

**Report of Review of Copyright Collecting Societies'
Compliance with their Code of Conduct
for the Year 1 July 2021 to
30 June 2022**

**The Hon K E Lindgren AM, KC
30 November 2022**

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Report of Review of Copyright Collecting Societies' Compliance with their Code of Conduct for the Year 1 July 2021 to 30 June 2022

A. INTRODUCTION AND SUMMARY CONCLUSIONS

1. This report of the Code Compliance Reviewer, the Hon K E Lindgren, AM, KC, is the nineteenth annual report of an assessment of the compliance by the following collecting societies with their voluntary Code of Conduct (**Code**): 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 2021 to 30 June 2022 (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. Although APRA and AMCOS are distinct legal entities, they have furnished a single joint report on their compliance with the Code. It is therefore sometimes convenient to conceive of the number of collecting societies as six rather than seven.

3. For the purposes of the review, each society reported to the Code Compliance 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 (**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 who were known or understood to have or to be likely to have an interest in the review were individually notified of it by the Code Review Secretariat. The Secretariat has prepared and holds an alphabetical list of them. It is available for inspection on request. It is so voluminous, however, that in the interests of convenience it is not attached to this Report.
6. Historically, a significantly revised version of the Code was adopted with effect from 1 July 2019. This implemented recommendations of a review of the Code that was 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, Communications and the Arts was then named).
7. Therefore, the Code as so amended is the version that has operated throughout the Review Period and this is the third 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. The practice is now adopted, in accordance with the terminology used in the Code as amended, of distinguishing between the person who is the Code Compliance Reviewer and the person who is the Triennial Code Reviewer (prior to 1 July 2019 the one person performed both functions and was called simply the “Code Reviewer”).
9. 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.
10. At my suggestion made some time ago, the societies’ reports on compliance are structured by reference to the obligations imposed on the societies 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 the reports directs the attention of the societies to all of the obligations imposed on them by the Code.
11. The Code applies to all seven collecting societies, but Clause 2.9 applies only to declared collecting societies, namely, Copyright Agency and Screenrights. Clause 2.9 was introduced in March 2017 following the issue on 28 October 2015 of a report that was supplementary to my first triennial report dated 30 September 2014.
12. As mentioned in previous years, 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 for me and for the reader if I were to remind the reader of this in association with 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 to me, 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 the correspondence, file notes and other Accompanying Underlying Documents relating to the complaints or disputes.

13. As from 1 July 2019 APRA and PCCA introduced their "OneMusic Australia" (OneMusic) licence. It is convenient to note the background. The copyright in a musical work includes the exclusive right 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**). That right is 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. That right is the concern of AMCOS.
14. The copyright in a sound recording includes the exclusive right to make a copy of the recording, to 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 PCCA.
15. Consistently with their respective concerns, the members of APRA and AMCOS are composers, authors and publishers of music, whereas the licensors of PCCA are recording companies and recorded 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. PCCA 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 playing of sound recordings in public, as in shopping centres, cafes, restaurants, gymnasia 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 PPCA 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 PPCA, they would often resist attempts to persuade them that it was necessary for them to obtain a further licence from the other society.
19. This explains the advent, as from 1 July 2019, of OneMusic, a joint licensing initiative of APRA, AMCOS and PPCA, the aim of which is to provide a single licence from a single source in respect of both the musical work and the sound recording—a one stop shop..
20. More will be said of this below when I address the reports from APRA AMCOS and PPCA.
21. 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

22. 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

23. APRA AMCOS's report on their compliance with the Code was furnished to me on 3 August 2022.
24. APRA AMCOS's joint corporate website is at <https://www.apraamcos.com.au/>.
25. As noted at [2] above, APRA administers AMCOS, and has done so under an arrangement between the two societies since 1 July 1997.
26. 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.

Legal Framework (Code, Clause 2.1)

27. APRA AMCOS state that they have not changed any of the principal characteristics of their membership structures during the Review Period.
28. The APRA Board has six writer directors, elected by the writer members, and six publisher directors, elected by the publisher members.

29. The AMCOS Board is elected by the members of AMCOS.
30. 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 their joint corporate website.
31. 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 2020/21 financial year, by way of a link on the website;
 - APRA Statutory Accounts for the 2020/21 financial year;
 - AMCOS Statutory Accounts for the 2020/21 financial year;
 - An organisational chart showing the overall management structure as at 30 June 2022;
 - The Constitutions of both APRA and AMCOS; and
 - APRA AMCOS Privacy Policy.
32. As at 30 June 2022, APRA AMCOS had 338 employees (including casual compliance staff) in Australia and 38 employees in the APRA AMCOS New Zealand office.
33. 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 Attorney-General's *Guidelines for Declaration of Collecting Societies*. In practice, however, they report that they satisfy many of those requirements.

