applications following a recommendation process by a committee of the Board.

## Governance and Accountability (Code, Clause 2.6)

194. Under Copyright Agency's Constitution, its Board comprises directors elected by author, artist and publisher members respectively, and directors appointed by the Australian Society of Authors and Australian Publishers Association. The current directors and the capacity in which they were elected or appointed appear on Copyright Agency's website.
195. The Society's financial statements are audited annually. Information about revenue, expenses and distribution of licence fees is included in each Annual Report, together with the auditor's report, and is made available to the public on Copyright Agency's website, as well as to members and to the Minister for Communications, Cyber Safety and the Arts. In addition, the Annual Report is tabled in Parliament.
196. On request, Copyright Agency provides information to members about entitlements to payment, in accordance with privacy and confidentiality obligations.
197. Copyright Agency's annual reports provide information about:
- total revenue for the period;
  - total amount, and nature of, expenses;
  - total amounts allocated and paid to members, including breakdowns by licence sectors;
  - the accounting and distribution of licence revenue, including:
    - classes of Licensees from whom licence revenue was received;
    - classes of Members to whom licence revenue was paid

- categories of copyright material for which licence revenue was received; and
- domestic vs international payments of licence revenue
- information about expired undistributed funds, including:
  - the reason/s why funds remain undistributed to rightsholders;
  - the steps taken to locate rightsholders and distribute funds to; and
  - information on the allocation and use or proposed use of the funds by the Collecting Society for which funds are to be applied

### **Staff Training (Code, Clause 2.7)**

198. Copyright Agency's procedures for making its staff aware of the Code include:
- induction training for new staff members on the requirements of the Code;
  - policy documents implementing those requirements on the society's intranet; and
  - periodic updates for all staff on the requirements of the Code.

### **Education and Awareness (Code, Clause 2.8)**

199. Education and awareness activities conducted by Copyright Agency for its members, licensees and other stakeholders include:
- information on the Code of Conduct website, including communications to members, licensees and other stakeholders about that website;
  - information on the corporate website and other websites managed by Copyright Agency;
  - eNewsletter ("Creative Licence") to members and other stakeholders;



- eNews("Canvas") to visual arts stakeholders;
- social media channels, including Copyright Agency's Facebook pages and Twitter account;
- presentations at Copyright Agency events and other events;
- training for licensees participating in surveys of usage;
- engagement with industry and professional associations that represent members and licensees; and
- mainstream and specialist media (such as industry magazines and newsletters).

200. Copyright Agency also uses the above channels to provide information about:

- matters relating to membership, including eligibility, benefits, responsibilities, policies and procedures; and
- matters relating to licensing, including benefits, responsibilities, obligations under copyright law, policies and procedures.

201. Information on the website relating to membership includes:

- membership terms and conditions;
- information about distributions, including distribution policy, information about each distribution (such as the data used), and forthcoming distributions;
- a 'Join Us' webpage, with information about eligibility, benefits of membership and how to join; and
- policies and procedures affecting members, including those relating to distributions and disputes.

202. Information on the website relating to licensing includes:

- licences available for various sectors (e.g. business, not-for-profit, education);
- pay-per-use licences;

- plain English guides;
- works excluded from voluntary licences;
- benefits of obtaining a licence, including a video for individually licensed education institutions and a webpage for businesses;
- guidelines for online teaching; and
- policies and procedures affecting licensees, including those relating to applying for a licence (including where this can be done online).

203. Copyright Agency has also provided funding to other organisations to conduct copyright education and awareness activities, including to:

- Australian Copyright Council;
- National Association for the Visual Arts; and
- Australian Society of Authors.

204. Copyright Agency also creates awareness of its role through sponsorship and publicity associated with grants from the Cultural Fund. For example, in the Review Period, it supported the Educational Publishing Awards Australia (EPAAs) and the Australian Reading Hour with (among others) the Australian Publishers Association and the Australian Library and Information Association.

### **Reporting by Declared Collecting Societies (Code, Clause 2.9)**

205. As noted earlier, clause 2.9 of the Code deals specifically with reporting required by Declared Collecting Societies, of which Copyright Agency is one.

206. Copyright Agency's annual reports provide the information set out in clause 2.9(a).

207. The annual reports also provide information regarding:

- classes of recipients of licence fees received from the schools,

- universities and government sectors respectively;
- allocations unpaid after four years from the education sector and government sector respectively, the reasons the allocations were unpaid, and the proportion of unpaid allocations attributable to each reason.

### **Complaints and Disputes (Code, Clause 3)**

208. This subject is dealt with in a separate section, "COMPLAINTS AND DISPUTES", below.

### **Publicity of the Code and Reporting of Compliance with it in the Annual Report (Code, Clause 4)**

209. The Code is available on the Code of Conduct website, as is information about the annual review of compliance with the Code, the Code Reviewer's reports, and the Triennial Review of the Code. The Copyright Agency's website has a webpage devoted to the Code and contains a link to the Code of Conduct website.

210. Copyright Agency alerts members and other stakeholders to the Code and to the annual compliance review and triennial review in a number of ways including on its website and in its monthly eNews.

211. Copyright Agency includes reference to its compliance with the Code in its annual reports.

212. Of course, Copyright Agency's annual report to the Code Reviewer is itself directed to its compliance with the Code.

## Audio-Visual Copyright Society Limited (“Screenrights”)

### General

213. Screenrights’ report on its compliance with the Code was furnished to me on 31 July 2019.
214. Screenrights’ website is at <https://www.screenrights.org>.
215. The Audio-Visual Copyright Society Limited, trading as “Screenrights”, was established in 1990 to be the declared collecting society for purposes of the statutory licence for the copying and communication of broadcasts by educational and other institutions under the then Pt VA (now Pt IVA Division 4) of the Copyright Act. Under those provisions, Screenrights also represents the owners of the copyright in sound recordings and cinematograph films (and works included in sound recordings and cinematograph films) for the purposes of the statutory licence in favour of educational institutions.
216. In addition, Screenrights is the sole collecting society for the collection of equitable remuneration for the retransmission of free-to-air broadcasts under Pt VC of the Copyright Act.
217. Finally, Screenrights has also been declared to be the collecting society in respect of television, radio and internet broadcasts under the government copying scheme under s 183 of the Copyright Act (Copyright Agency is also declared for that purpose).
218. As at 30 June 2020, Screenrights had 4,712 members [2019: 4,438] and 1,485 licensees [2019: 1,447]. It collects royalty payments from schools, universities, vocational training bodies, government agencies, TAFEs, resource centres,

retransmitters and New Zealand schools and tertiary institutions, as shown in the following table:

Type of Entity	Number
<b>Screenrights' Members</b>	<b>4,712</b>
<b>Licensees</b>	<b>1,485</b>
<i>Schools -- Government, Catholic Systemic, Independent -- Peak Bodies</i>	51
<i>Higher education including universities</i>	61
<i>Private Vocational Education/Training Organisation (inc ELICOS)</i>	26
<i>Government Agency</i>	432
<i>TAFE (including individual institutions and Departments representing multiple institutions)</i>	12
<i>Resource Centre</i>	9
<i>Retransmitter</i>	5
<i>NZ -- Tertiary</i>	28
<i>NZ – Schools</i>	859
<i>NZ – Resource Centre</i>	2

### Legal Framework (Code, Clause 2.1)

219. Screenrights reports that it has complied with the legal framework governing its operation and, subject to what is said at [209] below, has made no changes to its Constitution or other documents relevant to the legal framework during the Review Period.

220. At an Extraordinary General Meeting on 25 July 2019, the membership approved the Screenrights Board's proposed amendments to Screenrights' Constitution. The major changes are as follows:
- (a) The document was generally modernised, with references to facsimile transmissions removed and the document itself has been re-titled "Constitution".
  - (b) The Board must now include 3 Authorial Directors (a Screenwriter Director, Screen Director and Composer Director) and 1 New Zealand Director and changes were made to the procedure for election of Directors to facilitate the election of these new Directors generally. The first Authorial Director and Screenwriter Director, Kelly Lefever, was elected to the Board at the 2019 Annual General Meeting. The Screen Director and New Zealand Director will be elected at the 2020 AGM, and the Composer Director will be elected at the 2021 AGM.
  - (c) Removal of the requirement in the Constitution that one third of the Directors in office must retire from office at each AGM. This was removed because the effect of this provision was that some Directors may have not served a full three year term before retirement.
  - (d) Introduction of a maximum of three consecutive terms for each Director, with the possibility of submitting for re-election of one further term upon the special request of the Chair
221. Copies of the updated Constitution together with all other key governance documents are published on Screenrights' corporate website.

## Members (Code, Clause 2.2)

222. Membership of Screenrights remains open to all eligible rightsholders. Membership increased in the Review Period from 4,438 to 4,712 members.
223. Screenrights states that it adopts policies, processes and practices to ensure that members are treated fairly, honestly, impartially and courteously in accordance with its Constitution and the Membership Agreement. This includes staff training such as a comprehensive induction process and Code of Conduct training. Screenrights' Member Services team engages in frequent communication with members via phone and email and through its online membership portal *MyScreenrights*, as well as meeting in person where possible.
224. Screenrights adopts a continuous improvement approach to information management and information systems in the interests of transparency and efficiency. It reports that it undertakes numerous initiatives each year to improve the quality of information captured and the ease with which information can be provided to it by its members. The Society also undertakes initiatives to streamline information processing within its in-house systems to deliver efficiencies to royalty distribution.
225. Some of the key initiatives in the Review Period include:
- (a) Improvements to MyScreenrights online membership portal:
    - (i) The website underwent a complete rebuild, changing from a Drupal core website to one built within an Angular framework, giving Screenrights more freedom to design and customise the website based on internal requirements and member feedback.

- (ii) Stricter controls and instructional text implemented to prevent a user from taking over another's account. User name changes now require internal authorisation.
  - (iii) Improvements made to a user's ability to manage notifications. This includes a new notification-type filter, and options to toggle off email delivery of quarterly notifications.
  - (iv) Improvements to search functions. For example, the Competing Claims Advanced Search filters have been updated to consider specific deadlines that impact the user.
- (b) Improvements to in-house systems:
- (i) Research leads management was improved by way of introducing new functionality to enable the distribution team to more efficiently manage the creation of research leads at a more granular level.
  - (ii) Royalty generation improvements.
  - (iii) Refinements to the customer relationship management (CRM) system were made to improve the communication with members and prospective members about titles where Screenrights has identified that they may have a claim.

### **Licensees (Code, Clause 2.3)**

226. Screenrights reports that it adopts policies, processes and practices to ensure that licensees are treated fairly, honestly, impartially and courteously in accordance with the Screenrights' Constitution and the licensing agreements.
227. Screenrights' approach to licensees is built on respect for their needs with the goal of ensuring that they receive fair value while maintaining equitable remuneration for members. Most negotiations of licence



agreements are conducted with peak bodies, except in the case of retransmission where the individual licensees are substantial commercial organisations.

228. Screenrights' corporate website contains a Screenrights Licences section where it provides information about the licences available, and what uses are covered by the licences. Further, in relation to the Australian educational statutory licence, information is provided for educators on accessing educational content.
229. A Remuneration Notice is required to be completed by any new licensee under the statutory educational licence. The methodology for calculating the amount of equitable remuneration payable by an educational institution is included in the Remuneration Notice.
230. For the educational statutory licence, Screenrights generally negotiates with bodies that represent a group of licensees such as Universities Australia and the Copyright Advisory Group (CAG) to the COAG Education Council for schools and TAFEs.
231. For the government statutory licence, Screenrights deals with the Department of Infrastructure, Transport, Regional Development and Communications for the Commonwealth and with a collective representative group for the States and Territories. New agreements were executed by the State of Victoria and the Australian Capital Territory. The remaining States and Territories are in the process of being finalised as at the end of the Review Period. A variation to extend the agreement with the Commonwealth was executed in June 2020.

232. In relation to retransmission statutory licences, Screenrights largely deals with Foxtel. A new remuneration agreement was in negotiation at the end of the Review Period. However, by the end of the Review Period, Foxtel and Screenrights were unable to reach an agreement on the licence fee for the retransmission by Foxtel of free-to-air channels. As a result, on 22 July 2020 Screenrights filed an application to the Copyright Tribunal for a determination of equitable remuneration for retransmission of free-to-air television by Foxtel. As at the date of this report, the litigation is ongoing.
233. A primary transparency factor in dealings with licensees is the availability of usage data, which forms a key part of licence negotiations. Screenrights provides all relevant usage data to the licensees. This is the same data that Screenrights uses for its distribution purposes.
234. Detailed usage data for each university is provided to Universities Australia (UA) annually as required under the Universities Agreement established in 2018/19. The usage data determines the amount of equitable remuneration payable and is provided by UA to all Universities for transparency.

#### **Distribution of Remuneration and Licence Fees (Code, Clause 2.4)**

235. In the Review Period, Screenrights distributed payments in accordance with its Distribution Policy and Constitution.
236. No substantive changes were made to the Distribution Policy in the Review Period. A copy of the Distribution Policy can be accessed from Screenrights' corporate website. Screenrights has published 'Plain English' guidelines on the Distribution Policy which set out how royalties are calculated in detail. These guidelines are also available on the corporate website.

237. Under the Distribution Policy, royalties relating to the 2014, 2015 and 2016 distribution years were due to expire on 30 June 2020 and any undistributed royalties from those years would have been rolled over. However, in response to the COVID-19 pandemic, Screenrights' Board made the decision to extend that deadline so that members have until 30 April 2021 to submit their claims for those undistributed royalties.

#### **Collecting Society Expenses (Code, Clause 2.5)**

238. Screenrights' reports that its Board continues to approve the annual operating budget, and an updated financial report which compares actuals to budget is reviewed at each Board meeting.

239. Screenrights' expenses for the Review Period were approximately 15.8% of gross revenue subject to audit review. The audited figure will be in Screenrights' Annual Report.

240. Screenrights' operating costs associated with its licensing schemes are met from revenue. In some cases, a fixed percentage is deducted, but otherwise the deductions are generally based on actual costs. Members receive itemised reports about deductions along with payments.

241. Detailed information on Screenrights' expenses including the expenditure to collections ratio for the financial year 2019/2020 is found in Screenrights' Annual Report, where a comparison with the years 2017/2018 and 2018/2019 is depicted. This report was made available in October 2020.

## Governance and Accountability (Code, Clause 2.6)

242. Screenrights reports that it has complied with the requirements of Clause 2.6 during the Review Period. Screenrights' Board has acted in accordance with the Constitution and Corporate Governance Statement in being accountable to members. The current directors on the Board are listed on the society's website.
243. The Audit and Risk Committee of the Board met three times during the Review Period. Its principal functions are to ensure that accounting records are maintained in accordance with statutory requirements, to ensure that financial controls are sufficient, to review the operational and strategic risk assessments, and to review the financial statements and consult with the external auditors.
244. Screenrights maintains complete financial records every year. Where requested by a member, Screenrights provides information about the member's entitlement to payment from Screenrights consistent with obligations under privacy law and any applicable duties of confidentiality.
245. Screenrights' Annual Report for 2019-20 became available in late October 2020, including the audited accounts as at 30 June 2020. Each Annual Report of Screenrights contains the matters set out in clause 2.6(e) of the Code including revenue, expenses and distribution of payments to Members.
246. Annual Reports are published on the corporate website and presented to the members in preparation for the Annual General Meeting. A copy is

provided to the Minister for Communications, Cyber Safety and the Arts and is tabled in Parliament.

### **Staff Training (Code, Clause 2.7)**

247. Screenrights reports that it has taken reasonable steps, including through annual staff training, to ensure that employees and agents are aware of, and comply with, the Code. A copy of this year's training materials was provided to the Code Reviewer. Amongst other things, Screenrights' Code training session familiarises staff with complaints handling procedures, Screenrights' alternative dispute resolution procedures for disputes between the Society and licensees, between Screenrights and members and between members and members. A refresher training on Privacy Law was delivered at the same time as Code training. The importance of compliance with the Code is also emphasised to staff in induction training. Further, any updates on Code requirements are communicated to staff in regular staff meetings.

248. Screenrights is committed to promoting its staff's development and wellbeing and have implemented a voluntary "Skill-Up" internal training program that focuses on developing skills and strategies in the workplace. The Society has also partnered with an external provider and implemented an Employee Assistance Program to support the wellbeing of employees and their immediate family members.

### **Education and Awareness (Code, Clause 2.8)**

249. During the Review Period, Screenrights continued to provide information about its services and royalty distribution schemes, policies and procedures on its website, which is reviewed and updated regularly. Screenrights'

governance, financial and data information is also available on the corporate website

250. In addition, Screenrights continued to promote its role and functions as a collecting society by sponsoring and participating, either through speaking engagements, industry market stalls and providing attendees with hardcopy marketing material about Screenrights at the following events in the Review Period:
- 37South Market at Melbourne International Film Festival, August 2019
  - Australian Writers Guild "AWGIES" Awards, August 2019
  - Screen Makers Conference, July 2019
  - Screen Forever (run by Screen Producers Australia), November 2019
  - Screen Production and Development Association Conference, November 2019
  - Australian International Documentary Conference, March 2020
  - The Business of Producing Seminar (run by Northern Rivers Screenworks), March 2020
  - Australian Directors' Guild Awards, May 2020 (postponed until 19 October 2020 due to COVID-19 restrictions)
  - Doc Edge Forum, May – June 2020.
251. Screenrights has also continued its Cultural Fund competitive program in 2019 and 2020. The Cultural Fund was established in 2018 to support innovative projects that foster the creation and appreciation of screen content in Australia and New Zealand. The Fund awards up to \$50,000 per initiative. Screenrights promotes the Cultural Fund on the corporate website and through direct email mailouts.
252. Screenrights has published Plain English guidelines on how its undistributed funds are allocated in compliance with Clause 2.8(d) on the corporate website.

### **Reporting by Declared Collecting Societies (Code, Clause 2.9)**

253. Screenrights' Annual Report provides the information required by clause 2.9(a) of the Code, including in an Annexure to that report.

### **Complaints and Disputes (Code, Clause 3)**

254. This subject is dealt with in a separate section "COMPLAINTS AND DISPUTES" below.

### **Publicity of the Code and Reporting of Compliance with it in the Annual Report (Code, Clause 4)**

255. Screenrights publicises the Code and its undertaking to be bound by it, by referring to that fact and making the Code available on Screenrights' corporate website for download by members and licensees and other interested stakeholders. It also communicates about the Code via its e-newsletters.