Members (Code, Clause 2.2)

34. As at 30 June 2022, APRA had 115,326 [2021: 111,383] Australian and New Zealand members, comprising composers, authors and publishers. Of these, 111,929 [2021: 108,145] were local writer members, and 567 [2021: 527] were local publisher members. In addition, APRA had 2,823 [2021: 2,676] overseas resident writer members and 7 [2021: 7] overseas resident publisher members. Most Australian and New Zealand composers and publishers of music are members.
35. As at 30 June 2022, AMCOS had 27,039 [2021: 24,177] Australian and New Zealand members, of whom 25,909 [2021: 23,132] were writers and 508 [2021: 495] were publishers. In addition, AMCOS had 617 [2021: 545] overseas resident writer members and 5 [2021: 5] overseas resident publisher members.
36. As at 30 June 2022, APRA AMCOS had 1,808 [2021: 1,781] Aboriginal and Torres Strait Islander (**ATSI**) members, which represented an increase of 1.52% [2021: 4.52%] during the Review Period. Although indigenous membership is still relatively low, APRA AMCOS state that they are committed to increasing awareness through the national indigenous membership strategy, overseen by their Director, National Aboriginal and Torres Strait Islander Music Office (**NATSIMO**).
37. APRA AMCOS state that their relationship with their members is 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.

38. Members, overseas affiliates, the Board's Directors and the media are able to log in to a secure section of the APRA AMCOS website which provides a number of online services. In addition, APRA AMCOS produce a large volume of written material for members, all of which has been provided in previous reports to the Code Reviewer.
39. 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.
40. During the Review Period, the Writer Services and Publisher Services Departments engaged in email correspondence with writer members on 55,798 separate occasions. In addition, over 2,722,988 emails were sent to members as part of email broadcasts to the membership, which contained information including event notices, payment advices and APRA AMCOS publications.
41. Writer Services staff previously logged member phone calls four times 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. Writer Services staff now provide call statistics for all forward-facing staff for the entire year. During the Review Period, Writer Services staff logged 4,480 phone queries and detailed statistics are provided in the Accompanying Underlying Documents.
42. During the Review Period, positive feedback was received in relation to the service provided by the Membership Department and copies have been provided to the Code Reviewer.

International relations

43. APRA AMCOS's International Department is responsible for the reciprocal representation agreements with other societies administering performing and mechanical rights around the world.
44. 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 the 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 International Confederation of Societies of Authors and Composers (**CISAC**) and Bureau International des Sociétés Gérant les Droits d'Enregistrement et de Reproduction Mécanique (**BIEM**), as well as dealing with the World Intellectual Property Organisation (**WIPO**).
45. In the most recently audited financial statements (which are for the 2020/21 financial year), APRA collected a record amount of approximately AUD\$60.2m [2021: AUD\$54.4m] for the use of Australian and New Zealand repertoire overseas. AMCOS collected over AUD\$1.7m. [2021: AUD\$1.3m] 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.

46. During the Review Period, APRA distributed approximately \$42.8M [2021: \$46.7m] in performing right distributions from affiliate societies to APRA members over 12 monthly distributions. This amount was made up off 223 [2021: 194] individual distribution records from 26 [2021: 26] affiliate societies. AMCOS distributed \$757,862 [2021: \$779.6k] in mechanical distributions from affiliate societies to AMCOS members across 4 quarterly distributions. This amount consisted of 64 [2021: 71] individual distribution records from 25 [2021: 25] affiliate societies
47. In addition, during the Review Period, the International Department was involved in a number of regional and international activities, details of which were provided in the Underlying Accompanying Documents.

Opt Out and License Back

48. 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 uses, or to 'license back' specific works for specific uses in Australia and/or New Zealand.
49. During the Review Period, APRA received and approved 13 (2021: 17) 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.
50. 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 use 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

51. APRA AMCOS have developed an extensive resources and benefits 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)

52. APRA AMCOS have large licensing departments dedicated to liaising with licensees and potential licensees. The two main areas of licensing operations are: OneMusic and Media Licensing.
53. As noted earlier, OneMusic is a joint licensing project of APRA and PPCA which aims to provide a single licensing solution for music and recordings in Australia and which was launched on 1 July 2019.
54. Collectively, OneMusic and Media Licensing administered approximately 114,000 (2021: 112,000) businesses and events in Australia and New Zealand during the Review Period.
55. The fees paid to APRA AMCOS by licensees vary according to the licence scheme applicable to the particular circumstances of use.

OneMusic

56. OneMusic Australia (I shall often refer to it simply as "OneMusic") primarily licenses the rights of APRA, AMCOS and PPCA under single licence structures to general businesses that use music including for example, nightclubs, hotels, fitness centres and retail stores.