256. In the Review Period, Screenrights has also published its 2018/2019 Annual Compliance Report to the Code Reviewer, in addition to publishing past Code of Conduct Compliance Reports and Triennial Reviews of the Code of Conduct for members and licensees and other interested stakeholders, together with the Notice for any interested party to make a submission to the Code Reviewer with respect to the Collecting Societies' compliance with the Code of Conduct.

257. Screenrights' corporate website also links to the new Code of Conduct website, where a copy of the Code can be accessed centrally.

258. The Society includes a statement in its Annual Report (under "Governance") on its compliance with the Code.
259. Of course, Screenrights' annual report to the Code Reviewer is itself directed to its compliance with the Code.

#### **Monitoring, Review and Amendments (Code, Clause 5)**

260. In the Review Period, Screenrights released a major upgrade to its member portal *MyScreenrights*. The *MyScreenrights* portal is the primary channel used by members to keep their contact information and bank account information up-to-date, access their payment statements and submit or vary their claim information. The latest release improves overall site performance and includes new administration functionality for the Screenrights team to provide real-time member support. It also has enhanced error reporting capability to track and resolve usability issues.
261. Screenrights also increased automation in the application used to ingest and prepare usage events for distribution. This upgrade involves a series of passes over usage events to automatically match the usage events to its broadcast based on predetermined matching criteria. These improvements make the validation of usage events significantly more efficient.

#### **Phonographic Performance Company of Australia Ltd ("PPCA")**

262. PPCA's report on its compliance with the Code was furnished to me on 31 July 2020.
263. PPCA's website is at <http://www.pcca.com.au>.



## **Legal Framework (Code, Clause 2.1)**

264. PPCA reports that during the Review Period, it met its obligations as set out in clause 2.1 of the Code.
265. PPCA reports that its Constitution did not change during the Review Period.
266. During the Review Period, PPCA's Privacy Policy did change to provide more detail as to PPCA's practices in handling the personal information of PPCA licensors and licensees. In particular, the Privacy Policy now includes more detailed information as to the primary and secondary uses of personal information, and the businesses and organisations to which, and the circumstances under which, PPCA may make disclosures of personal information.
267. Copies of the PPCA Constitution, Privacy Policy, Distribution Policy and Complaints Handling and Dispute Resolution Policy are available from the PPCA website, as well as the CCSA Website.
268. PPCA has also made available a plain-English guide of the PPCA Distribution Policy as well as a plain-English guide explaining how Undistributed Funds are handled. These guides provide a simpler overview of PPCA's distribution practices and provide readers with links to the full Distribution Policy, as well as details as to where they can direct further questions.

## **Members (Code, Clause 2.2)**

269. PPCA is a limited liability company, with equal shares held by the remaining three of the six founding record company members. These members are

ineligible for any dividend from PPCA Net Revenue, and receive remuneration only on the same basis as all other licensors, in line with PPCA's Distribution Policy.

270. As a result, whereas other collecting societies represent the interests of "members", PPCA represents the interests of "licensors" (ie the copyright owners or exclusive licensees in sound recordings).
271. PPCA's relationship with licensors (including its three shareholder members) is governed by the terms of its standard "Input Agreement" rather than by PPCA's Constitution. The Input Agreement allows PPCA to sub-license on a non-exclusive basis, and to create the blanket public performance and other licence schemes for the users of sound recordings (particularly, small businesses).
272. Similarly, rather than artist members, PPCA has "registered artists". Registered Artists can receive a payment under the Distribution Policy's Artist Direct Distribution scheme, provided they are an Australian artist featured on a sound recording. This payment is made on an ex-gratia basis and does not arise from any copyright held by the artists themselves.
273. As at the end of the Review Period on 30 June 2019, PPCA had approximately 2,900 licensors [2019: 2,654] representing major record companies, smaller record companies and independent copyright owners (for example, recording artists themselves). The number of registered artists was 4,575 [2019: 4,296].
274. The Distribution Policy was updated, with the changes going into effect on 1 July 2019. There were no major amendments to the policy, but it was updated to make the language clearer and present the material in a layout, with

examples, to make the document easier to read. The Input Agreement was not amended during the period under review.

275. PPCA reports that it continues to receive queries relating to registering as a licensor by telephone or email. PPCA generally refers the applicant to the relevant section of the website and the related on-line registration form. An acknowledgment is sent to licensors upon receipt of their track registrations.
276. Similarly, queries from Artists on registering with PPCA's Artist Direct Distribution Scheme are now generally received by email, in which case applicants are directed to the relevant area of the PPCA website and the online registration forms.
277. The PPCA website includes "FAQ" sections for both licensors and artists, to help explain the services provided by PPCA. Licensors and Artists can access the PPCA Constitution from the PPCA or CCSA website, or are supplied with a copy upon request.
278. In addition to the publication of its newsletters, during the period under review PPCA emailed its Licensors and Registered Artists to provide information on matters of interest to those stakeholders.
279. During Review Period, PPCA did not receive any requests from licensees for the methodology or matters taken into consideration when setting licence fees.

### **Licensees (Code, Clause 2.3)**

280. As described in the APRA AMCOS section above, since the last reporting period, OneMusic was launched. OneMusic offers blanket public performance

licences which cover both the copyright in the musical works and the sound recording. OneMusic was established to ease the burden on Australian businesses by creating a one-stop shop where businesses could acquire the necessary licensing to play music. With OneMusic's launch, PPCA handed over the bulk of its public performance licensing service to OneMusic, with most of the PPCA Public Performance Licensing team also moving to OneMusic. Although PPCA continues to directly licence some businesses who have not yet transitioned to a OneMusic licence, as well as continuing to issue broadcast and communication licences, the commencement of OneMusic has resulted in a large reduction in the number of licensees with whom PPCA is in direct communication.

281. As at 30 June 2020, PPCA had 4,249 businesses and individuals licensed for the use of protected sound recordings and music videos. We note that a large portion of these public performance licences have since terminated, with licensees advised of the new joint licence offering and referred for transition to OneMusic. This will be reflected in PPCA's report for future reporting periods.
282. PPCA also has broadcast and communication licences in place for services, including broadcasting, non-interactive and semi-interactive music streaming services.
283. PPCA continues to license a range of services operating within the radio and television broadcast sectors and also services that stream music or audiovisual content online. These types of licences issued by PPCA include:

- radio broadcast licences and separate simulcast licences for commercial radio broadcasters;
- radio broadcast and optional simulcast licences for members of the Community Broadcasting Association of Australia (CBAA) and community radio stations that operate independently of the CBAA;
- narrowcasting broadcast and optional simulcast licences for narrowcast operators;
- television broadcast licences and communication licences for free-to-air television broadcasters;
- broadcast and communication licences for subscription televisions operators (including IPTV operators);
- communication licences for subscription video on demand services;
- television and radio broadcast licences, simulcast licences and communication licences for the ABC and SBS;
- communication licences for linear music streaming services (such as internet radio stations) and semi-interactive music streaming services; and
- communication and broadcast licences for background music services that provide music services to commercial premises by means of broadcast or streaming.

284. In light of the COVID-19 pandemic and the need for greater flexibility to enable businesses to continue to operate, PPCA offered two additional complimentary licences, on a temporary basis, covering the live-streaming of sound recordings. These licences were made available to public performance licence holders in the dance instructors, gyms, and fitness centres sectors to supplement their existing licence and enable them to stream classes to their clientele, and for religious institutions to stream worship services to their congregation.

285. PPCA also provides licensing through a number of joint licensing agreements. They include:
- Eisteddfodau with ARIA and APRA AMCOS;
  - Early learning providers with ARIA, APRA AMCOS, Copyright Agency and Viscopy;
  - Funeral directors and associations with ARIA and APRA AMCOS;
  - Tertiary education with ARIA and APRA AMCOS; and
  - State education departments with ARIA and APRA AMCOS.
286. PPCA's website contains information on the range of broadcasting and digital licences available, the application process, and a range of FAQs covering matters both specific to PPCA and on copyright issues more generally.
287. In addition, PPCA, in collaboration with APRA, continues to engage in extensive consultation to finalise the remaining licence schemes to be administered by OneMusic. As a consequence of APRA's role in administering OneMusic further detail on the development of OneMusic licensing schemes can be found in the APRA submission.
288. PPCA reports that during the Review Period, PPCA enacted several relief measures for licensees in response to the summer bushfire emergencies and the ongoing COVID-19 pandemic.
289. For licensees in areas impacted by the bushfire emergencies in New South Wales and Victoria, all music licensing was paused. Existing licensees had their accounts placed on hold, and a complimentary 12-month licence was offered where appropriate. Invoices were also pro-rated for businesses which had to temporarily suspend trade during the emergency.

290. In March 2020, PPCA posted a notice on its website outlining its COVID-19 policy and the steps taken to provide relief to licensees. Where a licensee had been forced to stop trading, PPCA placed their account on hold, paused invoicing and suspended debt collection for any outstanding invoices. Further, when made aware of any licensees that had prepaid licence fees for periods of closure, PPCA made pro-rata adjustments and processed any resulting refunds.

#### **Distribution of Remuneration and Licence Fees (Code, Clause 2.4)**

291. PPCA reports that it maintains and makes available on its website its Distribution Policy, which sets out how it collects licence fees paid for the use of sound recordings and music videos, the type and range of expenses that have an impact on the net surplus, and how that surplus is then allocated and paid to the licensors.
292. The Distribution Policy also incorporates details of the Direct Artist Distribution Scheme – an *ex gratia* arrangement under which featured Australian artists may register to receive payments directly from PPCA, regardless of whether they have retained copyright in the sound recordings on which they feature.
293. Changes were made to the Distribution Policy, which took effect at the start of the Review Period, 1 July 2019. The Policy was not drastically changed, but refreshed to make the Policy easier to understand. The Policy was also amended to include references to the new plain-English summary guides covering PPCA’s distribution practices. The Distribution Information Guide offers a simple, 4-page summary of the Distribution Policy. The Undistributed Funds Guide explains PPCA’s handling of funds which cannot be distributed. Both plain-English summary guides are available from PPCA’s website.

294. In addition to being available on the website, the Distribution Policy is also provided to each new licensor together with the Input Agreement. An information sheet on the Direct Artist Distribution Scheme is provided to each registering artist as part of the artist registration pack. The correspondence describes the overall scheme as outlined in the Distribution Policy and advises that the Policy (and all other policies) can be viewed on the PPCA website, or supplied on request.
295. Any amendments to the Distribution Policy are communicated in a variety of ways, including through articles in the regular artist and licensor newsletter and through direct communications
296. PPCA undertakes a single annual distribution for the financial year ended 30 June, which is made prior to 31 December in each calendar year.
297. During the period under review, PPCA did not receive any requests from licensees asking for details about how their particular licence fee was distributed to licensors and artists.
298. The COVID-19 pandemic and resulting shutdown of venues has had a devastating effect on record labels and artists, many of whom normally rely on live performances and touring as a critical source of income. In acknowledgement of the struggles the industry was facing, on 20 March 2020, PPCA offered Registered Artists a one-off advance, with payments ranging between \$250 and \$10,000. Eligible artists were directly contacted by PPCA regarding the scheme. Altogether, 205 artists applied to receive the advance, with the resulting payments made during the Review Period, and within days of receiving the relevant information from the applicant.



## **Collecting Society Expenses (Code, Clause 2.5)**

299. PPCA's operating expenses are deducted from total gross revenue, yielding a surplus available for allocation and distribution in line with PPCA's Distribution Policy.
300. PPCA's Annual Report for the year ended 30 June 2019 (published during the Review Period) showed that the expense to revenue ratio was 13.9% [2019: 14%].
301. PPCA maintains a fund for charitable, educational and like purposes. The fund represents 2.5% of the annual distributable funds (after expenses) allocated to the local (Australian) repertoire pool.

## **Governance and Accountability (Code, Clause 2.6)**

302. PPCA's financial records are subject to an annual external audit.
303. Reports of the Board of Directors and of the external auditors are published in the Annual Report, which is available on the PPCA website. It contains all of the information specified in Clause 2.6(e) of the Code.
304. In addition, the Board-appointed Finance Committee continues to meet regularly to review interim financial accounts, and the outgoings and expenses referred to in them.
305. Further, PPCA provides, as part of its annual distribution process, Licensors and Registered Artists with detailed statements setting out the composition of their allocation and payment on a track by track basis

306. The PPCA Board, Committees and relevant Managers are also provided with PPCA's "Competition and Consumer Compliance Guidelines" and training presentations are held periodically.
307. In accordance with PPCA's Constitution (Clauses 6.2(b) and 6.2(c)), PPCA conducts regular elections to fill the positions for both Licensor and Artist Representative Directors. In addition, at each meeting of the PPCA Board, directors are reminded of their obligations and duties.
308. The PPCA Management Team continues to meet each week to discuss operational and strategic matters.

#### **Staff Training (Code, Clause 2.7)**

309. PPCA's practice of providing staff at the commencement of their employment with a number of key documents, including the Code, the PPCA Privacy Policy and the PPCA Complaints Handling and Dispute Resolution Policy, continued to be followed during the Review Period.
310. Individual teams involved in licensing meet on a regular basis. During these meetings staff are reminded of PPCA's obligations under the Code and other policies.
311. The Business Affairs and Distribution Departments meet regularly for staff training and process review purposes. Department managers are provided with copies of any complaints received, relevant to their department, so they can be discussed and reviewed at team meetings.
312. In addition, staff training sessions for the Credit, Business Affairs and Distribution departments on the Code are held regularly. PPCA maintains an

in-house intranet which makes available all key policy documents, including the Code. Staff are encouraged to review the intranet regularly and are notified when changes are made to PPCA policies.

### **Education and Awareness (Code, Clause 2.8)**

313. As OneMusic now manages the operational aspects of PPCA's public performance licensing service and is responsible for engaging with public performance licensees, PPCA does not now directly engage with licensees at the same level as previous years, as users of these licences are now able to obtain relevant information from a single source (i.e. OneMusic). Where PPCA still directly administers licences, explanatory materials are provided to prospective licensees about the role of PPCA, benefits of music licensing, and the operation of the Code.
314. The Review Period was one of transition, with existing PPCA licensees directed to OneMusic as the term of their PPCA licence drew to a close. PPCA worked closely with APRA to ensure that the communications issued by the Societies were aligned and provided consistently, in order to guide clients through the termination of their PPCA (and APRA) licences, and the process for obtaining a single licence under the newly settled OneMusic joint schemes.
315. Information was made available by post, distribution at specific industry events, trade publications and the PPCA website. PPCA maintained relationships with a number of licensee representative bodies and, in partnership with APRA, provided materials and ongoing updates to those bodies on the transition to OneMusic, to allow them to best advise their members.
316. PPCA engages with artists and licensors in several ways to educate them as to the role and function of PPCA. This includes regular meetings, presenting at

seminars and panel discussions, and distributing explanatory material. PPCA also issues a newsletter, *On The Record*, to artists and licensors on a regular basis. To assist artists and licensors during the COVID-19 pandemic, PPCA provided information about various initiatives and support available.

317. PPCA uses Facebook and Twitter to speak directly with registered/potential artists and licensors, keeping them informed on PPCA news, issues and initiatives, as well as providing the latest music industry information to help aspiring artists, managers and music industry professionals. PPCA posts an average of one to two posts a week on Facebook and Twitter. PPCA currently has 2,979 followers on Facebook and 1,915 followers on Twitter.
318. PPCA raises public and industry awareness of its role through its support of:
- Sounds Australia
  - the PPCA Performers' Trust Foundation
  - the Why Music Matters initiative
  - The Arts Law Centre of Australia
  - The Australian Copyright Council
  - the ATSI office
  - the Australian Independent Record Labels Association (AIR)
  - Support Act;
  - the Association of Artist Managers, and
  - the Australian Songwriters Association Awards.
319. Awareness is further highlighted through the grants program conducted in partnership with the Australia Council each year, through which the creation of new Australian recordings is facilitated.
320. PPCA, alongside other key Australian collecting societies, provides through its membership of the Australian Copyright Council financial support which assists

the Council make available free, independent advice and information on a range of copyright issues of interest to both creators and users of copyright material.

321. The PPCA website provides useful resources for both music users and copyright owners. The website is promoted in a variety of ways, including PPCA promotional materials, industry listings, banners, flyers and correspondence.

### **Complaints and Disputes (Code, Clause 3)**

322. This subject is dealt with in a separate section, "COMPLAINTS AND DISPUTES", below.

### **Publicity of the Code and Reporting of Compliance with it in the Annual Report (Code, Clause 4)**

323. PPCA publishes notification of (a) the Annual Code of Conduct Review Process, and (b) the Triennial Code Review, on its website, and also in its newsletters. The Code itself is available on the PPCA website, together with all historical reports on Code compliance issued by the Code Compliance Reviewer, and all reports issued in relation to the various Triennial Review processes undertaken since the Code was first introduced.
324. PPCA also notes the Code Reviewer's report on PPCA's compliance with the Code in its Annual Report.
325. Since the introduction of the CSAA website in July 2019, PPCA's site also provides links directly to that Code specific site

326. Of course, PPCA's annual report to the Code Reviewer is itself directed to the issue of its compliance with the Code.

#### **Monitoring, Review and Amendments (Code, Clause 5)**

327. The process of ensuring that appropriate data is available for the proper allocation of the distributable surplus is continuous and ongoing, as new sources of data become available at a reasonable cost relative to the pool of income to be distributed.

328. During the review period PPCA was able to make arrangements to acquire data relating to market leading subscription streaming services, to supplement the existing data already used to distribute various public performance revenue pools. This data will be utilised for the first time in December 2020, when the year ending June 2020 surplus is distributed to PPCA Licensors and Registered Artists.

## **Australian Writers' Guild Authorship Collecting Society Ltd ("AWGACS")**

### **General**

329. AWGACS's report on its compliance with the Code was furnished to me on 6 August 2020.

330. AWGACS's website is at <https://www.awg.com.au/awgacs>.

331. AWGACS states that there have been no substantive changes to its practices since the last reporting period in 2019, and confirms that the issues with domestic collection and distribution with Screenrights previously raised with the Code Reviewer, have now been resolved.

332. AWGACS is not a declared society under the Copyright Act.
333. AWGACS is a member of the International Confederation of Societies of Authors and Composers (CISAC) and therefore submits to the international best practice Professional Rules for dramatic, literary and audio-visual guidelines. AWGACS is considered a “developing society” in CISAC terminology, determined by its number of its members, level of collections, age and infrastructure. AWGACS’s procedures continue to be subject to CISAC review and extensive reporting on an annual basis.
334. AWGACS confirms that it does not license the use of its members’ works and that it collects and distributes secondary royalties only.

#### **Legal Framework (Code, Clause 2.1)**

335. AWGACS reports that it has met all of its obligations with regard to its obligations under clause 2.1 of the Code and that there has been no change since the previous annual Compliance Report.

#### **Members (Code, Clause 2.2)**

336. The number of members of AWGACS at 1 July 2020 was 1,971 [2019: 1,873], an increase of 98 since the last report.
337. AWGACS reports that it has amended its Constitution to remove any reference to AWGACS’s members’ requirement to pay any subscription fees since the last Review
338. Membership remains available to all scriptwriters.

339. AWGACS's constitution is available to all members and potential members upon request and on the AWGACS section of the Australian Writers' Guild (AWG) website.

#### **Licensees (Code, Clause 2.3)**

340. Clause 2.3 of the Code does not apply to AWGACS because AWGACS is not a licensor of copyright material.

#### **Distribution of Remuneration and Licence Fees (Code, Clause 2.4)**

341. For the same reason, AWGACS does not recover licence fees for distribution.

342. AWGACS distributes to its members monies collected from partnered societies. This is in accordance with its Constitution and is governed by its Distribution Policy as determined by the Board.

343. The Distribution Policy is made available to AWGACS's members upon request and is also published on the AWGACS section of the AWG website.

344. In the financial year ended 30 June 2020, AWGACS collected \$2,131,387.39 [2019: 1,669,909.81] for distribution in 2020 and distributed \$1,076,964.84 [2019: \$1,373,681.96] from prior year collections.

#### **Collecting Society Expenses (Code, Clause 2.5)**

345. AWGACS states that it deducts from each year's royalty collections, its operating costs for that year.



346. AWGACS also deducts 5% of gross royalties received as a “cultural levy” to be directed towards appropriate activities in support of its members. It sponsors the Annual AWGIE Awards for scriptwriters, which is run by the AWG.
347. In addition, AWGACS continues to invest, as resources permit, in pursuing new sources of income for its constituents.

### **Governance and Accountability (Code, Clause 2.6)**

348. The Board of Directors of AWGACS comprises five directors, of whom two are elected by the Board of the AWG (which itself is democratically elected by and from writers who are members of the AWG), two are elected by the AWGACS members from among the AWGACS membership, and one director is, ex-officio, the AWGACS/AWG Group CEO.
349. During the Review Period, AWGACS has been audited and has presented the audited accounts to the members at an AGM, including:
- Total revenue during the period;
  - Total amount and general nature of expenses;
  - Allocation and distribution of payments to members.
350. AWGACS voluntarily submits to the extensive governance and accountability reporting measures and reviews of CISAC.

### **Staff Training (Code, Clause 2.7)**

351. AWGACS reports that its employees are aware of the Code and of its requirements and particularly of the society’s Complaints Handling Procedure.

## Education and Awareness (Code, Clause 2.8)

352. As a small “developing” society, AWGACS focuses on the education of scriptwriters and relies on larger societies and the Australian Copyright Council to contribute to the promotion of the importance of copyright and of making information about the roles and functions of collecting societies in general accessible to the general public.
353. Internationally, the Society’s membership of CISAC is directed to accomplish the same purposes.
354. AWGACS seeks to increase awareness among its members and the scriptwriting community via sponsorship of the Annual AWGIE Awards.
355. In addition, AWGACS continues to promote awareness of scriptwriting royalties to its members and industry stakeholders via electronic bulletins and an accessible and regularly updated website.
356. Similarly, all of AWGACS’s foundation documents are available to international collecting societies via the CISAC online portal, and domestically via the AWGACS website.
357. AWGACS also provides an advice service to members and to industry stakeholders on copyright and related issues.
358. AWGACS continues to respond individually to all telephone and email enquiries from members, potential members and the general public about the society’s purposes and practices.

### **Complaints and Disputes (Code, Clause 3)**

359. The subject of complaints and disputes is dealt with in a separate section of this report, "COMPLAINTS AND DISPUTES", below.

### **Publicity of the Code and Reporting of Compliance with it in the Annual Report (Code, Clause 4)**

360. The Code is posted on the AWGACS section of the AWG website and is made available to members and potential members upon request.

361. Calls for submissions to the Code Reviewer are made on the society's website in accordance with the requirements of the Code.

362. Of course, AWGACS's annual report to the Code Reviewer is itself directed to the issue of its compliance with the Code.

### **Monitoring, Review and Amendments (Code, Clause 5)**

363. Calls for submissions are made available on the website.

## **Australian Screen Directors Authorship Collecting Society Ltd ("ASDACCS")**

### **General**

364. ASDACS's report on its compliance with the Code was furnished to me on 30 July 2020.

365. ASDACS's website is at <https://asdacs.com.au>.

366. Established by the Australian Directors' Guild (ADG), ASDACS was incorporated as a company limited by guarantee in 1995. ASDACS collects and distributes secondary royalty income for audio-visual directors, which arise from the screening of their work both internationally and domestically.

#### **Legal Framework (Code, Clause 2.1)**

367. ASDACS reports that there were no changes during the Review Period. However, on 13 March 2020 ASDACS made an application to the ACCC to seek authorisation on behalf of its current and future screen director members to alter its Constitution to provide that:

- members must assign their copyrights under the 'retransmission scheme' to ASDACS (that is, any copyrights in a film that is included in the retransmission of a free-to-air broadcast under the Copyright Act, and
- ASDACS is to collect the money paid by retransmitters to Screenrights (which is the declared collecting society appointed under the Copyright Act) under the retransmission scheme, and distribute it to relevant directors and overseas collecting societies.

368. A final determination was made by the ACCC on 28 August 2020 (effective 19 September 2020) granting approval to ASDACS to change its constitution to make directors assigning their retransmission rights to ASDACS a condition of membership for a period of 5 years. The relevant constitutional changes were passed at an ASDACS Extraordinary General Meeting on 29 October 2020 and are currently in the process of been implemented. The full application and responses are available on the ACCC Public register at:

<https://www.accc.gov.au/public-registers/authorisations-and-notifications->

[registers/authorisations-register/australian-screen-directors-authorship-collecting-society-ltd-asdacs.](#)

369. ASDACS' Privacy Policy, 2019 Annual Accounts, Articles of Association and Memorandum are made available on the ASDACS website
370. ASDACS consists of one full-time staff member and three casual staff members. The staff list is available on the ASDACS website.
371. As has been previously noted, ASDACS is not a declared collecting society under the Copyright Act and is therefore not required to comply with the Attorney General's Guidelines for Declared Collecting Societies. Nevertheless, ASDACS's constitutional rules are largely modelled on these guidelines.
372. ASDACS reports that it continues to be administered by the ADG through a services contract but continues to be legally governed by a separate board and in accordance with its own constitutional rules.

#### **Members (Code, Clause 2.2)**

373. Membership eligibility remains open to audio-visual directors and there was no change to the membership rules during the review period.
374. By the end of the Review Period, the membership had grown to 1,267 [2019: 1,180], an increase of 7%. 1006 members were Australian, 175 New Zealander and 86 were international residents for tax purposes.
375. During the Review Period, ASDACS introduced a new online membership portal to allow members easy access to distribution statements, warranty submissions, updates to credits and personal details. Secure sign in and

registration is available to approved members and their beneficiaries via the ASDACS website.

376. In addition to its Constitution, the ASDACS website features a FAQ section with information sheets aimed to provide members with easy access to information and resources.
377. All staff are trained to respond readily to members' queries and complaints in accordance with its complaints policy also available on its website.
378. ASDACS reports that there was no change to its membership rules or procedures during the Review Period.

#### **Licensees (Code, Clause 2.3)**

379. ASDACS does not grant licences to use copyright works.

#### **Distribution of Remuneration and Licence Fees (Code, Clause 2.4)**

380. ASDACS does not collect licence revenue, but instead collects royalties generated from secondary rights. Secondary royalty income for the 2019 calendar year period totalled \$1,982,630 [2018: \$1,750,408]. This includes a small amount of domestic retransmission royalty revenue totalling \$10,867 [2018: \$21,875] received from Screenrights.
381. A total of \$27,697 bank interest [2019: \$24,766] earned on ASDACS income over the 2019 calendar year will be distributed evenly to its members in accordance with its constitutional rules.

382. ASDACS distributes domestic and international income collected the prior calendar year to members on an annual basis. During the Review Period, \$1,267,898 of secondary royalties collected in the 2018 year were distributed to the members. In response to the COVID-19 pandemic, ASDACS commenced its annual distribution in July 2020 (3 months prior to the previous year) with aim to release royalty income to the membership as soon as possible.
383. In accordance with ASDACS' constitutional rules, after four years, undistributed funds are transferred into a development fund and put toward the benefit of the members. During the year, the development fund decreased by \$42,851 due to \$39,595 used on database development (online membership portal, IDA Exports) and transfers of \$8,182 from the Fund in respect of distributions made to members during the year from closed funds. Expired distributions of \$4,926 were allocated to the development fund.
384. As reported previously, the ASDACS distribution rules and practices were updated in June 2019 to include requirements as per the Code of Conduct changes introduced 1 July 2019. In particular, the guideline maintains that the membership will be consulted prior to making any substantive changes to its distribution rules and practices and affirms that a detailed report on undistributed funds will be made available to its members. A plain English distribution rules and practices guideline is also available on the ASDACS website.

### Collecting Society Expenses (Code, Clause 2.5)

385. ASDACS's members received the full amount of gross royalties that ASDACS received from reciprocal collecting societies internationally for their works, less the following amounts:
- **Administrative fee:** administrative fee of 15 per cent, which covers

ASDACS's operational expenses.

- **Membership fee:** membership fee of 10 per cent. While ordinarily waived for members of the Australian Directors' Guild (ADG), the Directors and Editors Guild of New Zealand (DEGNZ), beneficiaries and retirees, in order to support members more broadly during the COVID-19 pandemic, ASDACS applied the 10% membership fee waiver on *all* royalties in its annual distribution which commenced July 2020.
- **Cultural Purposes Fund:** cultural fund fee of 4 per cent. In 2019, \$79,305 was transferred to the fund; \$75,000 of which was granted to the Australian Directors Guild; \$55,000 of which went toward the 2019 ADG Awards and \$20,000 granted to the 2020 ADG Awards (postponed from May 2020 to October 2020 due to COVID-19 restrictions). \$14,500 was granted to the Directors and Editors Guild of New Zealand (DEGNZ) and \$1000 was donated to the Australian International Documentary Conference (AIDC) for an event creche.

## **Governance and Accountability (Code, Clause 2.6)**

386. At its Annual General Meeting, seven members were appointed to the ASDACS Board in accordance with its' constitutional rules.

387. As mentioned previously, the 2019 audited ASDACS Annual Accounts are available on the ASDACS website and include details on collections, administration expenses, distributed funds and undistributed funds

388. ASDACS is also a member of CISAC (the International Confederation of Societies of Authors and Composers) and abides by CISAC professional rules and standards, including the submission of an annual finance declaration and completion of a professional rules questionnaire and Asia-Pacific Committee Territory/Society Reports.



### **Staff Training (Code, Clause 2.7)**

389. During the Review Period, ASDACS's full-time staff member ensured that all staff were aware of the Code and gave further training on ASDACS's complaints handling procedure, as outlined in the ASDACS complaints policy. ASDACS is also registered as a COVID Safe business with NSW Health and has an active COVID Safe plan in place. Staff are trained in COVID Safe protocols and have been provided with remote working Workplace Health and Safety guidelines and resources from Safe Work Australia.

### **Education and Awareness (Code, Clause 2.8)**

390. The ASDACS website continues to promote the importance of copyright and makes detailed reference to the nature of copyright as administered by societies in Australia and overseas, addressing the functions and policies of ASDACS in particular.

391. ASDACS continued to send to its members a quarterly e-news and Social media (Twitter, Facebook and LinkedIn) to keep members informed and aware of its work and progress.

392. ASDACS continues to promote fair remuneration for screen directors. This is in alignment with the broader international Writers and Directors Worldwide 'Audio-visual campaign', which is aimed at gaining an unassignable and unwaivable right to remuneration for audio-visual authors across the globe.

393. As previously reported, ASDACS is a member of the Asia-Pacific Audio-visual Alliance for Writers and Directors, aimed as a platform for audio - visual creators to share, connect and communicate, advocate for stronger copyright

protections and further their interests in Asia-Pacific. A follow up meeting was held in October 2019 in Busan, Korea, to further formalise the Alliance.

394. Plain English distribution rules and practices guidelines, as well as information sheets on retransmission rights, undistributed funds and distribution practices are available to members on the ASDACS website.

395. ASDACS also makes its documents available on the Code of Conduct for Copyright Collecting Societies website introduced as from 1 July 2019.

### **Complaints and Disputes (Code, Clause 3)**

396. This subject is dealt with in a separate section, "COMPLAINTS AND DISPUTES", below.

### **Publicity of the Code and Reporting of Compliance with it in the Annual Report (Code, Clause 4)**

397. ASDACS publicises the Code and its adherence to it on its website and in all relevant information documents provided to members and potential members.

398. The Code is posted on the ASDACS website in a comprehensive area called "Governance", where those interested can also find:

- the Code Reviewer's latest Report on Compliance with the Code;
- the Code Reviewer's Triennial Review of the Operation of the Code 2017; and
- the 2020 Call for Submissions.

399. Of course, ASDACS's annual report to the Code Reviewer is itself directed to the issue of its compliance with the Code.

### **Monitoring, Review and Amendments (Code, Clause 5)**

400. In order to improve the capture and exploitation of data to achieve better business practices, ASDACS has upgraded its database to allow the transfer of its repertoire of members works to the International Documentation on Audio-visual Works (IDA) database: <https://www.ida-net.org>. IDA is a non-profit international audio-visual rights management system, owned by CISAC, that Authors Societies consult to get accurate information on audio-visual works and rights owners. ASDACS continues to update and add new works to IDA on a regular basis.

## **C. COMPLAINTS AND DISPUTES**

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### **General**

401. In accordance with a recommendation made at [28]-[38] of my Report of my Review of the Operation of the Code of Conduct dated 30 April 2014, the collecting societies have attached to the Code an explanatory document distinguishing between "complaints" and "disputes".

## Australasian Performing Right Association Limited (“APRA”) and Australasian Mechanical Copyright Owners Society Limited (“AMCOS”)

### General

402. APRA AMCOS states that it has included in its report to me all documents and correspondence that have been dealt with as “complaints” during the Review Period.
403. During that period, there were five new member complaints and none carried over from the previous review period.
404. The Society reports that there were nine new licensee complaints received during the Review Period and one carried over from the previous period.
405. Where APRA AMCOS have been unsuccessful in their attempts to persuade a user of music to acquire a licence, the matter is referred to their external solicitors. For the purposes of their report to me, APRA AMCOS have adopted a broad definition of “complaint” but they exclude from their report those matters that have been referred to their external solicitors unless there is an associated complaint about the conduct of APRA AMCOS employees or of the external solicitors.
406. As at 30 June 2020 there were 102 ongoing general infringement matters under the management of the APRA AMCOS’s licensing departments, with 83 of them under the management of external solicitors. The increase in the number of matters being managed by external solicitors as contrasted with the previous review period results from a bulk referral of infringement matters arising from the transitioning of former APRA AMCOS and PPCA licensees to OneMusic licences.

407. Where a licensee refuses to pay an invoice issued by APRA AMCOS, the matter is pursued by the Finance Department and, if necessary, then referred to APRA AMCOS's external mercantile agents to manage and, again, if necessary, to pursue through debt recovery proceedings.
408. As at 30 June 2020, 219 clients were under the management of Australian external mercantile agents and 169 under the management of APRA AMCOS's New Zealand external mercantile agent.
409. Again, these matters are not categorised as "complaints" unless there is complaint regarding the conduct of the Finance Department or the debt collectors, of which there were none during the Review Period.
410. In relation to alternative dispute resolution, the "Resolution Pathways" facility has been described in my previous reports on compliance. This independent ADR facility is provided by APRA AMCOS for the resolution of disputes between it and its licensees (or potential licensees), between it and its members, and also disputes between members.
411. A copy of the independent Resolution Facilitator's annual dispute report to the ACCC for the year ended 31 December 2019 and copies of quarterly reports have been provided to me.

## **Complaints by Members**

### ***APRA AMCOS Member Complaint 1***

412. This complainant-member had two grievances: lack of responsiveness to the member's communications with APRA AMCOS; and the omission of any

reference to him or his compositions on the United States database of ASCAP (the counterpart Performing Right Organisation (PRO) in the United States), with which APRA has a reciprocal arrangement.

413. It was on 3 December 2019 that the member first contacted APRA AMCOS to point out that neither he nor his works appeared in the United States database. His initial enquiry was made by telephone to the NSW/ACT office of APRA when he was assured by a member of staff that she would investigate and report back to him.
414. Not having heard anything, he wrote a follow up email on 11 January 2020. This again made the point that none of his 60 published songs were on the US ASCAP database (ACE). The member was a composer, publisher and performer of his works.
415. By email dated 12 February 2020, the member escalated the matter to the level of a formal complaint.
416. The Head of Member Services replied on 26 February 2020. She advised the member that following the receipt of his request for information on 3 December 2019, there was “unfortunately ... an internal procedural error” and that she had not received his email of 11 January 2020 which had been caught in the society’s “spam” filter.
417. The Head of Member Services assured the member that the “standard turn around for responding to member queries” is two business days. She acknowledged that that standard had not been observed in this case. She also acknowledged that where queries involved multiple departments, it can take

some time to resolve a query, but even in that case, APRA AMCOS undertakes to provide regular progress updates. Although she did not actually apologise in her email, she did say that APRA AMCOS's lack of "dialogue" with the member on his initial query was not excused by the circumstances.

418. In relation to the member's substantive complaint, the Head of Member Services explained that ASCAP will not, generally speaking, register works on their database and on the online view "ACE" without reported usages. She assured the member that his works were registered on the APRA AMCOS database and on the CIS-Net international database, which is made available to all sister societies. She said that once a work is active in a territory and appears in the relevant logs/reports used for distribution by the local PRO, that PRO would obtain work ownership information from CIS-Net, and that would be the case with ASCAP. Accordingly, she advised, it would not matter that the member's works did not appear on the ASCAP on-line ACE database.
419. On 2 March 2020, the member wrote to the Head of Member Services saying that it was "heartening" to read her assurances that relevant procedures, both human and IT-based, would be adhered to or improved in the future.
420. The member raised a number of further queries which arose out of the explanation that had been given to him concerning the omission of his works on the ASCAP ACE database.
421. I need not discuss the detail of these, but a particular query made by the member was whether APRA had actually referred his enquiry to ASCAP or had answered it on the basis of APRA's understandings and assumptions.
422. The Head of Member Services responded promptly on 2 March 2020. She said that the explanation that she had given was based on her experience of

previous member queries that APRA had received in relation to the ASCAP database.