57. Licensees have access to 'plain English' Licence Information Guides tailored to their industry type (the information guides are required by the Australian Competition and Consumer Commission (**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 - <https://onemusic.com.au/licences/>.
58. Information on other licences still administered by APRA AMCOS can be accessed on their website.
59. APRA AMCOS report that the Review Period continued to be dominated by the effects of the COVID-19 pandemic on licensees and OneMusic retained making a proactive response to support its customers. Many of OneMusic's tariffs are self-adjusting according to use (for example, fitness classes, recorded music for dance, concert/sporting events) such that licence fees automatically reduced or were not applied according to the individual circumstances of licensees. For other tariffs that are based on annual fees (for example, background music in retail stores, hotels), OneMusic continued to apply fee relief treatment at a state/territory level, to cover periods where businesses were forced to close under government direction.
60. During the Review Period 2672 (2021: 6,882) clients re-licensed their accounts with 2119 businesses obtaining new licences via paper application and 998 (2021: 906) via the portal.
61. APRA AMCOS report that the Review Period saw the delayed introduction of new rates for performance of featured music in hotels (further to the successful consultation with the industry in the previous review period).

62. OneMusic Australia also recommenced, following a hiatus caused by the pandemic, a consultation with the live performance industry on new rates, particularly those that apply to the use of sound recordings at concerts and festivals. As at the end of the Review Period, that consultation remained ongoing.
63. During the Review Period, the OneMusic and Finance (Credit Management) Department engaged in more than 393,876 (2021: 420,680) contacts with licensees, including by letter, email and telephone calls. A breakdown of the statistics has been provided by APRA AMCOS.
64. Details have been provided of emails of appreciation received by APRA AMCOS from licensees and/or potential licensees in relation to the services provided by the Licensing Departments.

Media Licensing

65. The Media Licensing Department covers four key areas of licensing: *Broadcast Licensing; Digital Licensing; Recorded Music Licensing; and Key Industries.*
66. *Broadcast Licensing* includes commercial and community radio, the ABC and SBS and subscription and commercial television. In total, approximately 714 [2021: 715] licensees were administered by the Department during the Review Period.
67. 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 498 [2021: 537] Australian production music clients licensed during the Review Period.
68. *Digital Licensing* includes video on demand services, digital subscription music services, music downloads, ringtones and general websites. In total,

approximately 605 [2021: 612] licensees of this category were administered during the Review Period.

69. *Recorded Music Licensing* includes CD and vinyl record and videographers. In total, approximately 220 [2021: 403] licensees of this kind were administered during the Review Period.
70. *Key Industries* include schools, universities, TAFEs and colleges state and federal government, airlines and luxury cruiselines, dramatic context, funerals and Eisteddfodau. Approximately 10,275 (2021: 10,221) key industry licensees were administered during the Review Period.
71. Clients of the Media Licensing Department are, for the most part, aware of their copyright and licensing obligations.

Information provided to Licensees

72. APRA AMCOS's website contains a music licences section with information in relation to the various licences and with contact details for the relevant Licensing Department, including links to public performance licences now being administered through *OneMusic*:
<http://apraamcos.com.au/music-customers/>
73. 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 industry associations

74. 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.
75. 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. APRA AM COS note that this approach is demonstrated by the successful negotiation of new licence schemes with relevant industry bodies.

Tariff Reviews

76. APRA AMCOS have previously provided detailed information in relation to the history and development of all significant existing licence scheme tariffs.
77. The following tariffs were introduced, re-negotiated or phased-in during the Review Period.

Media Licensing

78. As at the end of the Review Period, APRA AMCOS were in the process of consulting with OneMusic Australia licensees and renewing or establishing licence arrangements with a number of major media licensing services including Spotify, Amazon, YouTube, Britbox, Facebook, Deezer and Twitch.

OneMusic Australia Licence Consultations

79. As outlined previously, 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.
80. 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. Further information on OneMusic Australia industry consultations and licence scheme development was made available in the Underlying Accompanying Documents.

Education

81. Licences for the education sector were renewed during the Review Period. University and commercial colleges continued under the same scheme. A new licence scheme for schools was introduced following extensive consultation with the National Copyright Unit, providing more comprehensive and flexible cover suitable to modern teaching practices. The TAFE licence scheme introduced in the previous Review Period was rolled out in remaining states and territories.

Funerals

82. In response to COVID-19, during the previous Review Period APRA AMCOS implemented an updated scheme with the funerals sector. The revised scheme provides expanded rights to enable funeral operators to offer their customers greater online access as well as a simplified structure to make licensing easier for the sector. The revised scheme has now been put in place with all industry associations and key accounts and is being rolled out to the smaller providers.

Online Streaming

83. During the Review Period APRA AMCOS implemented an updated online live streaming scheme. The revised scheme provides expanded rights, revised rates and a new structure that better caters to the use and application of live streams within the current market.

Multi-Territory Licensing

84. 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.
85. 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.
86. 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, BUMA/STEMRA (APRA's Dutch sister society) and STIM (APRA's Swedish sister society).

Disaster Relief

87. APRA AMCOS report that during the Review Period they have continued their policy regarding Disaster affected licensees.

88. APRA AMCOS's actions, intended to alleviate financial pressure on affected businesses, include deferring licence fee renewals, extension of payment periods, and corporate donations to relief appeals.
89. 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.