423. In any event, APRA had now written to ASCAP concerning the member's enquiries.

424. On 6 March 2020 the member wrote advising that he was looking forward to seeing what came back from the US PRO regarding his enquiries and any comments made by the APRA AMCOS Director of International Relations, to whom the matter had also been referred. The member's letter concluded:

"Despite my continued concerns, I really do appreciate your efforts, ... - and those of your colleagues. Thank you."

425. ASCAP replied to APRA, whose Head of Member Services conveyed the substance of the reply to the complainant on 20 March 2020. The ASCAP officer said that ASCAP did not show any works of the complainant in its system and without "previous screenshots" he could not explain why works would have been listed on the ACE database previously.

426. However, ASCAP advised that it continued to utilise the CIS-Net database for performance and data matching. He said that if the complainant had a US publisher, that publisher could register his works with ASCAP, but that ASCAP would not add them to its system simply by default.

427. The complainant noted that his name had been misspelt in the correspondence from ASCAP and raised the possibility that he was not properly recorded in its records. He asked APRA to pursue that question. In addition, he advised that he wanted to take up the opportunity to speak with APRA's Director of International Relations.



428. On 31 March 2020, APRA AMCOS's Director, International Relations wrote to the complainant quoting a response from ASCAP just received to the effect that ASCAP's system was in accordance with the IPI database so that ASCAP showed the complainant's name spelt correctly. However, it did not have on record "any titles for this writer currently".

429. The last item of correspondence was an email dated 7 April 2020 from the Director, International Relations to the complainant, explaining that APRA AMCOS's IT people had worked out a solution in relation to the discrepancy between "Mc" and "Mac".

*Code Reviewer's comments (if, and to the extent, called for)*

430. In relation to the lack of any response to the initial complaint, APRA AMCOS has described the steps that were taken to prevent a recurrence. These were as follows:

- the junk mail filter on APRA AMCOS's email software was reconfigured;
- Management reiterated to staff in the Member Services team the expected response timelines and best practice customer service expectations for client enquiries; and
- Several member-facing APRA AMCOS email inboxes have been set to now provide an automated reply to any enquirers confirming receipt and advising of the two-day timeframe by when the enquirer should expect a response from APRA AMCOS."

All of this is commendable but on the basis of the correspondence I consider that APRA AMCOS did not "apologise" even though it states in its report to me that it did. An unambiguous apology was called for.

## **APRA AMCOS Member Complaint 2**

431. A member complained by email on 15 July 2019 in relation to her unsuccessful application to participate in the APRA AMCOS 2019 Pop/Contemporary Women in Music Mentorship Program.
432. Her complaint was that she sought feedback and her request was forwarded by the initial staff member to another who provided what was, in the complainant's view, a generic response to the effect that feedback on individual applications could not be provided.
433. In her email of 15 July 2019, the member asserted that the object of the grants is to nurture the careers of artists, and yet her experience left her feeling that APRA did not care about her career at all. Her email concluded:
- "I feel undervalued and unsupported by APRA and really disheartened by this experience. I feel like this is the antithesis of what the grant was set up to achieve."
434. The background to the complainant's email of 15 July 2019 was that she had been advised on 11 July 2019 that her application had been unsuccessful; that there had been 490 applications; and that the successful mentees would be announced at the end of July.
435. On 11 July 2019, the complainant asked for any constructive feedback as she would like to apply again next time.
436. The response on 12 July 2019 was that due to the large number of applications received, it was not possible for APRA to offer individual feedback in 2019.

437. On 12 July 2019, the complainant wrote that it was damaging for her self-esteem to continue to apply and get no response, and that she expected more from APRA as the performing right association she chose to work with. She said: "I can't improve my grant applications when I don't know where I am going wrong".
438. On 15 July 2019, APRA staff members attempted to call the complainant and left voice messages for her to return the calls. As well, one of the staff members sent a text message to her. The complainant did not respond. On 15 July 2019, APRA wrote to the complainant advising that the issue raised by her would be investigated as a matter of urgency and that a formal response would be provided within 14 days.
439. Some seven months later, on 13 February 2020, the complainant wrote to APRA advising that she had heard nothing, and asked whether the issue raised by her had been investigated. She pointed out that she had been told that she would hear within 14 days.
440. APRA's Head of Legal, Corporate & Policy then wrote to the complainant on 13 February 2020 enclosing a copy of an email which he thought he had sent to her in July 2019 but which a review of his "sent" emails from that time revealed that it had not been sent. He apologised to the complainant and invited her to come in and meet with him and other staff.
441. I have not been provided with a copy of the email of July 2019 that was not sent, but on 13 February 2020 he wrote to the complainant at some length, again apologising. The letter explained that the complainant's application had been "rated highly" but that there were more than 490 songwriters who had applied. He advised that due to the number, APRA did not have the resourced to supply individual feedback to each applicant.

442. He advised the complainant that over 550 applicants were contacted about their unsuccessful submissions and that individually tailored responses would have been an enormous undertaking. He added, however, that he understood that receiving communications from two different individuals within APRA may have been confusing and appeared impersonal.

*Code Reviewer's comments (if, and to the extent, called for)*

443. APRA's failure to send the reply of July 2019 to the complainant fell short of the standard called for by cl 2.2(b) of the Code to treat members "courteously".

444. On the substantive complaint, I suggest that APRA should make it clear to applicants at the outset that APRA will not be in a position to provide bespoke feedback. On the other hand, also at the outset, APRA should describe the criteria and standards looked for in applications. On the basis of its accumulated experience, APRA should identify the features of successful applications that have differentiated them from the remainder and convey to applicants, at least in general descriptive terms, the nature of those winning features. Similarly, I do not see why, following the end of the exercise, APRA should not send a standard form of email to all applicants advising them in general terms of any commonly occurring shortcomings in the unsuccessful ones and the distinguishing features of the successful ones.

### ***APRA AMCOS Member Complaint 3***

445. This complaint concerns the distribution methodology underpinning APRA AMCOS royalty payments for performance of the complainant's music at dance schools. Prior to lodging her complaint, the complainant had raised the issue

with the APRA AMCOS Member Services team and had been advised that royalties derived from the licence fees were distributed in accordance with APRA AMCOS's Distribution Rules and Practices (not on the basis of performances).

446. APRA AMCOS had also advised her of its "Unlogged Performances Report" (UPR) process which allows members to claim royalties for performances that fall outside the usual distribution analysis of self-reporting systems. However, the complainant had expressed unwillingness to engage with the UPR process, saying that it was not feasible for her to gather the necessary information from dance school operators.
447. As will appear below, the matter has not been resolved and has been referred to the Independent Dispute Resolution Facilitator who presently has the carriage of the matter.
448. The member's complaint relates largely to certain "music of which she is the sole lyricist, and some of the songs of which were written by her alone or with others.
449. In her email dated 13 May 2020, the complainant gave as an illustration one dance school company which had advised her that in 2019 it ran pre-school ballet classes in 74 locations; that it used music in every class in every location; and that its payment to APRA (this year, OneMusic) was \$14,032.
450. The complainant said that on that basis, if 50% of the music was the particular music in question, the amount that should have been paid to the writers would be  $\$14,032 \times 0.5 \times 0.86 = \$6,033.76$ . The complainant asserted that as sole lyricist, a minimum of 50% of that amount should be paid to her.

451. Her point was that this example related to just one dance school company and that there were thousands of dance school companies throughout Australia using this music.
452. The complainant rejected any suggestion that she should have to do the research required by the Unlogged Performance Claim (UPC) regime, and that OneMusic would have details of every dance studio (and pre-school, kindergarten etc) because OneMusic is collecting royalties from them.
453. APRA's Writer Services Department replied on 17 March 2020. After apologising for the delay in responding, the Writer Services Department officer informed the complainant that at present APRA does not receive usage data directly from dance schools, and that associated licence fees are distributed via the data detailed in APRA's Distribution Practices; that is to say, commercial radio, music video programming, background music suppliers and streaming services.
454. The letter advised, however, that there are ongoing discussions regarding the obtaining of playlist data directly from the dance schools sector, but that those discussions are in their infancy. For the present, APRA recommended that the complainant use the UPC form and complete it to the extent possible.
455. At some time, the complainant lodged a formal complaint and on 14 May 2020, APRA's Manager – National Engagement formally acknowledged receipt of the complaint lodged in accordance with APRA's *Complaints Procedure*. The writer undertook to provide an update within the next 14 days, ie by 28 May 2020.

456. On 29 May 2020, the complainant wrote noting that the 14 day period had expired and requesting details of the individual concerned so that his or her contact details could be passed to the complainant's lawyers.
457. Later on 29 May 2020, APRA's Head of Member Services wrote a lengthy and informative email to the complainant, explaining that it is too burdensome, administratively, for APRA to require every dance school licensee to report each track played in each class, and for APRA to process that direct report data for distribution of royalties to members.
458. Later on 29 May 2020, the complainant asked APRA to supply her with details of the identity of all dance schools, pre-schools and kindergartens who pay licence fees to OneMusic for the use of music in their classes, so that she, the complainant, could carry out the appropriate research required for her to use the UPR mechanism. ("UPC" and "UPR" were used interchangeably by different APRA staff and the complainant throughout their correspondence. They mean "Unlogged Performance Claim" and "Unlogged Performance Report" respectively).
459. On 2 June 2020, the Head of Member Services wrote to the complainant undertaking to come back to her shortly in relation to her queries.
460. Not having heard anything by 11 June 2020, the complainant again wrote expressing her disappointment at the delay.
461. In relation to APRA's suggestion of the "Resolution Pathways" mechanism, the complainant said that the cost to her would be prohibitive. She also expressed the view that the mediation would not work as the mediator would not be a decision maker.

462. After indicating why other dispute resolution regimes would be too costly, the complainant said that she would refer the matter to her solicitors who would contact APRA.
463. On 12 June 2020, an APRA officer spoke to the complainant, advising her that APRA understood her position but that the only procedure that would assist her was the UPR mechanism. He also advised her that Resolution Pathways would be able to assist her very “cost effectively” and that if she wished, Shirli Kirschner of Resolution Pathways would attempt to resolve the matter by means of an initial “triage” at no cost to the complainant.
464. The complainant has since referred the issue to Resolution Pathways which presently has carriage of the matter.
465. APRA acknowledges “regrettable delays” in the response time throughout June 2020 and reports that “tracking processes have been established to mitigate against any such delays recurring”.

#### ***APRA AMCOS Member Complaint 4***

466. This complaint concerns the “SongHubs” Instagram account which is administered by APRA AMCOS. It is an initiative that links emerging and established APRA AMCOS songwriters with renowned international songwriters and producers, to create new works for local and international markets.
467. The complainant had her own Instagram account and tagged posts from them “#Aussiemade” and “@SongHubs” Instagram account tag. The latter was a mechanism by which she could cause her own Instagram posts to be shared by appearing on the feed of the SongHubs Instagram page.



468. The complainant was aggrieved that her posts tagged “#AussieMade” and “@SongHubs” did not appear on the APRA SongHubs Instagram feed as she had expected. She believed that APRA had blocked and/or removed her posts from the SongHub Instagram feed and considered that its doing so had denied her an opportunity to promote her music to a wider audience and was discouraging to her as a songwriter.
469. The complainant made her complaint on 3 June 2020 and the correspondence between her and APRA extended from then until 7 July 2020, at which time APRA considers that the complaint was resolved.
470. The complaint in fact went back to 22 April 2020 when the member, who described herself as a “proud, emerging Australian singer/songwriter” wrote to the Chief Executive of APRA complaining about the removal of an #AussieMade music release tagged to @SongHubs was removed from the APRA @Songhubs account. On 4 June 2020, the Chief Executive, Dean Ormiston, replied to the complainant, explaining that the SongHubs Instagram profile supports APRA’s SongHubs songwriting program. In particular, he explained that on the Instagram profile, APRA shares the stories of its songwriting camps as they are happening, and the outcomes of those camps, such as the release of songs that were written at one of them or by songwriters who met through the program. He explained that APRA limits sharing posts from members to those who have participated in the program, and that the complainant had not done so.
471. On 5 June 2020, the complainant replied explaining that her complaint was not that she had not been added to the @SongHub’s stories but that whereas her tagged SongHubs in #AussieMade post had been featured when the @SongHub’s tagged tab was selected, someone at APRA had later felt the

need simply to remove the complainant's #AussieMade post and to block physically her social media account.

472. Therefore, she said, her complaint was directed to investigate the reason underlying that course of action.

473. On 7 July 2020, the Chief Executive replied, firstly apologising for the delay, and attaching a document that had been prepared by the APRA Communications Team.

474. The document explained that the SongHub's Instagram page, although public, was made purely for SongHub's participants, and that on that page there will appear publicly only posts from participants.

475. Anyone is able to post an image with an @SongHub's tagged in the photo, but if the person is not a SongHub's participant it will not show on the tagged images. Thus, @SongHub's may show on the complainant's personal page but it will not feature on the SongHub's Instagram account.

476. The document concluded by assuring the complainant that SongHub's Instagram had not blocked the complainant from viewing any of its content.

477. APRA has not received any further communication from the complainant since 7 July 2020, and considers the complaint as having been resolved.

#### ***APRA AMCOS Member Complaint 5***

478. On 14 December 2019, the member complained in relation to a quarterly royalty payment that he had expected to receive but did not receive. A second complaint was that he sought review of a reduction in his live performance

royalties, citing the adverse financial impact of that reduction and a broader disillusionment with APRA's royalty calculations.

479. The complaint of 14 December 2019 related to the complainant's royalty statement in respect of performances in Australia for the year ended 30 June 2019. The member complained that for the year ended 30 June 2019, he received a royalty payment of \$3,433.86, yet for the year ended 30 June 2020, only \$224.50.
480. In his email of complaint, the member said that he had been told that the explanation was that there was an "adjustment" carried out, and because the venue where he mainly performed was not sufficiently licensed for the number of performances, the payment to him was reduced.
481. He said that he was told by APRA that if he had done the same number of performances at a variety of venues rather than at only the one, there would not have been a problem.
482. The member explained that it would not be feasible for him to check in advance that a venue was sufficiently licensed, because the negotiating power was all with the venue and he would simply be told that his services were not required.
483. In substance, the member's complaint was that it was unfair that a struggling musician should be penalised on account of the limited licence held by a venue.
484. On 20 December 2019, APRA's Head of Member Services replied. First, she explained that a distribution to the member on 12 November had not made it into his bank account due to incorrect bank details. The member subsequently

provided correct bank details and he was assured that the further payment should reach his bank account within the next few business days.

485. In relation to the "adjustment" or "alignment", the Head of Member Services explained that it is a process by which APRA seeks to balance the value of a member's Performance Report claim with the available licence fees of the venues in which performances took place.
486. The Head of Member Services explained that in earlier years, the member's claims had not reached APRA's Licence Alignment threshold and, in consequence, his claims in those years had not been reduced even though overpayments had been made. No adjustment was being sought for those earlier overpayments.
487. The Head of Member Services explained in some detail the nature and purpose of the Licence Alignment process. She assured the complainant that the purpose is not to punish prolific performing songwriters but is necessary to ensure that an equitable distribution of live music royalties takes place across the 8,000+ claims APRA receives.
488. The Head of Member Services also advised the complainant that a broader review was being undertaken by APRA into its Distribution Practices, in the course of which his feedback would be taken into account.
489. APRA received no further communication from the complainant after 20 December 2019 and regards both issues as resolved as from that time.

## **APRA AMCOS Licensee Complaint 1**

490. On 5 October 2019, the licensee complained about three things:
- Feeling harassed by phone calls and emails from OneMusic staff, some being outside business hours;
  - The lack of further information with respect to aspects of OneMusic's operations, eg fee calculation; and
  - The licensee's being reluctant to pay until an "ASIC" investigation into OneMusic had concluded (see below).
491. On 8 October 2019, a Legal & Policy consultant with OneMusic replied, undertaking to investigate the complaint as a matter of urgency and to provide a response by the end of the week.
492. On 16 October 2019, the foreshadowed reply was provided – by the Director, OneMusic General Licensing. The Director gave a detailed response. In particular, she explained that ASIC was not investigating OneMusic, but rather APRA AMCOS were participating in a re-authorisation process with the ACCC, which included OneMusic.
493. On 16 October 2019, the Director telephoned the complainant. It is not necessary for me to summarise the full discussion. The complainant had thought that for his premises the licence fee was to be \$1,400, but in fact the Director told him that since the audible area was less than 50m<sup>2</sup>, the licence fee would be \$476 for a gold package. The Director observed in her note of the telephone conversation: "I left [the complainant] feeling happier and satisfied and willing to pay the \$476 and assured him his account is on hold until this is resolved".

494. The complaint was considered resolved from the time of the telephone conversation on 16 October 2019. The complainant subsequently took out a OneMusic licence.

### ***APRA AMCOS Licensee Complaint 2***

495. This was a second complaint about harassment by OneMusic. The complainant alleged that OneMusic had repeatedly contacted him when his business was closed due to damage from the 2019 Queensland floods. He said that he felt harassed because he had told OneMusic several times that the business was not trading. He experienced frustration at not being able to get through to OneMusic on the phone to make a complaint.

496. In the initial email of complaint, the licensee requested a telephone number for OneMusic that someone would answer.

497. On 22 October 2019 an officer of OneMusic telephoned the complainant's mobile number and was told that the business would reopen in coming weeks but that there had been delay which made it impossible to give a definite reopening date.

498. On 22 October 2019, OneMusic's Manager, Customer Support wrote to the complainant advising that a tentative start date of 1 December 2019 had been fixed. The letter advised that the complainant would be contacted if there had been no word from him by 22 November 2019 to check how the reopening was progressing and whether he needed more time.

499. On 4 November 2019, what appears to be a standard form letter was sent by OneMusic to the complainant requiring him to attend urgently to the licence.

500. On 6 November 2019, the complainant responded referring to the earlier correspondence and advising that once the complainant's store was up and running, arrangements would be made to take out the licence.
501. On 6 November 2019, OneMusic wrote apologising for the standard form letter that had been sent, asking that it be disregarded, and promising to call the complainant on 22 November 2019.
502. On 22 November 2019, a OneMusic officer telephoned the complainant who was irate at being contacted. He was "screaming" throughout the conversation. He described OneMusic as "bullies" and said that he understood his obligations but the fact was that the shop had ceased trading. It was agreed that OneMusic would send an email confirming that the account had been closed and that it was not to contact him again.
503. OneMusic reports that the complainant's account has been "placed on hold" pending advice from the complainant that the business has recommenced trading. That has been the position since 22 November 2019.

*Code Reviewer's comments (if, and to the extent, called for)*

504. It is most unfortunate that due to an administrative error, the standard form "automated escalation letter" was issued prior to expiry of the agreed 30 day hold period. It is perfectly understandable that the complainant was angry. He was suffering from the flooding of his business. OneMusic would be well advised not to contact him again but to await any contact that may come from him.

### **APRA AMCOS Licensee Complaint 3**

505. The complaint was made on 8 October 2019. The complainant complained about the fee metrics of the OneMusic licence, considered the fees to be a significant increase on the previous tariff, and alleged that a fee in the United Kingdom for an equivalent licence was lower.
506. The nature of the business was that of a “hair studio” and the email of complaint dated 8 October 2019 raised no less than nine aspects of complaint.
507. On 10 October 2019, a OneMusic officer spoke with the complainant at length. Notwithstanding her explanation, the complainant said that he wanted his email to be treated as an official complaint and would not be submitting an application for a OneMusic licence until the matter was resolved.
508. The complainant confirmed that he was playing recorded music via music compiled on a hard drive, and that he would go back to CDs if he needed to pay OneMusic for its “gold package”.
509. On 3 March 2020 the Director, OneMusic General Licensing wrote a lengthy explanatory letter to the complainant.
510. There has been no further word from the complainant. OneMusic states that in view of COVID-19, it does not propose to pursue the complainant until after his trading circumstances have become more regular. OneMusic considers the complaint to have been resolved as at 3 March 2020.



#### **APRA AMCOS Licensee Complaint 4**

511. This complaint was made on 11 November 2019 and was regarded by APRA AMCOS as resolved as from 29 November 2019. The complaint was that a member of the staff of OneMusic had been rude, aggressive, threatening and accusatorial.
512. The complainant operated a gym and applied for a licence for background music. OneMusic replied noting that the complainant had applied for a partial right, and asked whether the complainant was using "Zoo Music" or "Foxtel Music" on the premises, to which the complainant replied that she was not using either and did not expect to have to provide any further explanation, having completed the application form and paid the appropriate fee.
513. Unfortunately, the member of staff at OneMusic, having asked the question and received the answer to it, was apparently not satisfied and wrote advising the complainant that unless OneMusic heard back from her as to the source of the music she was using for background music by close of business on 13 November 2019, her licence would be amended to a full right for background music. The staff member enclosed a "Fitness Information Guide" with the breakdown of what constitutes partial rights for background music.
514. That email prompted a response on the same day, 11 November 2019, in which the complaint was made. The complainant said, understandably, "Any other company would leave things at that yet you continue aggressive questioning me like I'm not telling the truth!" The email of complaint continued:

"My gym is a no frills gym, the only source of background music is the radio and a free to air tv. We do have virtual classes, not live classes, so my

understanding is this does not require any further licensing fees to you. If I have made a mistake on the application form, please advise.

If OneMusic need to contact me again, I do not wish to be contacted by [the particular staff member]."

515. On the same day, 11 November 2019, a more senior officer within One Music replied undertaking to investigate the issue raised as a matter of urgency and to provide a formal response within 14 days.
516. On 15 and 21 November 2019 attempts were made to contact the complainant by telephone.
517. On 29 November 2019, OneMusic's Senior Licensing Manager wrote to the complainant apologising and advising that it had never been intended to suggest that the complainant was not being truthful but it was accepted that the "tone of the correspondence to you from our staff member" was "unfortunate".
518. The letter confirmed that the complainant's business was correctly licensed for the background music sourced from radio and free to air tv.
519. There was no further correspondence from the complainant.

*Code Reviewer's comments (if, and to the extent, called for)*

520. The email dated 29 November 2019 was not only justified but it was also exemplary in its content and tone. The email of 11 November 2019, which gave rise to the complaint, should not have been written. Unless there was evidence suggesting that the application for the licence was incorrect, the applicant should not have been questioned. Even if there was such evidence, the staff member should have written in an entirely different tone, apologising

for having to trouble the applicant but asking her to assist OneMusic by clearing up a doubt.

### ***APRA AMCOS Licensee Complaint 5***

521. This complaint arose out of the attempt to persuade the complainant to “transition” from an APRA licence to a OneMusic licence.
522. On 20 December 2019, the complainant, the manager of a not-for-profit gym club, wrote to OneMusic complaining that its licence fee was substantially above the licence fees that were previously being paid to APRA. The writer asked that the terms of the licence be changed for the future so as to relate to the playing of CDs alone.
523. OneMusic’s Senior Licensing Manager responded to the complainant on 23 December 2019 undertaking to provide a substantive response no later than 20 January 2020, and advising that in the meanwhile the complainant need not take any steps as her account had been “placed on hold”.
524. On 13 January 2020, OneMusic’s Senior Licensing Manager wrote a detailed account of the consultation that had taken place prior to the introduction of OneMusic and of the fee structure. The letter pointed out that the licences issued by APRA and PPCA were separate, the former being in respect of the musical works, and the latter being in respect of sound recordings. The email recorded OneMusic’s understanding that the complainant held only an APRA licence for background music use and did not have in place a licence with PPCA for the public performance of sound recordings for background music. If this was correct, of course, the gym was underpaying licence fees.

525. The letter noted that OneMusic was not expecting the complainant to account retrospectively for periods when the business had been under-licensed.
526. In response to questions raised by the complainant, the Senior Licensing Manager mentioned that it would be possible for the complainant to look into playing only “royalty free” music, or taking a licence directly from the copyright owners.
527. In view of the complainant’s request to be licensed only in respect of the playing of CDs, the Senior Licensing Manager informed the complainant of the amount of the licence fee (\$318.75).
528. Subsequent to 13 January 2020, OneMusic resumed “standard” contact with the complainant in March 2020 when the complainant confirmed that her business was affected by COVID-19 restrictions. Her account was placed on hold pending contact from her once trading circumstances became regular again and the use of the OneMusic repertoire resumed. OneMusic considers the complaint to have been resolved as at 13 January 2020.

### ***APRA AMCOS Licensee Complaint 6***

529. This complaint was made on 24 December 2019 and APRA AMCOS regard it as having been resolved on from 6 January 2020. The complainant was dissatisfied with the level of service provided by an APRA staff member to his music licensing enquiries. The complainant expressed frustration at the lack of clarity that the staff member provided about the class of licence required, about having to chase up the staff member, and about feeling “fobbed off” by the staff member.

530. The way in which the matter was resolved was that the APRA Digital Licensing Manager spoke with the complainant on the telephone to apologise for the “adverse customer service experience” experienced by the complainant and provided clear information about the licences required for the complainant’s proposed music use. That was followed by written confirmation to the complainant on 6 January 2020 conveying that information.

531. At one stage in the correspondence, APRA replied:

“Once the service your business will be offering has been clearly defined, we can look at the type of licence that would best suit you.”

The complainant pointed out that he had completed the APRA forms stating:

“An audio/video and audio constant stream of primarily self-produced talk back shows with some music, occasional music show primarily on local artists, may do live concert and on some occasions general music”, and “single continuous audio/video and audio stream (replicating a single community broadcast).”

532. On 30 December 2019, APRA AMCOS’s Legal & Policy Consultant wrote to the complainant advising that the offices were closed until 6 January 2020 and that the issue raised by the complainant would be investigated as a matter of urgency and a formal response would be provided once the office reopened in January.

533. On 6 January 2020 the APRA AMCOS Manager – Digital Media Licensing spoke to the complainant on the telephone and then wrote a lengthy, detailed email setting out the classes of licences required for the various kinds of activity that the complainant may have had in contemplation.

534. This was an unusual case. At first blush, the description of the proposed use of music contained in the application form seems detailed, but the email ultimately sent by the Manager – Digital Media Licensing demonstrates that the licensing structure was complex. There was a mismatch between the expectation of the complainant and the full information pertinent to his enquiry. It is perhaps understandable that he felt “fobbed off”. The problem is that the only way of satisfying him was by exploring his proposal in detail by telephone and then writing in great detail on 6 January 2020. It seems to me that the complainant was probably unreasonable in his complaint that the information initially provided by the account manager constituted a “fobbing off”.

***APRA AMCOS Licensee Complaint 7***

535. In this case, the complaint was made on 15 December 2019 and APRA AMCOS treat it as having been resolved on 14 January 2020.

536. The complainant’s grievance was over having received an overdue payment notice in December 2019 for a licence and billing period that was not to commence until 1 January 2020. She complained that receipt of the overdue payment notices left her feeling harassed and bullied.

537. When the complainant submitted an application for a licence in November 2019, it was agreed that the commencement date would be deferred to 1 January 2020. But due to an administrative error, the licence was activated prematurely which caused the automated billing system to issue invoices and payment reminders also prematurely.

538. The record was remedied immediately and OneMusic's Director of General Licensing wrote to the complainant on 14 January 2020 apologising and followed that up with a phone call to her on the same date.
539. The complainant responded positively and as she raised no further issues, the matter was treated as resolved. She remains a licensee.
540. In her email of complaint dated 15 December 2019, the complainant explained that she had set up the account early because she was pregnant and did not want to have to check emails daily when the baby arrived. The complainant operated three gyms and said in her email of complaint:
- "I've done the right thing & honesty after emails like this I wish I hadn't been organised early with all three clubs. I want something to be done about this and won't be paying the bill until the 3<sup>rd</sup> of January 2020."
541. The letter of apology from OneMusic's Director – General Licensing was appropriate.
542. When a member of staff spoke to the complainant on 14 January 2020, she asked him to pass on to the Director her appreciation of the Director's email, and said that she would pay the amount payable on time.

### ***APRA AMCOS Licensee Complaint 8***

543. According to APRA AMCOS, this complaint was made on 15 February 2020 and resolved on 24 February 2020.
544. The complainant had received overdue payment notices in February 2020 for a licence and billing period that was not due to commence until 1 March 2020.

The complainant was critical of the level of customer service demonstrated by this and suggested that OneMusic review its billing software.

545. When the complainant submitted an application for licence in January 2020, it was agreed that the licence would commence on 1 March 2020. However, an administrative error caused the licence to be activated prematurely which in turn caused the automated billing system to issue invoices and payment reminders prematurely.
546. The record was immediately remedied and OneMusic's Director of General Licensing issued a written apology and explained the cause of the error.
547. The complainant responded positively and raised no other issues. The complainant remains a licensee.
548. The complaint of 15 February 2020 captured the understandable sense of grievance of the complainant:

"Your treatment of customers is quite frankly horrendous. I am getting threats of a mercantile agency for a service that is due to start on March 1. I do not understand what company thinks it is good practice to threaten for invoice payment well in advance of a billing period. Furthermore, I was given written advice from OneMusic that the invoice would be put on hold until 1/3/20."

The email of apology from OneMusic's Director of General Licensing dated 24 February 2020 was appropriately contrite. The email explained how the error had come about.

549. On 24 February 2020, the complainant wrote to the Director: "Thank you for your email, it is appreciated."



## **APRA AMCOS Licensee Complaint 9**

550. This complaint was made on 27 November 2018, and, according to APRA AMCOS, was resolved on 13 August 2019. The complaint related to a Background Music Licence (Licence 1) and a Music on Hold Licence (Licence 2) held in connection with the complainant's business.
551. The complainant had applied for the two licences as long ago as in November 2010. The practice of APRA AMCOS was to bill for both licences annually and by means of a single invoice on which the separate licence fees payable were stated.
552. The complainant asserted that he had never intended to take out Licence 2 in 2010 and had therefore been overcharged by APRA AMCOS for eight licence years since 1 November 2010. He refused to pay the fee payable under Licence 1 for the 2018 – 2019 licence year until he received a refund for eight years' of licence fees for Licence 2.
553. APRA AMCOS took the position that Licence 1 and Licence 2 had been validly applied for and paid for, and that Licence 2 was only not renewed from the 2018 – 2019 licence year, and that the licence fee payable for Licence 1 was, in any event, unrelated to the issue concerning Licence 2.
554. APRA AMCOS explain that both sides to the dispute asserted their respective positions firmly and that correspondence between external solicitors for both parties was involved.
555. Eventually the matter was compromised by the complainant's paying the fee for Licence 1 for 2018 – 2019 and APRA AMCOS's agreeing to refund, without admissions, three years' worth of fees paid for Licence 2.

556. The business was in the nature of a dental clinic. The initial email of complaint attached a copy of the form of agreement which showed the part relating to "Music on Hold" deleted with an indication that the dental clinic was relying on the factory tone for the hold function.
557. On 27 November 2018, APRA AMCOS acknowledged receipt and undertook to provide a substantive response within 14 days.
558. On 7 December 2018, the APRA AMCOS Senior Legal Liaison Officer wrote a detailed response.
559. On 24 July 2019, after earlier correspondence, the Business Manager of the dental clinic wrote to APRA AMCOS in relation to the application dated 11 November 2010. The email acknowledged that "both contracts were returned to APRA" but pointed out that the Background Music portion was signed and a money figure assigned to it, while, although the Music on Hold portion was signed, "the owner was confused" and "nothing was filled out". The email suggested that certain "black streaks" on the Music on Hold section suggested that the intention was to delete it.
560. On 1 August 2019, APRA AMCOS's Senior Legal Liaison Officer wrote to the complainant making a without admissions settlement offer, and on 13 August 2019, the complainant replied saying that while he still found this "unsatisfactory", he would agree to the terms proposed in order to resolve the dispute.

## Copyright Agency Limited (“Copyright Agency”) / Viscopy

561. During the Review Period there were five complaints addressed in Copyright Agency’s report.

### **Copyright Agency Complaint 1**

562. On 17 July 2019, a gallery operator complained that payments made by him over the years had not made it into the artists’ pockets under the Resale Royalty Act. The complainant said that if there was a problem in locating artists, Copyright Agency should have contacted him because he would either be able to supply contact details or direct the society as to where they could be obtained. He made the point that in his case, 21 artists had not been paid a total of \$7,184 and asserted that if this non-payment to artists applied to other galleries, Copyright Agency could be sitting on a large amount of money. The complainant said:

“... this is a very bad look. I realise that CAL’s task is difficult, but you have people in the industry that will engage and will help. Please use them. I am more than happy to engage with you in a constructive manner to discuss how myself and the AAAA [Aboriginal Art Association of Australia] can help resolve this.”

563. Officers of Copyright Agency promptly contacted the complainant who was travelling overseas at the time. There were 53 royalties of a total value of \$7,184 that had not been paid and were being researched. According to the society, the unpaid royalties were less than 3% by volume and 2% by value of all that were payable to indigenous artists. Of those unpaid, 23 or 43% by volume and \$3,090 or 44% by value, were for a single deceased artist. Copyright Agency was researching to locate the beneficiaries so that the

payment could be made. Apparently the complainant acknowledged that this was a particularly difficult case.

564. Following that telephone conversation, the complainant provided details of two artists whom Copyright Agency was seeking, and it paid their royalties on the next payment run.
565. On 29 August 2019, Copyright Agency's Manager, Visual Arts and its Indigenous Engagement Manager met with the complainant at his gallery. He invited Copyright Agency to nominate someone to speak at the AAAA's annual meeting in Alice Springs in September 2019, and that occurred.
566. Some two months later, on 3 November 2019, the complainant again wrote, this time in relation to his July – September report. Again his complaint was that it appeared that some artists had not been paid.
567. The reply from Copyright Agency was to the effect that the problem was probably that the system had not yet recorded the payments. On 22 November 2019 a Copyright Agency officer called the complainant confirming that in the case of a few of the transactions, the artist had indeed been paid. She also confirmed that the beneficiaries of the estate of the deceased artist had since been located and the payments made to them in May 2020. The complainant expressed appreciation of the resolution of that difficult case on particular.
568. On 26 July 2020, a file note records that 17 royalty payments had been received from the complainant with a total value of \$1,395 that were being researched for payment to artists.

*Code Reviewer's comments (if, and to the extent, called for)*

569. The complaint seems to have been handled efficiently and courteously. Perhaps, however, the system could be improved if, at the **first** sign of a problem in identifying or locating the artist entitled, the gallery could be contacted for such assistance as it may be able to provide.

## **CA Complaint 2**

570. Beginning with a complaint about tardiness in receipt of payments from Copyright Agency compared to the time that used to be taken by Viscopy, the complainant went on to say:

"BUT my main enquiry is about the issue of how major Australian art galleries and regional galleries just refuse to pay visual artists for use of their images. AND/OR trick them into giving such rights away."

The complainant acknowledged that Copyright Agency had done some work for him on this issue but for him only as an individual. His question was whether the Society had taken the issue on board "in a total way meaning will you take such institutions to Court and consider Class Actions to recoup monies?"

571. There was attached to the email a screenshot from the complainant's Facebook page. The Facebook page was what is sometimes called a "rant" in the sense that it complained about the distribution of grants by Copyright Agency and funding by bureaucrats. The thrust of the complaint was that artists themselves are overlooked.

572. The complainant also telephoned Copyright Agency to express his extreme disappointment as to how Copyright Agency's Cultural Fund money is

managed. In substance the complaint seems to have been about the provision of funds to various institutions, including galleries, at the expense of individual artists.

573. The complainant posted numerous statements on his Facebook page. In one of the entries, he said, quite frankly, that he thought that "ALL" the cultural fund money should be given to individual artists.
574. Concurrently with his Facebook campaign and direct communications with Copyright Agency, the complainant was engaging the Greens and the Commonwealth Attorney-General.
575. On 13 January 2020, the CEO of Copyright Agency wrote a fairly lengthy email to the complainant explaining that Copyright Agency adheres to the Code and reports each year on its compliance with the Code. She referred the complainant to the website for the Code and undertook to raise the concerns expressed by the complainant with the Code Reviewer.
576. On 13 January 2020, the complainant telephoned Copyright Agency's CEO complaining about widespread unauthorised use of his images by galleries. The CEO explained that Copyright Agency is not able to take enforcement action in relation to infringements of its members' works except where doing so is connected with licences that are managed by Copyright Agency.
577. There was further correspondence in which the complainant complained about a reference by Copyright Agency to the grant by artists of licences free of charge. The complainant's argument was that the grant of a licence to use does not necessarily mean that the licence is gratuitous.