COVID-19 Pandemic

90. As previously reported, in March 2020, OneMusic moved to respond to lockdown measures issued by the Australian Government, putting approximately 25,000 accounts on hold.
91. As lockdowns and restrictions have continued throughout Australia during the Review Period, OneMusic continues to hold accounts which are in lockdown affected locations, apply fee relief, and offer payment plans to all licensees.
92. 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 continued 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.
93. OneMusic has continued to receive a high volume of positive feedback from licensees for putting these disaster relief measures in place.

New South Wales and Queensland Floods

94. In response to the major rainfall that hit Southeast Queensland and Northern New South Wales from January 2022, OneMusic Australia held in abeyance licence fees payable by all affected businesses within natural

disaster declared areas for 3 months. Lismore was excluded from that time limit, that is to say, licence fees payable by businesses in Lismore are still being held in abeyance.

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

95. The most recently audited financial statements for the year ended 30 June 2021 show that APRA AMCOS's total combined net distributable revenue for that year was \$442.6m (2020: \$407.3m). Further information regarding APRA AMCOS's performance is contained in the 2019/20 APRA AMCOS Year in Review, which is available on the APRA AMCOS website.
96. APRA and AMCOS distribute royalties quarterly.

Distribution Rules and Practices

97. APRA and AMCOS maintain, and make available on its website, comprehensive Distribution Rules and Practices. APRA AMCOS have published a 'plain English' information guide summarising its Distribution policies, including how undistributed funds are dealt with.
98. APRA 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, and the approaches of affiliated societies to the process and methods of distribution.
99. The APRA Distribution Rules were updated in the Review Period to:
- update information regarding works ownership research; and
 - update the policy which governs Unlogged Performance Claims

100. The APRA Distribution Practices were updated in the Review Period to:

- update the policy relating to the processing of data from Video on Demand services; and
- establish a new practice for the distribution of revenue relating to film festivals

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

- update information regarding works ownership research
- establish a policy governing Unlogged Performance Claims;
- establish a new policy relating to the processing of data from Video on Demand services; and
- establish a practice of using Carryover Points to represent the ongoing value of unpayable works

102. The AMCOS Distribution Practices were updated in the Review Period to establish a new policy relating to the processing of data from Video on Demand services:

103. APRA AMCOS have 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 continues to deal 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.

Investment in Systems Development

104. APRA AMCOS's systems development strategy is to continuously innovate and deliver new services at speed, in response to the needs of writers, publishers and industry stakeholders. Major strategic business initiatives continued to be delivered across business as usual, automation, business processes, business critical and digital services areas, representing a significant long-term value proposition.

Automation

105. Extensive work has continued to be undertaken to automate mundane, resource-intensive tasks, identify inefficiencies in business processes, and develop policy and automation strategies to combat these inefficiencies. APRA AMCOS state that at the end of the Review Period, 39 Robotic Process Automations (RPA) were in production, with 1,100 days of 'Human Time' saved.

Large strategic projects

106. Strategic projects being worked on and monitored by APRA AMCOS' Executive Leadership Team during the Review Period include:

- CRD (Common Royalty Distribution) Phase 3
- AREV to CMS
- Member Writer Portal
- Mobile Application
- Publisher Portal
- Earnings Insights
- Revenue Portals
- International Data Analytics and Processing (IDAP)
- Distribution Streaming (PoC for NextGen Distribution)
- Repertoire Management

- Video On Demand (VOD) Disaggregation
- Ingestion & Matching
- Amplify

107. APRA report that all member facing projects have received positive customer feedback and provide valuable, feature-rich services to its members

Cyber Security

108. The continued pace of digital business and an ongoing transition to cloud are challenging traditional security approaches. APRA AMCOS advise that they continuously monitor and improve their resilience to cyber threats and that a cyber security and data management plan and assurance framework have been established to strengthen their cyber security posture.

Collecting Society Expenses (Code, Clause 2.5)

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

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

111. According to the most recent audited financial statements, for the year ended 30 June 2021, APRA AMCOS achieved a group expense to revenue ratio of 12.68% [2020: 14.16%].

Governance and Accountability (Code, Clause 2.6)

112. The Annual Report of each of APRA and AMCOS contains the matters set out in clause 2.6(e) of the Code.
113. 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, Risk & Culture Sub-Committees, which continue to meet at least six times a year and which concentrate exclusively on issues relating to Corporate Governance.
114. The APRA AMCOS Chief Executive and Executive Leadership Team meet regularly to discuss matters relating to corporate governance and the day to day operation and management of the two societies. The Executive Leadership Team also deals with policy setting and other matters relating to Human Resources and Industrial Relations matters, risk management, infrastructure, general administration, and regulatory compliance.
115. APRA AMCOS 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.
116. APRA and AMCOS maintain complete financial records which are audited each year, and a statement by each company's auditor is included in their Annual Reports.
117. 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 2021 were provided to the Code Compliance Reviewer.

Australian Competition and Consumer Commission (ACCC) Authorisation

118. As previously reported, APRA's membership, licensing, distribution and international arrangements are all the subject of an "authorisation" by the ACCC.
119. In granting the authorisation in July 2020 for a period that will expire in July 2024, and for 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. The conditions of authorisation primarily focus on improving the transparency of APRA's licencing and distribution arrangements.
120. APRA reports that it has complied with the ACCC's conditions of authorisation.

Staff Training and Development (Code, Clause 2.7)

121. APRA AMCOS report that their staff at management level continue to be comprehensively trained regarding the Code.
122. 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.
123. In addition, the wider senior management team now meets monthly, 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.

124. 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.
125. The Music Licensing and Membership divisions usually hold staff training conferences at least once per year.
126. 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.
127. APRA AMCOS also hold company-wide staff briefings on a monthly basis. The briefings focus on the respective needs and expectations of general staff, middle and senior management and also of the organisation. The focus of the training sessions has in the past covered the Code, the ACCC authorisation, as well as performance within and between departments and with external stakeholders.
128. APRA AMCOS have provided details of the induction and training sessions that the Human Resources Department provides 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, 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.

129. APRA AMCOS have developed a “brand blueprint” which further outlines its purpose, values and “personality”.

130. 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 has been provided previously. As previously reported, 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.

131. APRA AMCOS assert that they are committed to taking a proactive approach to staff training, development and wellbeing, with such internal programs including:

- Higher Education Assistance Program
- Leadership Development Programme
- Mentoring & High Potentials Programme
- Buddy Program
- In-house Training Programs
- BeSpoke Coaching (leadership presence and presentation skills)
- Employee Assistance Programme
- Purchased Leave Scheme

- Employee Wellbeing Program comprising seminars on resilience, stress management, work-life balance, COVID-19 and dealing with change

132. During the Review Period, APRA AMCOS partnered with Diversity Arts Australia (**DARTS**) to lead the organisation through a Diversity Audit and develop an Equity Action Plan to guide ongoing work in the short to long term. DARTS facilitated more than 20 training and mentor sessions on inclusive practices. APRA AMCOS staff and the APRA AMCOS Boards were again given the opportunity to participate in key sessions covering cultural safety, Culturally and Linguistically Diverse (**CALD**) communities and “ableism”. Training sessions and targeted mentor sessions provided APRA’s cross functional Steering Committee with the tools to develop goals, actions, outcomes and evaluation measures to feed into the Equity Action Plan proposal which was completed in June 2021, with a progress report produced in December 2021.

133. Under the *Workplace Gender Equality Act 2012 (Cth)* (**WGE Act**), APRA AMCOS continue to submit their annual report to the Workplace Gender Equality Agency (**WGEA**), outlining its 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 WGE Act, staff and members are notified of the report each year.

134. 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 and Work, Health & Safety.

Education and Awareness (Code, Clause 2.8)

135. APRA AMCOS report that they continue to devote “considerable resources” to the education of members, licensees, industry associations and members of the public, regarding the matters set out at CI 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.

136. 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
- National Aboriginal and Torres Strait Islander Music Office (NATSIMO)
- Ambassador Program
- Member Events
- Member Advisory Group Development
- SongHubs and SongMakers programs
- Sounds Australia & Live Music Office;
- Various industry related organisations and programs; and
- Seminars and public forums

137. Since July 2020, the collecting societies that adhere to the Code have maintained a consolidated online portal for the public dissemination of governance, financial and data information, including all documents relating to the Collecting Societies' compliance with the Code. The

website continues to be maintained and can be viewed at

<https://www.copyrightcodeofconduct.org.au/>.

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 – 129 events conducted and attended in person and online by local and overseas members;
- Publisher Members – Portal Reference Groups and Publisher Pulse seminars held regularly;
- Licensee Education – attendance at approximately 89 industry association functions, events and awards ceremonies 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.

141. The *OneMusic* website (<https://www.onemusic.com.au/>) 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 at a time convenient to them.

Complaints and Disputes (Code, Clause 3)

142. 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)

143. 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.

144. As reported elsewhere in this Report, the collecting societies have launched and maintain a new standalone website for the Code (<https://www.copyrightcodeofconduct.org.au/>).

145. 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

146. Prior to the 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.

147. In addition, on their own website APRA AMCOS invite any interested party to make submissions to the Code Reviewer as part of the annual compliance process.

148. Of course, APRA AMCOS's annual report to the Code Compliance Reviewer is itself directed to its compliance with the Code.

Monitoring, Review and Amendments (Code, Clause 5)

149. 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.

150. 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.

151. 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 audio upload function of the publisher portal enables writers and publishers to upload audio files directly to APRA AMCOS' database so that they can be matched with music used in advertisements using music recognition technology to provide accurate and efficient tracking of jingle play on television and radio.

Copyright Agency Limited (“Copyright Agency”)

152. Copyright Agency's report on its compliance with the Code was furnished to me on 29 July 2022.

153. Copyright Agency's website is at <https://www.copyright.com.au>.

154. Copyright Agency merged with Viscopy on 1 December 2017. Prior to that merger, it had managed Viscopy's services under a services agreement since 2 July 2012. Viscopy members are now members of Copyright Agency, and Copyright Agency is now the licensor for the artwork licences that it previously managed for Viscopy.