578. There was further correspondence which included a complaint about the National Gallery of Victoria (the complainant had also complained to the Victorian Ombudsman).
579. The final episode was a query by the complainant to "Member Services" asking whether it was correct that the Art Gallery of New South Wales would now be paying licence fees. An internal file note dated 26 July 2020 records that "there is likely to be a future distribution payment from us [Copyright Agency] to [the complainant] from licence fees paid by public galleries in 2021." This has not yet been communicated to the member as the amount and timing are still being finalised.

### ***Copyright Agency Complaint 3***

580. This complaint related to a "resale royalty invoice" or "billing document" issued by Copyright Agency to the complainant. The complaint was that the invoice, like its predecessors, was addressed to the wrong entity. In fact, the complaint was made a succession of times because, according to the complainant, a series of Copyright Agency's invoices were wrongly addressed.
581. On 8 May 2020, a Copyright Agency officer wrote to the complainant indicating that Copyright Agency wished to conduct a test run to ensure that the problem which had proved endemic had been rectified.
582. Copyright Agency informs me that it has received no response to its attempts to contact the complainant.

#### **CA Complaint 4**

583. The husband of an artist called leaving a message for the Policy Director complaining about the substantial decline in the royalties paid to his wife by Copyright Agency. He asserted that since Copyright Agency had “taken over” from Viscopy, his wife’s income had declined by 95%.
584. On 15 June 2020 the husband wrote a lengthy and detailed email of complaint and then on 25 June 2020 expressed surprise that he had not received a reply.
585. Copyright Agency’s Policy Director responded on 26 June 2020 explaining changes that had taken place from “the old methodology” as well as peculiarities of his wife’s situation (living in Canada while her publisher was based in the United Kingdom).
586. On 14 July 2020, Simpsons Solicitors contacted the Policy Director to say that they had been asked by the writer’s husband for information about the distribution methodology. The Policy Director sent to the solicitors a lengthy explanatory email dated 17 July 2020.
587. On 17 July 2020, the solicitor at Simpsons handling the matter called to acknowledge receipt and there have been no developments since then.
588. Copyright Agency informs me that there have been subsequent communications and that the matter is close to resolution.

#### **CA Complaint 5**

589. On 24 February 2020, Copyright Agency wrote to the complainant noting that the complainant had not yet updated its report of gross receipts for the



previous financial year, which had been due on 11 February 2020. Copyright Agency's letter stated:

"Under the terms and conditions of your remuneration agreement with Copyright Agency, you are required to advise us of your updated figures to enable Copyright Agency to invoice you accurately for the current year. Failure to do so incurs an automatic increase of your previous year's invoice by 5% for the current year, subject to the minimum fee."

590. On the same day, 24 February 2020, the individual to whom Copyright Agency had written replied advising that the business had been sold, and he supplied particulars, including contact details, of the new owner.
591. A person wrote on behalf of the new owner. Copyright Agency then provided to the new owner information about the statutory education licence which is administered by Copyright Agency.
592. On 26 February 2020, the new owner advised that it was not using any external content for the training that it provided.
593. This left outstanding the amount payable in respect of a period of three months. Copyright Agency's licensing officer advised that the minimum termination fee was \$276.
594. The final email in the chain was one dated 19 June 2020 from Copyright Agency to the representative of the new owner advising that in light of the impact of COVID-19, Copyright Agency would offer a minimum fee of \$276 for the 2020 licence. Copyright Agency's email asked for confirmation that this was acceptable in which case it would generate the invoice and forward it.
595. There has, however, been no further contact since then.

596. Copyright Agency reports that since there was no response to its email, the licence was cancelled in October 2020.

## Audio-Visual Copyright Society Limited (“Screenrights”)

### General

597. In its report at Section 11, Screenrights reports (at [11.2]) that no complaints that would be considered complaints for the purposes of the Code were received by Screenrights during the Review Period.

598. During the Review Period, Screenrights undertook a review of its “Resolution Pathways for disputes between members and members” and in September 2019 adopted a new “Competing Claim Resolution Procedures”. A list of the changes and their levels of adoption appear on Screenrights’ website.

599. At [11.7], Screenrights reports that in the Review Period it had over 1.48million individual claims and opened competing claims involving 482 series and 1,599 one-off programs. Screenrights’ members were notified of the competing claims via its member portal “MyScreenrights”.

600. At [11.8], Screenrights states that at the date of its report to me, competing claims have been closed for 627 series and for 1,612 one-off programs. Under its new “Competing Claims Resolution Procedure” (CCRP), Screenrights has issued 97 internal determinations. No requests were received from members for an expert determination.

# Phonographic Performance Company of Australia Ltd ("PPCA")

## General

601. PPCA states that it is committed to the equitable and transparent handling and resolving of complaints, and to dealing with all existing and potential licensees, licensors and registered artists in a courteous and reasonable manner. It states that all PPCA employees are provided with information on PPCA's *Complaints Handling and Dispute Resolution Policy* (the Policy), and are encouraged to ask questions and to review related processes regularly.
602. The Policy is available on the PPCA website, the internal intranet and as a hard copy document to employees as part of their induction package.
603. No changes to the Policy were made during the Review Period.
604. PPCA has a Complaints Officer who oversees the complaints process and who has access to all other PPCA employees in order to address properly any complaint made.
605. All complaints are recorded in a complaints register.
606. Only two complaints were received during the Review Period. I have read the Accompanying Underlying Documents.

## ***PPCA Complaint 1***

607. On 19 December 2019, the CEO of a record label based in the United States had noticed that the label was listed on the PPCA Licensors Labels list available

on the PPCA website. The CEO complained that the label had never registered with PPCA and enquired why it was listed.

608. The complaint was made by email on 19 December 2019, and the PPCA Complaints Officer replied on the following day explaining that the label had been registered with PPCA by two overseas rights management organisations which the record label may have authorised to handle their catalogue.
609. The Complaints Officer explained that it is not uncommon, where a label is based in one country, such as the United States, for it to authorise its local collecting society to represent it with the relevant collecting society in another country, eg PPCA in Australia. The email from the Complaints Officer explained that a label may prefer to follow that course rather than making direct arrangements with the foreign collecting society. When the practice is followed, the US collecting society would send through repertoire claims on behalf of the label and, generally speaking, handle all administrative tasks necessary with PPCA.
610. The Complaints Officer further explained that the list to which the complainant referred is the PPCA "Label List" and complements PPCA's "Licensor List". The Licensor List sets out all those entities that have entered into input arrangements with PPCA for the territory of Australia, and the accompanying Label List identifies all of the labels covered by those arrangements, noting against each label the licensor which has granted PPCA the relevant rights.
611. The complainant replied on 24 December 2019 seeking a minor correction to the Label name, but did not decide to have the label removed.

*Code Reviewer's comments (if, and to the extent, called for)*

612. The promptness and clarity of PPCA's response were exemplary, in my view.

**PPCA Complaint 2**

613. On 26 March 2020, a recording artist and musician complained that he had attempted to register as a "Registered Artist" via the PPCA website on four occasions but had failed each time. He said that the website's response each time was "must attach a photo signature" id and supply date of birth, which he had done on all four occasions.

614. PPCA's Complaints Officer responded on the following day by forwarding a PDF copy of PPCA's "Artist Details Form" and inviting the complainant to complete it and return it by email. PPCA also asked the complainant to provide some information on the operating system, device and photo file format being used, so that PPCA could further investigate and resolve the system issue.

615. PPCA reports that its IT Team was informed of the error.

616. Soon afterwards, the complainant submitted the registration details using the online form facility. PPCA informs me that this led PPCA to believe that the system issue had been local and temporary.

617. The IT Team was unable to replicate the error because the problem appeared to have been quickly resolved and the team had no details on the basis of which to investigate the problem further.

## Australian Writers' Guild Authorship Collecting Society Ltd ("AWGACS")

618. As it did last year, AWGACS reports that its complaints handling procedure and dispute resolution procedure were developed in line with the requirements of the Code, the requirements of CISAC, and Australian Standard AS4269-1995 (Complaints Handling).
619. During the Review Period, AWGACS received no requests from members for these documents and no complaints from members or their affiliates.

## Australian Screen Directors Authorship Collecting Society Ltd ("ASDACS")

620. Any complaints received by ASDACS are identified in a specific Complaints Register, separate from other general interactions from members.
621. During the Review Period, which covers the distribution of 2017 royalty income, no formal complaints were received.

## D. SUBMISSIONS MADE DIRECTLY TO THE CODE REVIEWER

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622. Under this heading I deal with submissions that have been made directly to me as Code Reviewer, as distinct from complaints made to a collecting society on which it reports to me.

623. As noted at [12] – [25] above, the number of submissions made directly to the Code Reviewer this year (nine) has been greater than the usual number, and I suggested there some possible explanations for the increase.
624. As has happened in past years, some submissions lie outside the Code, and are within the jurisdiction of the Copyright Tribunal: see, for example, Subdiv H of Div 3 of Part VI of the Copyright Act.
625. Complaints about copyright itself and about the bargaining strength of collecting societies are clearly beyond the reach of the Code, and are more appropriately addressed to the ACCC. Indeed, some of the following submitters did make submissions to the ACCC in response to APRA's application for re-authorisation (see [23] – [24] above). The limited scope of the Code must be borne in mind when this section of the Report is read.

## 1. Over the Moon Yoga and Dance Education

626. Edna Reinhardt conducts a business of yoga and dance education at a small yoga and dance studio in rural Victoria [Over the Moon Yoga and Dance Education]. She and her teachers will typically use a small number of pieces of music in the course of their one-hour lessons.
627. The music is not popular or well-known and is sometimes "obscure". She pays a subscription to a streaming service such as Spotify or Apple. But in addition, she pays APRA for a licence to perform the music. It is a monthly subscription. Each teacher prepares a "playlist" prior to a class.
628. The complaint is that the only form of licence that APRA offers is a blanket licence over its entire repertoire, nearly all of which is not used in the

complainant's business. APRA confirms that the licence is a "blanket" licence. Ms Reinhardt would prefer to pay only for the music she actually uses. In addition to paying what she regards as "excessive licence fees", Ms Reinhardt contends that it is unfair that the licence fees paid by her are distributed by APRA on a basis that has no regard to those whose music she has used as against those whose music she does not use.

629. Ms Reinhardt says that APRA has suggested that the teachers keep a record of the music to be used so that a licence could be tailored to refer to that music with a substantially reduced licence fee. Ms Reinhardt says that this solution is simply not practicable.

630. As a separate matter, Ms Reinhardt complains that APRA had assured her that for the duration of the COVID-19 Pandemic, it would waive payment of her licence fees, yet she has been receiving monthly invoices for the fees. She is concerned that when the Pandemic is over, APRA will demand that she pay the invoices.

631. OneMusic has responded to Ms Reinhardt's complaint. It is convenient to address, first, the complaint last mentioned. OneMusic has said that any invoices sent during the COVID-19 Pandemic were issued in error. OneMusic has apologised to Ms Reinhardt for this and has confirmed that the licence fees have been waived for the period 1 April 2020 to 13 November 2020 as a result of the COVID-19 Pandemic.

632. In relation to the main complaint, OneMusic makes the following points:

- The OneMusic licence covers most of the world's commercially released music and is not limited to what is commonly termed "popular" or "chart" music. OneMusic states that the songwriters, composers and



performers it represents create music across all genres, including a range of niche, specialist and obscure music, including a large amount of music intended for yoga practice and dance.

- It is likely that the complainant's business is using music that would require a OneMusic licence, but OneMusic would be happy to work with Ms Reinhardt to confirm whether any of the music she is using would in fact require coverage under a OneMusic licence.
- OneMusic acknowledges that under the previous APRA AMCOS Events Licence, the complainant would have been required to provide a list of actual music performed at certain events, but explains that the new OneMusic *Dance & Performance Instructors and Dance Schools* Licence does not require this level of reporting. Under the new licence, all that is sought is the class numbers and class sizes.
- In relation to the complainant's grievance that she has to pay "twice" for music – both when she purchases it and again when she uses it in her business, OneMusic responds that most, by far, commercially released music is produced and sold for personal purposes, such as for use in the home, but when music is performed in public by a business, a separate "public performance" licence is required. That rule applies whether one purchases a physical CD or a digital download or streamed music through a subscription music streaming device.
- OneMusic has explained that the concept of an additional fee at the time of purchase has been considered in the past in various forums, but the prevailing view has been that such a scheme would risk unfairly placing a larger cost burden on all users of music, including those who listen in the home. OneMusic states in its response to Ms Reinhardt's submission: "In contrast, a licence-based approach allows for different users of music to pay fees which appropriately correspond to the particular benefit the music brings".

633. Ms Reinhardt's submission is not expressed to relate to any particular provision of the Code, but I thought it desirable to relay it, with her permission, to OneMusic. The complaint about the "blanket" all-or-nothing nature of the licence was addressed by the ACCC in its Determination, for example, at [4.75] – [4.80]. At least, Ms Reinhardt's complaint in relation to the waiver of license fees has been addressed.

## 2. Australian Small Business & Family Enterprise Ombudsman

634. The Australian Small Business & Family Enterprise Ombudsman (the Ombudsman) makes two distinct complaints.

635. It is important to note that the opening paragraph of the Ombudsman's submission is as follows:

"My Office has previously made submissions to the Australian Competition and Consumer Commission (ACCC) regarding the re-authorisation of Australasian Performing Right Association (APRA). Despite the conditions imposed with the re-authorisation, we remain concerned about the effect of APRA's, and its affiliate OneMusic's, conduct on its small business members and licensees."

The Ombudsman provides a reference to its submission to the ACCC.

636. As the first complaint, the Ombudsman writes in the interests of non-mainstream artists who are members of APRA and who, the Ombudsman contends, are not being paid adequately. The Ombudsman argues that this arises from APRA's use of proxy and sample data sets to calculate how revenue received by APRA should be distributed. The Ombudsman contends that the works of non-mainstream artists are performed on non-commercial (community) radio stations, but those performances are not adequately

recorded by APRA. This is because, according to the Ombudsman, APRA uses “proxy” and “sample” data sets to calculate how licence fees received should be distributed.

637. The Ombudsman suggests that the solution is for APRA, at its expense, “to extend modern electronic reporting mechanisms to fairly calculate revenue distributions”.
638. The Ombudsman’s second complaint relates to the level of licence fees payable to OneMusic in respect of venues. The level of licence fees is based on maximum capacity irrespective of actual use. The licence is issued in respect of a year and the licensee must nominate to APRA “each day of operation”. But the licence fee ignores the facts, first, that a venue may not be open on many days and, second, the fact that it will be frequently be operating at less than full capacity (even though the level of licence fee is fixed by reference to full capacity).
639. The Ombudsman contends that: “OneMusic should restructure its fees so that they are proportional to licensees’ actual or likely use”.
640. In relation to the first complaint, APRA AMCOS have referred to the treatment of the issue by the ACCC in its recent re-authorisation Determination. In particular, APRA has supplied references to particular paragraphs of its submissions to the ACCC dated 24 April 2019 and 9 August 2019, and to paragraphs [4.81] to [4.93] of the ACCC’s Determination. Those paragraphs occur under the heading “Inefficiency in the production of musical works”. I note that the ACCC concluded that the conditions of authorisation which it imposed (see especially Conditions C2.3 and C2.4) would go a long way to meeting the present complaint.

641. In addition to referring to treatment of the issue by the ACCC, APRA AMCOS, in their reply to me, has made the following points:

- “• Proxy data is only one of many different techniques that APRA uses to inform our royalty distributions. For example, members that perform live and lodge performance reports can expect to receive royalties corresponding with those logged performances.
- APRA’s current distribution rules and practices reflect what APRA considers to be presently achievable, feasible and reasonable with respect to achieving the appropriate balance, including, where deemed suitable, distribution by analogy via proxy data from certain licence types.
- APRA offers an Unlogged Performance Reports mechanism for members to claim royalties for performances of their music, which for any reason has fallen outside our usual distribution analysis or self-reporting systems.
- APRA’s distribution rules and practices are dynamic - in 2018/19 alone, APRA implemented nine changes across its distribution rules and practices. APRA continues to seek out and evaluate new technologies and techniques that offer the potential to enhance our royalty distribution practices, such as the use of Music Recognition Technology in nightclubs.
- An independent dispute resolution facility is available to any members wishing to raise any issues pertaining to their royalties, distributions or any other aspect of their APRA membership.
- We also reiterate that all members receive non-financial support from APRA, including member events and residencies.
- APRA supports conditions C2.3 and C2.4 of the recent authorisation and will be publishing the corresponding reporting with respect to its distribution techniques from 1 July 2021.”

642. In view of all these matters, APRA has respectfully rejected the Ombudsman’s claim that it has not complied with its obligations under the Code to treat its members “fairly” .

643. It would not be appropriate for me to re-address the present issue until there has been an opportunity to observe the conditions of authorisation operating. I suggest that the Ombudsman keep the matter under review and, if necessary, renew the complaint in relation to the year ended 30 June 2021 if appropriate.

644. In relation to the second complaint, APRA has noted that the Ombudsman has raised the issue in its submission to the ACCC dated 10 May 2019, to which APRA responded in its submission to the ACCC dated 23 May 2019. In the light of this, APRA has not canvassed the ground again.
645. However, as part of its consultation for the *Recorded Music for Dance and Featured Recorded Music* licence schemes, OneMusic has recently proposed a rate using annual attendance, rather than venue capacity, as a metric.
646. In relation to the Ombudsman's contention that OneMusic should restructure its fees so that they are proportional to licensee's actual or likely use, APRA claims that its schemes are released to market only after extensive industry consultation and considers that fees payable under its licence schemes are reasonable and proportionate to the music use and the sector of the relevant licensee.
647. APRA's response includes the following two paragraphs:

"The different metrics applied by OneMusic Australia to different licence schemes are tailored to deliver what we see as the simplest and most accurate indicators of size and use on a sector-by-sector basis, without imposing significant reporting impost on businesses using our music, including small businesses. During the OneMusic Australia consultation process, licensee groups were often offered the option of more granular, complex licences with additional variables, but the licensee groups preferred simpler schemes that reduced their reporting and compliance obligations. For example, the two main rates that apply in fitness centres: background music and music in fitness classes are linked respectively to a fitness centre's number of members, and number of classes (using our music) it offers.

OneMusic Australia has responded swiftly to the significant disruptions brought about by COVID-19 with a range of licensee-focused actions that included pausing licensing activity from the commencement of restrictions up until when restrictions in many states started easing and businesses resumed trading; providing automatic COVID-19 fee-relief by crediting back licence fees paid by affected licensees; and offering flexible payment

and credit options to affected licensees. I hope to have addressed ASBFEO's concerns and do contact me should there be any further issues of concern, whether it be in respect of this matter or otherwise."

648. In my view, again, the proposed new rate based on annual attendance rather than venue capacity, should be allowed to run its course. Moreover, in circumstances where the ACCC, with the resources available to it, has recently considered and dealt with the present complaint, it would be wasteful for me, without research resources, to attempt the same task.
649. In addition, I draw attention to the provision for a reference of licence schemes to the Copyright Tribunal in ss 155ff of the Copyright Act.

### 3. Jamison Young

650. Mr Young is a composer of music. He ceased to be a member of APRA many years ago, but is a member of the American Society of Composers, Authors and Publishers (ASCAP). ASCAP is an American Performing Right Organisation (PRO). Like APRA, ASCAP holds itself out as protecting its members' musical copyrights by monitoring public performances of their music. It also administers ASCAP Clearance Express (ACE) which is a searchable database that contains information relating to musical works in the ASCAP repertoire (Repertory).
651. Mr Young has a grievance relating to a particular work which apparently has proved to be quite successful and in respect of which Mr Young is entitled to 90% of the royalties. Mr Young has written, saying:

"Issues I have relate mostly to the way APRA deals with competition. Solving my own situation is of little consequence."

and

“I’m not looking for any solution to my situation. It’s a little silly to be paying \$4,000 to get control of 10% of works that don’t generate any income”.

652. The reference to \$4,000 is a reference to the cost of engaging in the APRA-sponsored ADR program called “Resolution Pathways”.
653. The reference to “the way APRA deals with competition” indicates a topic beyond the scope of the Code.
654. APRA has responded to the complaint about the particular work by noting, at the outset, that Mr Young has made related submissions to it previously to which APRA has responded. Apparently, Mr Young has also made submissions to the ACCC in connection with APRA’s recent application to it for re-authorisation.
655. APRA has observed that the work in question is apparently jointly authored by two APRA writer members as well as by Mr Young. It is published by an APRA publisher member.
656. As APRA sees it, the source of Mr Young’s grievance is that he is not free to deal with the work as he wishes because the copyright in it is owned jointly, rather than by Mr Young alone. As Mr Young seems to appreciate, there is nothing that the Code Reviewer can do in relation to that.
657. Mr Young also makes complaint about the exclusivity of the APRA input arrangements. These were described at [2.24] of the ACCC’s Determination as follows:

“2.24 Broadly, APRA domestic input arrangements involve the exclusive assignment to APRA by members of the performing rights in any current and future musical and associated literary works in which they own copyright during the continuance of membership, subject to APRA’s opt out and licence back provisions discussed below.”

At [2.25] and [2.26] the ACCC described APRA’s international input arrangements.

658. At [2.27] the ACCC summarises the position by saying that by virtue of the input arrangements, domestic and international, “APRA repertoire includes a large proportion of the world-wide repertoire of musical works, including almost all commercially popular musical works”.

659. The input arrangements were recently re-authorised (subject to conditions) by the ACCC. I would not re-do the work so undertaken by the ACCC, because: it is not within the Code; I do not have the research resources required; and that work has been undertaken so recently by an organisation better qualified than I am to grapple with competition issues.

660. Nor can the Code Reviewer overcome any disadvantage which Mr Young may suffer as a result of the fact of joint authorship.

#### 4. Events Organiser

661. The complainant, who wished not to be identified, promotes electronic musical events.

662. The complaint is directed to OneMusic. He complains that the arrangement for distribution of licence fees as between APRA and PPCA is an unacceptable



distribution policy. According to the complainant, the arrangement is that PPCA receives 50% and APRA 50%.

663. The event organiser's submission states:

"Let me explain what I mean by PPCAs portion now being 50% in the last paragraph. In the past a concert run by [Promoter] was [Performer]. She performs for around 2+ hours. [Performer] back 5 years ago would have paid APRA around 1.5% + GST (including early reporting discount). Now, [Performer] would be paying APRA 2%, and because she has recorded music (Backing track) being played for the whole set she would be in the 90%+ category and have to pay pretty much another 2%+GST approx. for PPCA. In 5 years, the music fees have more than doubled. APRA also over a period of time has raised its rates to 2% under OneMusic's new schemes, to bring it in sync with the PPCAs rates. On [Performer's] next tour her fees to music societies for playing her very own music, will increase from 1.5% to around 4% (+GST). Wow.

Huge amounts of these funds often go to dubious "distribution pools" overseen by committees filled with conflict. However as the article posted here <http://medium.com/@rebelbuzz/fair-play-fa83ba462c88> back up and from my experience in the music industry, the industry is rife with back scratching and industry bodies filled with conflicting members, reminisce of a mafia or boys club.

As a small label I gave up the mission in 1995. There wasn't enough money yet my music was being played globally and across Australia at dance events in the 90s. The whole industry is geared up to cover the majors interests. With a little luck and hard work and working the system in Australia, larger independents can survive and get a slice of a pie, that in a **huge amount of cases is not rightfully theirs.**

With APRA approaching 100 years old and PPCA well underway thanks to its unlimited funding by the major label mafia and ARIA, it's completely unacceptable that these businesses (lets not call them not for profit societies case [sic] that is not how they are run) collect money for music played, that is not 100% paid to that musics owners. The **complete failure** in the development of the holy grail of distribution with CLEF, in a world where coding and tech innovation is at its most advanced and cost effective, is a **huge tragedy to the fairness of distribution of music money in Australia.**

As a licensee, negotiations with these incredibly wealthy and liquid Collection Societies and its members including the 3 majors (Sony,

Universal, Warners – worth over US\$100B combined), lack any fair way of appeal due to the cost-prohibitive nature of fighting it.”

664. The complainant makes more specific complaints under numerous specific clauses in the Code.
665. The submitter did not consent to my forwarding his submission to APRA AMCOS, PPCA or OneMusic. While the non-identification of the submitter presents no difficulty, I told him that I could not sensibly deal with his submission without any response to it from the collecting societies.
666. The submitter said he would provide a shortened version that would not identify him for forwarding to the collecting societies.
667. Notwithstanding a follow up letter from the Secretariat on 20 November 2020, the submitter has not provided that further document.
668. Even though I will not delay finalising this report for lack of it, I would encourage him to provide it to the Secretariat for transmission to the societies.

## 5. Chris Bausor and the “Factory Summer Festival”

669. Chris Bausor, co-founder and director of “Factory Summer Festival” which has been producing festivals in Perth for five years and expects to expand to Brisbane and Melbourne in the near future.
670. Mr Bausor is a licensee and complains that APRA AMCOS and PPCA do not observe cl 2.3(d) and (f) of the Code. Paragraph (d) requires a collecting society’s policies, procedures and conduct in connection in the setting of licence fees to be fair and reasonable, and para (f) requires a collecting society,

where appropriate, to consult in good faith with relevant industry associations in relation to the terms and conditions applying to licences or licence schemes offered by the collecting society.

671. Mr Bausor complains specifically that in respect of the festivals that his business has been producing, the licence fees are set by reference to the ticket revenue, without having regard to the purpose for which, and the context in which, the copyright material specifically is used. In other words, the level of fees does not exclude the component of ticket sales that is not related to the use of copyright material.
672. In relation to para (f) of cl 2.3, Mr Bausor complains that neither he nor anyone from his organisation has been consulted on the terms and conditions applying to licences or licence schemes offered. He says that the lack of consultation results in “stagnant policies and processes” which do not ultimately benefit Australian artists. On the other hand, he contends that consultation will lead to technological improvements relating to the collection of information and will lead to greater accountability and an overall increase in the benefits to both members and licensees.
673. After consulting with PPCA, APRA AMCOS has provided a response to Mr Bausor’s two complaints.
674. In relation to the first complaint, APRA AMCOS and PPCA say that they look to the particular circumstances of the businesses using music, as a matter of course. This is the reason, they say, why there are a range of event licences calibrated to specific uses. As an example, they say that the rates for the use of music at festivals that offer supplementary benefits under the same ticket price, the rate of licence fees set at 1.65% of box office, whereas in the case of stand-alone music concerts, it is set at 2.2% of box office.

675. APRA AMCOS say that there is scope for further fee flexibility within the current licence fee framework of both the APRA AMCOS and PPCA event licences, such as reducing the APRA fee with respect to any musical works performed that are not in APRA's repertoire, or reducing the PPCA fee based on a lower percentage of sound recording used at the event.
676. APRA AMCOS have suggested that the next step is for Mr Bausor to discuss his licensing options with a member of the OneMusic licensing team with a view to arriving at the most appropriate and cost-effective solution.
677. If the licence options discussed prove not to be satisfactory to Mr Bausor, the independent dispute resolution procedure is available.
678. In relation to the second complaint, APRA AMCOS refer to the "extensive consultation" that was initiated with licensees, industry bodies and other interested stakeholders in preparation for the launch of OneMusic. They say that all of those stakeholders were invited to comment and provide feedback on the proposed single OneMusic licence.
679. APRA AMCOS say that Mr Bausor should have received information from OneMusic about the consultation on or around 23 May 2019, because he is listed on the contact list for consultation. The CEO of APRA AMCOS has apologised if any information was not received by Mr Bausor and if he was unaware of the consultation process in respect of event licences. APRA AMCOS have suggested that Mr Bausor visit the section "Events (Concerts & Festivals)" at the link [www.onemusic.com.au/consultation/](http://www.onemusic.com.au/consultation/).
680. APRA AMCOS have concluded their response by saying that until the consultation for "Events" is completed and new licence schemes are launched,

the current stand-alone APRA AMCOS and PPCA licences for festivals continue to be required, even though they are now administered by OneMusic. The current APRA licence scheme for promoted Events was launched in January 2016 following discussion and consultation with Live Performance Australia throughout 2014 and 2015. The current PPCA licence scheme for Events was launched in June 2012 after a ten-month consultation with stakeholders.

681. Taking all the circumstances into account, APRA AMCOS express the view that they have acted, and are acting, in accordance with cl2.3(f) of the Code.
682. In relation to the first complaint, I recommend that Mr Bausor and a OneMusic representative discuss the matter. Indeed, APRA AMCOS have stated that one of the OneMusic licensing team will “reach out to [Mr Bausor] to set up a meeting”.
683. In relation to the second complaint, it is unfortunate that Mr Bausor apparently did not receive on or about 23 May 2019 the invitation to participate in the consultation that was taking place. Perhaps this can be overcome by what transpires at the foreshadowed meeting.
684. Before concluding the consideration of this submission, I note a difference between the Code as amended and its predecessor. The first sentence of para (d) of cl 2.3 used to be: “Licence fees for the use of copyright material will be fair and reasonable”. Construed literally, that requirement of fairness and reasonableness would (a) open up a wide-ranging field of enquiry which the Code surely did not contemplate, and (b) intrude upon the role of the Copyright Tribunal.
685. The first sentence in para (d) of the Code as amended is: “Each Collecting Society’s policies, procedures and conduct in the setting of licence fees for the

use of copyright material will be fair and reasonable". The change makes it clear that the requirement is adjectival rather than substantive.

## 6. Australian Local Government Association

686. The Australian Local Government Association (ALGA) represents 537 local government councils. Some of them have raised queries and complaints which may be summarised as follows:

- Lack of consultation with the introduction of OneMusic as from 1 July 2019;
- Lack of transparency as to the local government councils from which APRA derives revenue;
- Limited ability to negotiate fees for a OneMusic licence, in particular, in the light of reduction in the revenue of councils due to bushfires and the COVID-19 Pandemic; and
- Lack of information as to how the effects of bushfires and the Pandemic are taken into account in relation to licence fees.

687. In relation to the first matter, ALGA says that on 25 June 2019 the State and Territory Local Government Associations were notified of a consultation paper for the "Events Licensing" component of the OneMusic scheme, that is to say, one week before the scheme was due to commence.

688. In relation to the second matter, ALGA told me that ideally it would like to have information as to how much each local government council pays to APRA, but that if this is not possible, at least how much revenue APRA derives from the local government councils in each State and Territory.

689. In relation to the third and fourth points, ALGA informs me that local government councils use music as “background music” in various venues, such as in child care centres. ALGA has heard that in some cases OneMusic has been willing to grant a concession on account of bushfires (about 110 local government councils have been affected by bushfires) and in other cases not. ALGA has heard that in some cases the level of licence fees has been raised and in other cases reduced.
690. ALGA says that its member councils have been required to continue operating during the Pandemic, even though at a limited capacity and with some services closed.
691. In their response, APRA AMCOS note that ALGA made submissions to the ACCC in respect of APRA’s application for re-authorisation, and that APRA responded to concerns similar to those now raised by ALGA, in APRA’s submission to the ACCC dated 24 April 2019.
692. In relation to the asserted lack of consultation, APRA AMCOS say that they published an initial consultation paper on the Local Government Association (LGA) Scheme in June 2017, and then a further updated paper in October 2017 following feedback from the sector. According to APRA AMCOS, a final paper was issued during September 2018. APRA AMCOS believe that ALGA’s reference to consultation on Events Licensing (see [687] above) mistakenly implies that the LGA scheme was proposed to commence from 1 July 2019, but that was not the case. At the commencement of OneMusic on that date, the longstanding separate APRA and PPCA tariffs applicable to events continued in effect while consultation on that particular scheme continued, as it has done. APRA AMCOS say that they have “applied a pause to the consultations” (applicable to events) because of the COVID-19 Pandemic, but hope to revive the consultations in the new year.

693. APRA AMCOS note that performance of works in OneMusic’s repertoire at the overwhelming majority of council events is already covered under the now-finalised OneMusic *Councils* licence scheme. In summary, according to APRA AMCOS, the existing event licence schemes continue to operate unchanged, even though they are now administered by OneMusic (see [680] above). While the consultation continues, OneMusic will continue to issue separate licences for APRA AMCOS musical works and PPCA sound recordings that are used at events that are not covered by the overarching OneMusic *Councils* licence scheme.
694. In relation to transparency, APRA AMCOS say that they understand that ALGA’s concerns have been allayed by Conditions C1 and C2 of the ACCC’s re-authorisation of APRA as set out in the ACCC’s Final Determination dated 13 July 2020. Those conditions are lengthy – Condition C1 is headed “Transparency of Licence Fees” and Condition C2 is headed “Transparency of Distribution Arrangements”.
695. In relation to the alleged limited ability to negotiate fees, APRA AMCOS observe that OneMusic is obliged to ensure that its terms are not inconsistent as between local government licensees. They note that the outcome of a consultation that took place in 2014 was broad agreement that a single rate not only reduced the administrative burden for councils, but also ensured equity and fairness for smaller councils.
696. APRA AMCOS draw attention, however, to the possibility of an independent dispute resolution under its *Resolution Pathways* mechanism.
697. In relation to COVID-19, APRA AMCOS observe that OneMusic responded to the Pandemic, including by “pausing new licensing activity from the



commencement of restrictions up until when restrictions in many states started easing". As well, OneMusic provided automatic COVID-19 fee relief, which credited back licence fees paid by affected licensees and provided flexible payment and credit arrangements.

698. The accounts of a significant number of councils across Australia have been placed "on hold" as part of the COVID-19 response, including every council in Victoria.
699. In relation by bushfires, OneMusic implemented a suite of fire disaster support initiatives which are outlined on a website:  
<https://onemusic.com.au/news/2020/january/fire-disaster-support/>.
700. APRA AMCOS note that, at the request of a number of councils, the OneMusic LGA scheme finalised in 2018 ready for the launch of OneMusic on 1 July 2019 was made available to them with effect from 1 January 2019. Those councils elected to transition to the new scheme in advance of the scheduled commencement of OneMusic and the newly established OneMusic LGA scheme. APRA AMCOS conclude by noting that approximately 95% of councils in Australia are licensed with OneMusic, which APRA AMCOS and PPCA consider reflects broad market acceptance of their licence scheme by local government. They say that the approximately 5% of councils that remain unlicensed represent, in large part, very small rural councils which make no use of music.
701. To my mind, the fact that 95% of councils are licensed with OneMusic does not in itself establish their satisfaction or dissatisfaction with a licence scheme, because, in order to satisfy a need for background music without infringing copyright, they **must** have a licence, and by far the most practical way of getting one is through OneMusic.

702. APRA AMCOS's response about lack of consultation may be inadequate.
703. The complaint by ALGA is that local government councils in the States and Territories were consulted on Tuesday, 25 June 2019 **about the introduction of OneMusic**. OneMusic was introduced on the following Monday, 1 July 2019 – hardly adequate consultation one would have thought.

## 7. An association of businesses involved in the festival industry (the Association)

704. A not-for-profit member-run industry association formed to represent the interests of businesses involved in the festival industry made a submission. Having been asked not to identify it, I will call the submitter simply "the Association".
705. Members of the Association comprise festival promoters and organisers. They span a range of festival sizes, regions and compositions. Membership also includes small business owners with an interest in the industry, such as medical providers, security agencies, site managers and suppliers of infrastructure like toilets and marquees.
706. The Association's letter of complaint states that key themes raised by members are that the societies' conduct has been:
- Lacking in transparency
    - Collection methodology
    - distribution
  - Lacking in meaningful consultation
  - Genre bias against electronic music;

- Misleading/ambiguous application of collections;
- Anti-competitive
- Lacking in a partnership approach to the industry
- No incentive to benefit Australian artists' royalty distribution using data and innovation."

707. The letter of complaint asserts that there is considerable frustration among members about the societies in general, and that some of the members have cited this as the reason why they have joined a peak body (apparently a reference to the Association).

708. I am unable to deal with complaints expressed in such a generalised form. I relayed those areas of concern to APRA AMCOS and PPCA which have responded to the effect that this is the first time they have been made aware of those concerns and that they are too broadly expressed to allow a proper response. They say that they would be happy to meet with representatives of the Association.

709. The societies have drawn attention to the facts that:

- their distribution rules and practices are published on their websites;
- the ACCC has recently re-authorised APRA following investigation;
- several years ago APRA AMCOS established the "Club Music Advisory Group" which comprises individuals drawn from the electronic music scene, and that Group has not raised an issue of "genre bias".