General

155. Copyright Agency is a company limited by guarantee and has more than 38,000 members. They include writers, artists, surveyors, publishers and other collecting societies.

156. In its report to the Code Compliance 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

- o content creators; and
- o 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."

157. Copyright Agency reports annually to the relevant Minister (currently the Attorney-General) (**the Attorney**) in accordance with statutory obligations in the Copyright Act and to the Minister for the Arts in accordance with statutory obligations in the 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.

158. As a declared collecting society, Copyright Agency also operates in accordance with the Attorney-General's *Guidelines for Declared Collecting Societies*.

Legal Framework (Code, Clause 2.1)

159. 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.

160. 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 Div 4 of Part IVA of the Copyright Act; and
- the Copyright Tribunal's Declaration of Copyright Agency for Div 2 of Part VII of the Copyright Act.

161. Copyright Agency's in-house legal team continues to oversee compliance issues, including the implementation of any necessary or desirable changes to its policies or practices and monitors relevant legal and regulatory developments.
162. Copyright Agency advises that in November 2021, it was subjected to a cyber attack. It notified the Office of the Information Commissioner and the Australian Signals Directorate and provided members with an update, on the website, in early December 2021.
163. Copyright Agency further reports that it subsequently undertook a privacy assessment, and notifications were sent to all affected individuals and an update provided to the Privacy Commissioner at the end of 2021. The Privacy Commissioner's office has advised that it is satisfied with Copyright Agency's response to the data breach and has closed its file on the matter.

Members (Code, Clause 2.2)

Paragraph (a): eligibility for membership

164. 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).
165. 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.

Paragraph (b): treatment of members

166. 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.

Paragraph (c): transparency of dealings with members

167. In its report to the Code Compliance Reviewer, Copyright Agency gives details of its communications with its members and potential members about membership arrangements, distributions of licence fees and payments, including:

- information on the Copyright Agency website and its Constitution (available on its website);
- updates in its monthly e-newsletter, *Creative Licence*;
- 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.

Paragraph (d): availability of Constitution

168. Copyright Agency advises that its Constitution is available to the public on its website and that it directs new and potential members to it.

Licensees (Code, Clause 2.3)

Paragraph (a): treatment of licensees

169. Copyright Agency reiterates what it has said in relation to members as recounted above, substituting “licensees” for “members” and “licence agreements” for “membership agreements”.

Paragraph (b) transparency of dealings with licensees

170. Information on the Copyright Agency website about licensing includes:

- plain English guides for different types of businesses;
- plain English guides for pay-per-use licences;
- information for media monitoring organisation customers;
- data processing protocols; and
- information in annual reports.

171. 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.

Paragraph (c) Information about licences and licence schemes

172. 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*) and via other channels,

including seminars, trade shows, trade publications and in response to specific enquiries.

173. 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.

Paragraph (d): setting of licence fees

174. For the statutory licences for education and government, Copyright Agency mostly deal with bodies or departments representing a class of licensees such as UA for universities; CAG for most schools and TAFEs; and the Department of Infrastructure, Transport, Regional Development Communications and the Arts for the Commonwealth government; rather than with individual licensees.
175. Copyright Agency also has individual licence agreements with more than 1,000 other education providers, such as registered training organisations, and with licensees for its voluntary licences, for example, media monitoring organisations.
176. Copyright Agency reports that it is currently engaged in advanced negotiations with CAG in relation to new agreements from 2023 for the school sector and the TAFE sector.
177. Copyright Agency reports that in May 2022, the Copyright Tribunal issued a determination regarding licence fees payable by the 39 members of Universities Australia. Subsequently, The universities applied to the Federal Court for judicial review of aspects of the determination. An announcement to members, including interim arrangements pending resolution of the appeal was made at that time. This matter is dealt with at [138] below.

178. Similarly, in October 2021, the Copyright Tribunal issued a determination regarding licence fees payable by media monitoring organisations, Isentia Pty Ltd and Meltwater Pty Ltd.
179. Copyright Agency sought judicial review of certain aspects of the Tribunal's decision. It reached a settlement with Isentia Pty Ltd. The matter is dealt with at [139]-[141] below.
180. Copyright Agency advises that it has engaged an independent expert to advise on how best to approach the development of recommendations for future media monitoring licence agreements.

Paragraph (e): acknowledgement of industry associations

181. Copyright Agency acknowledge the role of industry associations with which they have dealings, including the Public Relations Institute of Australia, Australian Local Government Association, Association of Corporate Counsel, Early Childhood Australia and Independent Tertiary Education Council Australia.

Paragraph (f): consultation with industry associations

182. During the Review Period, the Commercial Licensing team worked with the Australian Psychological Society (**APS**) to develop a licence for its sole practitioner members as APS felt it would be of benefit to their members.

Paragraph (g): response to requests for licence fee methodology or factors

183. Copyright Agency reports that where licensees requested further information in connection with negotiation of licence fees, that information was provided.