710. The letter of complaint does, however, make a specific complaint of lack of consultation in relation to the introduction of OneMusic. This, and the nature of the business engaged in by the Association's members, suggests that the submission is addressed to APRA, PPCA and OneMusic.

711. Consultation in good faith is required by cl 2.3(f) of the Code.

712. The Association has outlined the course of such consultation as took place, as follows:

- On 23 May, 2019, the Association received the paper introducing OneMusic Australia (OMA) and the proposed fee structure
- On the 28 May, 2019 the Association requested further consultation in the form of a meeting to discuss the paper further
- On 5 June 2019, OMA responded to say that they would have *“a member of our Events team contact you soon”*
- On 25 June 2019, OMA sent an indirect email requesting submissions
- On 16 July 2020 [sic – 2019], OMA contacted the Association directly to arrange a meeting
- The consultation paper requested submissions by 30 August 2019

713. The Association’s letter concludes: *“The process of consultation as outlined by this timeline, does not appear to show consultation in good faith”*.

714. I agree that the chronology suggests inadequate consultation. But it is necessary to take into account the collecting societies’ response.

715. APRA AMCOS and PPCA have responded as follows:

*“We commenced a consultation process for concert and festival tariffs in conjunction with the impending launch of OneMusic Australia. That consultation process remains open including because [the Association] asked on repeated occasions for more time to consult with their members. While this consultation process continues, OneMusic Australia has maintained the existing APRA and PPCA licence schemes for concerts and festivals, that is we have not imposed new rates on the industry and*

the pre OneMusic status quo prevails although, of course, licensees need now only contact one entity to obtain both licences.

We had hoped to reconvene further discussions with key stakeholders this year but with the devastating impact of the COVID-pandemic on the industry such that no, or virtually no, festival events have taken place since March, we decided to further pause consultations.

The timeline provided by [the Association] is missing certain details and we note:

- the date in the penultimate dot-point is likely incorrect, we contacted [the Association] on 16 July 2019, not 16 July 2020;
- the contact on that date noted we had been trying unsuccessfully to contact [the Association] and proposed date options for a meeting - [the Association] advised that none of those were convenient and that they were unavailable to meet in July - we asked them to provide possible dates;
- we did not receive a response until 18 August 2019, proposing a meeting w/c 26 August or the following week;
- these dates were not convenient and, in the end, we agreed to meet on 18 September 2019;
- following the meeting [the Association] contacted us to advise they would shortly provide us "outtakes and next steps";
- [the Association] contacted us on 31 October to say that they were now aiming to provide feedback in November;
- during the above correspondence we agreed to two further extensions to the consultation period past the original 30 August 2019 date; and
- We met again with [the Association] (in a consultation session that also involved Live Performance Australia) on 28 November 2019.

We are currently considering how and when we might recommence the consultation process, noting of course the continued impact of the pandemic and the industry's desire to focus on those issues.

Finally, we respectfully reject [the Association's] submission that we have not conducted this consultation in good faith."

716. I infer that the COVID-19 Pandemic has interfered with the consultation process.

717. I would encourage the representatives of the Association and the societies to contact each other and to establish a mechanism for regular, ongoing contact and liaison.

718. In its letter of complaint, the Association also suggested review of the Code itself, but the triennial review of the content and operation of the Code is distinct from the present review of compliance with the Code in its present form. Clause 5.3 of the Code provides for the triennial reviews, of which the next one will take place in 2021.

## 8. Nightlife Music

719. Nightlife Music (Nightlife) is a business that was established by two husband and wife teams. All four individuals are actively engaged in the business.

720. In summary, that business is to package background music for its clients. The “value added” component contributed by Nightlife is the skill and experience required to choose music for the particular venue, time of day, type of activity etc.

721. Nightlife has made a lengthy submission. As Nightlife itself says:

“Dr Lindgren, this is a very big and confusing subject. Our aim is to distil it down to unambiguous language that an average business user of music can understand and ultimately make an informed decision.”

The reference to ambiguity is a reference to licences granted to Nightlife’s competitors or potential competitors.

722. The complaint concerns the distinction between business digital service providers like Nightlife, and consumers. Nightlife complains that some business entities take out the “consumer licence” but in fact use it in their business of providing background music in competition with Nightlife. At first, I thought that Nightlife’s complaint was that APRA AMCOS did not enforce the

prohibition contained in consumer licences against using music for commercial purposes, but Nightlife has explained to me that it would be satisfied with a clear statement by OneMusic either in or accompanying its licence emphasising the limited nature of the licence granted and referring to uses that are not authorised by the licence.

723. Clause 2.3(c) of the Code provides that each Collecting Society must:

“(ii) to the extent it reasonably can, having regard to the complexity of the questions of fact and law necessarily involved, take steps to ensure that all licences offered by the Collecting Society are drafted so as to be plainly understandable to licensees, and are accompanied by practical and suitable explanatory material.”

724. At my suggestion, Nightlife submitted a form of statement that it would wish to see accompany the consumer licence.

725. At [3.13], the ACCC Determination records a submission made by a number of background music suppliers to the effect that APRA should make it clear that “licensees using personal streaming services in a commercial setting are in breach of the terms of use of those services”.

726. The ACCC addressed the present submission in Condition C1.8 of the conditions attached to the Determination. Condition C1.8 was as follows:

“C1.8 Any time a person using the ‘Get a Quote’ function on the OneMusic website answers yes to a question about the use of a digital music service or device to play music in their business APRA must ensure that the following statement is prominently displayed before the next question appears:

*Even with our licence, the use of digital music streaming services by you in your business may be in breach of the terms and conditions of your end user agreement with that service. You should check with your service provider.”*

727. APRA submits that it **must** use that language or seek an amendment to the terms of its existing Authorisation from the ACCC. With respect, and I think APRA accepts this, the better way of putting it is to say that it must ensure that it does not issue any document, licence or accompanying statement that is inconsistent with the statement required by Condition C1.8.
728. Nightlife seeks to emphasise that it accepts the conditions of the ACCC Determination.
729. APRA AMCOS have indicated to me that they are willing to discuss with Nightlife publication of additional wording consistent with Condition C1.8.
730. The wording suggested by Nightlife would not be acceptable. As an example, statements such as “you will be in breach” of digital service terms are not necessarily true, and the language also suggested by Nightlife, “you will be in breach of copyright for music [not controlled by OneMusic Australia]” is, according to APRA, the kind of language that the ACCC does not want APRA AMCOS or OneMusic to use because of the availability of direct licences.
731. It is not possible, nor my role, to negotiate an acceptable form of wording, but I strongly suggest that the parties meet with the aim of doing so.

## 9. ClubChart Equality - An Organisation of Artists, DJs, Independent Labels and Artist Managers

732. This is an unincorporated association of artists, DJs, Independent Labels and Artist Managers who have loosely associated themselves together with the objective of ensuring that there is a fair distribution to artists corresponding with the use made of their works.



733. ARIA prepares charts each week with the purpose of reporting on “music consumption” in Australia at any given time. Originally, the ARIA Charts predominantly tracked physical product sales, but now they encompass physical, digital and streaming activity.
734. The ARIA Charts are calculated once a week on Friday and are based on retail recorded music sales and streaming activity within Australia for the week from the preceding Friday to the Thursday immediately prior to calculation. The new charts are usually uploaded to the ARIA Charts website on Saturday night at 5.00 pm (Sydney time). Although the ARIA Charts are predominantly based on music consumption, based on sales and streaming activity, the ARIA Club Chart is based on weekly returns from a panel of working DJs who are asked to provide a ranked list of the 20 tracks receiving the best reaction at the venues at which they work as DJs.
735. ARIA Charts are “the official record of the hottest singles and albums in Australia”.
736. The complaint refers to clauses 2.6(f), 2.8(c)(ii) and 1.1(b)(iii) of the Code.
737. A representative of ClubChart Equality authorised me to forward to named officers of APRA AMCOS and PPCA on a confidential basis, the submission that ClubChart Equality had made. That has given rise to a lengthy response by PPCA and a not so lengthy response by APRA AMCOS.
738. Each has responded to ClubChart Equality’s complaint of a breach of the Code and I will deal with them under the three Code provisions to which ClubChart Equality has referred.

## Clause 2.6(f)

### **"Section 2.6 (f)**

*Each Collecting Society will provide detailed information in its annual publications, at an anonymised or aggregate level where appropriate, about the accounting and distribution of licence revenue. This information is to be reported in a consistent format year on year. Categories for reporting should include, but are not limited to:*

*(i) classes of Licensees from whom licence revenue is received;*

*(ii) classes of Members to whom licence revenue is paid;*

*(iii) categories of copyright material copied/licensed in respect of which licence revenue is received; and*

*(iv) domestic vs international payments of licence revenue." [emphasis supplied]*

739. ClubChart Equality complains that there is no transparency on the revenue derived by reference to specific classes of licensees nor the classes of members to whom the revenue is paid.

740. APRA AMCOS says that it complies with this provision by the publication of its annual transparency report on its website and says that there is nothing in the Code that calls for a more granular breakdown of the accounting and of the licence revenue than that which is so provided.

741. PPCA states as follows:

"The Code obliges the participating societies to detail in annual publications anonymised or aggregate information about the accounting and distribution of licence revenues. For PPCA's part, it had intended to address this requirement through the reporting of the licence fee amounts attributed to the key licence revenue categories of Broadcast, Public Performance, and Communication, set out under the heading of 'financial' in the Management Report section of the Annual Report, available on PPCA's website. Information on PPCA's expense to revenue ratio is also outlined there.

In terms of distributions PPCA Licensors have not been categorised into a particular 'class' or 'classes'. They are all generally the same in that they provide their rights mandate through a standard input document, and contribute audio and video repertoire to PPCA's blanket licences, often across a wide range of genres. Similarly PPCA's licence schemes are offered on the basis of blanket usage, and do not restrict the licensee to

any particular genre or style of music. It is unclear to us how the complainants would have us categorise the Licensors into 'classes'.

Since its inception PPCA has operated on a non-exclusive basis. As a consequence PPCA's licensors are not only stakeholders with an interest in PPCA's efficient operations, but competitors, with many actively licensing their repertoire in the same markets (particularly for public performance) as PPCA. The disclosure of revenue figures in the aggregate form currently provided by PPCA assists to protect the targeting of particular market categories, by PPCA Licensors or others."

#### Clause 2.8 (c) (ii)

##### "Section 2.8 (c) (ii)

Without limiting paragraph (a) or any other obligation in this Code, each Collecting Society will produce and make available appropriate information about the following:

(i) the eligibility criteria for membership of the Collecting Society;

**(ii) the benefits of membership of the Collecting Society;**" [emphasis supplied]

742. ClubChart Equality makes the point that both PPCA and APRA distribute a significant percentage of the revenue derived from nightclubs, dance music events and festivals featuring dance music, by using certain data pools. The submission states: "There has not been any education specific to these data pools as we believe that this should be more clearly educated to Members".
743. In response, APRA AMCOS states that it complies with the Code in this respect by publishing on its website a wide array of information relating to membership benefits and criteria for membership eligibility. APRA AMCOS say that the percentage of revenue distributed from nightclubs, dance music events and festivals featuring dance music using certain data pools as set out in APRA Distribution Practice 30. In addition, APRA AMCOS say that they consult and educate their membership in relation to those data pools by way of regular meetings with the "Club Music Advisory Group" (see earlier) which APRA AMCOS set up to be a committee of members and other industry representatives with club music expertise.

744. For its response, PPCA states as follows:

“PPCA’s website sets out the benefits of collective licensing, and that PPCA retains no fees but pays all net revenue through to its Licensors and Registered artists, in line with the Distribution Policy. It also notes a number of industry initiatives (eg Support Act and the annual PPCA recording grants) supported by PPCA on behalf of its stakeholders. Further, a PPCA flyer on registering with PPCA sets out ‘as a record label or Australian recording artist, what can PPCA do for me?’

In relation to the suggestion that there has not been any education on the distribution of the nightclub / dance music distribution pools we note that newsletters provided to registered artists and PPCA licensors in both Winter 2018 and Winter 2017 provided information on the use of MRT technology to source data for distribution purposes, including the opportunity for specific pools to be established for individual music festivals / events and distributed on the basis of MRT data from those events, where the event promoters agree that such analysis can be undertaken.

On PPCA’s website, in any brochures (such as the one noted above), and when PPCA speaks at panels or conferences PPCA stakeholders and other interested parties are encouraged to contact PPCA if they have any questions, or need additional information. PPCA’s Distribution Team in particular regularly responds to questions or requests for assistance from record labels and artists on many issues (often unrelated directly to PPCA). In fact, some of the information contained in the document provided with this complaint was quickly obtained through contact with a member of the Distribution Team. A PPCA representative routinely also attends meetings of the APRA ‘Club Music Advisory Group’ and is on hand to respond to any PPCA related queries raised by those sector specialists.”

**Clause 1.1 (b) (iii)**

**“Section 1.1 (b) (iii)**

*Each Collecting Society aspires to:*

- (i) achieve best practice in the conduct of its operations;*
- (ii) be responsive to the needs of Members and Licensees;*
- (iii) ensure transparency and accountability in the conduct of its operations;*
- and*
- (iv) achieve efficiency in the process of allocating and distributing payments to Members.” [emphasis supplied]*

745. ClubChart Equality states that there is a significant lack of transparency regarding the revenue derived from music licences for nightclubs, dance music events and festivals featuring dance music, specifically in relation to the modelling and management of the ARIA ClubChart distribution data pools. The suggestion is made that the Code’s language of “aspires to” should be reviewed to make transparency mandatory.
746. APRA AMCOS point out that this provision of the Code is located in the “Background” section and it is therefore understandable that the language of aspiration is used. Nonetheless, APRA AMCOS claim that they have acted consistently with that provision. APRA Distribution Rule 20, read in conjunction with APRA Distribution Practice 30, sets out APRA’s distribution methodology in relation to nightclub licence revenue. Their management reports to the APRA Board include more detailed revenue and distribution reports against which the Board holds management accountable.
747. PPCA responds to the present point as follows:
- “Many of the concerns in the document have been raised there for the first time, and only shared with PPCA after the conclusion of the review period. We are currently working through each of the allegations and had recently arranged to meet with representatives of the complainant group, in order to better understand and address their concerns. Unfortunately that meeting was cancelled at their request, as they have now indicated they would prefer to discuss the content with us in the new year.”
748. It should be noted that some of the matters raised by ClubChart Equality go to the content of the Code rather than to compliance with it. Submissions for amendment of the Code will be invited next year as part of the Triennial Review of the operation of the Code.
749. Finally, I set out the following further comments by PPCA:
- “However, as the complainant notes, their concern here seems to be directed at the Club Chart Committee of ARIA. As an ARIA Committee its

composition and / or conduct is not determined by PPCA and, in fact, the ARIA Club Chart (and related Committee) existed long before PPCA began utilising data sourced from its compilation.

PPCA is aware that ARIA has processes in place to periodically review and settle the composition of its Club Chart Committee, which is a sub committee of the broader ARIA Chart and Marketing Committee, charged with oversight of the Code of Practice for the ARIA Charts (including its Club Chart).

PPCA merely acquires the underlying data used to create the Club Chart when it believes it may assist its distribution processes. By way of example, in early April 2020 when the vast majority of Australian nightclubs were closed and, as a result, the relevant ARIA chart produced was based on DJ preferences rather than consumer reactions in operating nightclubs, PPCA ceased using the data. The methodology and processes adopted by ARIA in order to produce any of its charts are matters solely for ARIA and its Board, supported by its various advisory committees.

PPCA has sought to ensure that its Board is representative of its stakeholders and is, to some extent, determined by its stakeholders through the conduct of regular elections. The Constitution and the standard form input agreement both support the strategy of ensuring that any significant change to the distribution policy, likely to have adverse impact on any Licensors, may only occur after consultation with PPCA Licensors.”

## E. CONCLUSION

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750. This report is now submitted to the societies and to the Department of Infrastructure, Transport, Regional Development and Communications of the Commonwealth of Australia.

Dated: 30 November 2020.



The Hon Kevin E Lindgren, AM, QC

Code Reviewer

## APPENDIX A - CALL FOR SUBMISSIONS 2020

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Notice of the Review, with an invitation to make submissions by mail to the Code Reviewer at a specified address or by email by 31 July 2020, was given by the Societies to their members, and by the Code Review Secretariat to some licensees of the various societies or to bodies representing large classes of licensees, as well as to other interested persons, names and addresses having been supplied by the societies. The Notice was published in an advertisement in *The Australian* newspaper on 6 June 2020 and it was also placed on the websites of the societies. It was in the following terms:

**The Code Reviewer**

**Suite 704  
4 Young Street  
NEUTRAL BAY NSW 2089  
EMAIL: [codereviewer@gmail.com](mailto:codereviewer@gmail.com)**

**COPYRIGHT COLLECTING SOCIETIES  
CODE OF CONDUCT  
CALL FOR SUBMISSIONS 2020**

Each of the copyright collecting societies, Australasian Performing Right Association Limited ("**APRA**"), Australasian Mechanical Copyright Owners Society Limited ("**AMCOS**"), Phonographic Performance Company of Australia Limited ("**PPCA**"), Copyright Agency Limited ("**Copyright Agency**"), Audio-Visual Copyright Society Limited ("**Screenrights**"), Australian Writers' Guild Authorship Collecting Society Limited ("**AWGACS**") and Australian Screen Directors Authorship Collecting Society Limited ("**ASDACS**"), subscribes to a code of conduct. In its original form, the Code came into effect in July 2002, with the most recent update **1 July 2019**.

A copy of the Code is available on each Society's website or from the Code of Conduct for Copyright Collecting Societies website <https://www.copyrightcodeofconduct.org.au/code> and can be downloaded or, if requested, a copy can be supplied by post.

Compliance by participating collecting societies with the Code's standards of conduct is the subject of an independent annual review. The Code Reviewer for this purpose is former Federal Court judge and former President of the Copyright Tribunal of Australia, The Hon Kevin Lindgren AM, QC. He is currently reviewing the Societies' compliance with the Code during the period **1 July 2019 to 30 June 2020**.

The Code allows for interested parties to make submissions to the Code Reviewer concerning a collecting society's compliance or non-compliance with the Code. Accordingly, should you wish to make such a submission to Dr Lindgren, please do so to the address above by no later than **31 July 2020**.

It would assist if your submission referred to any particular provision of the Code with which you contend that a collecting society has not complied.