Paragraph (h): request for ADR

184. In the Review Period, Copyright Agency reports that no requests for ADR were received.

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

Paragraph (a): distribution policy

185. On its website, Copyright Agency publishes its:

- distribution policy;
- distribution schedule;
- payment timetable (when payments are made to members' bank accounts);
- information sheets about individual distributions; and
- deductions before distribution.

Paragraph (b): distribution in accordance with distribution policy and Constitution

186. Copyright Agency distributes payments in accordance with its Constitution and Distribution Policy.

187. Copyright Agency informs members of proposed and recent 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, *Creative Licence*.

Paragraph (c): licensee requests regarding rights payments

188. Copyright Agency reports that during the Review Period it did not receive any requests regarding rights payments.

189. It did, however, receive a request for information from CAG, that is outlined below under Clause 2.9

Paragraph (d)(i): consultation with members

190. There were no substantive changes to distribution policies in the Review Period. Copyright Agency's information sheets on each major distribution continue to outline any changes since the previous distribution.

191. However, in July 2022, Copyright Agency amended its distribution policy and webpages on Fees and Unpaid Allocations to reflect a change in policy regarding unpaid allocations ('rollovers'), to take effect from 1 July 2022. There will be information about the change in a forthcoming issue of the e-newsletter, *Creative Licence*.

Paragraph (d)(ii): Plain English guidelines

192. Copyright Agency's distribution policy, and information sheets about individual distributions, are in Plain English.

Collecting Society Expenses (Code, Clause 2.5)

Paragraph (a): expenses of managing and operating the society

193. Copyright Agency reports that the operating costs associated with managing the statutory and voluntary licence schemes continue to be met from its revenue. In a few 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.

194. 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.

195. Copyright Agency's Board of Directors approves the society's annual operating budget and reviews the budget at each Board meeting.

Paragraph (b): other amounts

196. 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)

Paragraph (a): Board accountable to members

197. 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 the Australian Publishers Association. The current directors and the capacity in which they were elected or appointed appear on Copyright Agency's website.

Paragraph (b): maintenance of financial records

198. Copyright Agency reports that it maintains proper and complete financial records, including providing detailed reports to the Board and to its Audit and Finance Committee.

Paragraph (c): audit of financial records

199. 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. In addition, the Annual Report is tabled in Parliament.

Paragraph (d): information to members

200. On request, Copyright Agency provides reasonable information to members about entitlements to payment, in accordance with privacy and confidentiality obligations.

Paragraph (e): information in annual report

201. 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;

Paragraph (f): information in annual publications

202. Copyright Agency's annual reports provide information about 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

Paragraph (g): information about expired undistributed funds

203. Copyright Agency's annual reports provide 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

Staff Training (Code, Clause 2.7)

204. 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)

Paragraph (a): activities to promote awareness

205. Education and awareness activities conducted by Copyright Agency for its members, licensees and other stakeholders include:

- information on the Code 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).

206. 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.

207. 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;

208. 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;

209. 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.

210. Copyright Agency also creates awareness of its role through sponsorship and the publicity associated with grants from the Cultural Fund. For example, in the Review Period, it supported the Educational Publishing Awards Australia (**EPAAAs**) and the Australian Reading Hour with (among

others) the Australian Publishers Association and the Australian Library and Information Association.

Paragraph (b): factors affecting activities to promote awareness

211. Copyright Agency reports that its activities to promote awareness are proportionate to the number of members and licensees we have, and our revenue.

212. Copyright Agency liaises with other Collecting Societies and some activities are done jointly from time to time. The Collecting Societies jointly support the services provided by the Australian Copyright Council, including information, advice and training on a large range of copyright issues.

Paragraph (c): particular information about membership and licensing

213. Information on the website relating to membership includes:

- a 'Join Us' webpage, with information about eligibility, benefits of membership and how to join;
- membership terms;
- policies and procedures affecting members, including those relating to distributions and disputes.

214. Information on the website relating to licensing includes:

- benefits of obtaining a licence, including a video for individually licensed education institutions and a webpage for businesses;
- information for licensees about their responsibilities is provided in training sessions, and is also available on the website, for example 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).

Paragraph (d): guidelines about expired undistributed funds

215. There is a webpage about unpaid allocations on Copyright Agency's website.

Paragraph (e): online portal for Code

216. With other collecting societies, Copyright Agency launched a website for the Code in July 2019: <https://www.copyrightcodeofconduct.org.au/>.

Reporting by Declared Collecting Societies (Code, Clause 2.9)

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

Paragraph (a): information in annual reports

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

Paragraph (b): information about licensee classes and expired unpaid allocations

219. 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.

Information request from CAG

220. In November 2021, CAG made a written request for certain information, requested to be provided by March 2022.

221. Copyright Agency provided a written response in June 2022, after acknowledging to CAG that it had received the request, determining that a response was not urgent, and advising CAG that it would respond.

Complaints and Disputes (Code, Clause 3)

222. 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)

Paragraph (a): publicising the Code

223. The Code is available on the Code 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 website has a webpage devoted to the Code and contains a link to the Code website.

224. 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, and specific email alerts.

Paragraph (b): statement about Code compliance in annual reports

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

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

Paragraph (c): notification of contraventions

227. There have not yet been any findings or notifications of contravention of the Code by Copyright Agency.

Audio-Visual Copyright Society Limited (“Screenrights”)

General

228. Screenrights' report on its compliance with the Code was furnished to me on 29 July 2022.

229. Screenrights' website is at <https://www.screenrights.org>.

230. 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.

231. 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.

232. 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).

233. As at 30 June 2022, Screenrights had 5,005 members [2021: 4,897] and 1,571 licensees [2021: 1,530]. 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
Screenrights Members	5,005
Licensees	1,571
<i>Schools -- Government, Catholic Systemic, Independent -- Peak Bodies</i>	32
<i>Higher education including universities</i>	63
<i>Private Vocational Education/Training Organisation (inc ELICOS, U3A)</i>	18
<i>Government Agency</i>	462
<i>TAFE (including individual, and Depts representing multiple, institutions)</i>	12
<i>Resource Centre</i>	5
<i>Retransmitter</i>	3
<i>NZ -- Tertiary</i>	28
<i>NZ – Schools</i>	946
<i>NZ – Resource Centre</i>	2

Legal Framework (Code, Clause 2.1)

234. Screenrights reports that it has complied with the legal framework governing its operation.

235. Screenrights made no material changes to any other documents relevant to the legal framework during the Review Period.
236. A copy of Screenrights' key governance documents, including the Constitution, Privacy Policy, and our dispute and complaints management procedures can be accessed on the corporate website.
237. The Screenrights Board is elected by the members in accordance with the Constitution. A list of current directors and the Screenrights executive team is available on the corporate website.
238. Screenrights' Legal team oversees compliance with the legal framework governing its operation, including training of staff in relevant laws including privacy and workplace behaviour laws.

Members (Code, Clause 2.2)

239. Membership of Screenrights remains open to all eligible rightsholders. Membership increased in the Review Period from 4,897 to 5,005 members.
240. 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*.
241. 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 and handling of information, and simplify member engagement with Screenrights. The Society also undertakes initiatives to streamline information processing within its in-house systems to deliver efficiencies to royalty distribution.

242. Some of the key initiatives in the Review Period include:

- Integration, benchmarking and routine measurement of member satisfaction and effort via multiple channels, to support continuous improvement of Screenrights' service delivery;
- Increase in distribution process automation and accuracy, enabling the release of smaller amounts and greater frequency of payments to members; and
- Continuing the leveraging of AI to improve data handling, increase the frequency of distributions and reduce the period of time between usage and payment to ensure members receive their royalties sooner.

Licensees (Code, Clause 2.3)

243. 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.

244. 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.

245. 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.
246. 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.
247. For the educational statutory licence, Screenrights generally negotiates with bodies that represent a group of licensees such as UA and CAG for schools and TAFEs.
248. The educational scheme agreement covering 98% of Australian schools was renewed in 2021 and will expire on 31 December 2024.
249. 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 Government Copying agreements to include internet copying have been executed by the State of Victoria and the Australian Capital Territory and Tasmania. The remaining States and Territories continue to remain in the process of being finalised as at the end of this reporting period.
250. In relation to retransmission statutory licences, Foxtel and Screenrights entered into a new agreement in 2021 which will expire on 31 December 2024.

251. Also in the Review Period, Screenrights and Hills entered into a 5 year agreement (to October 2026) in relation to Hills' retransmission.

252. 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.

253. Detailed usage data for each university is provided to 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)

254. In the Review Period, Screenrights distributed payments in accordance with its Distribution Policy and Constitution.

255. 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.

256. Under the Distribution Policy, all undistributed royalties from the 2018 distribution year have been rolled over to the 2022 distribution year. Any royalties still in dispute from the 2018 year have moved into the Competing Claims Fund (CCF), which allows members an additional 12 months to resolve their competing claims to these royalties

Collecting Society Expenses (Code, Clause 2.5)

257. 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.
258. Screenrights' expenses for the Review Period were approximately 13,2% (2021: 15.87%) of gross revenue subject to audit review. The audited figure will be in Screenrights' Annual Report.
259. 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.
260. Detailed information on Screenrights' expenses including the expenditure to collections ratio for the year ended 30 June 2022 will be found in Screenrights' Annual Report, where a comparison with the year ended 30 June 2021 will be shown. This report was made available in October 2022.

Governance and Accountability (Code, Clause 2.6)

261. 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.
262. The Audit, Risk & Governance Committee of the Board met five 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.

263. 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.

264. Screenrights' Annual Report for 2022 will become available in late October 2022, including the audited accounts as at 30 June 2022. Each Annual Report of Screenrights contains the matters set out in clause 2.6(e) to (g) of the Code including revenue, expenses and distribution of payments to Members.

265. 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 relevant Minister and is tabled in Parliament.

Staff Training (Code, Clause 2.7)

266. 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 Compliance 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.

Education and Awareness (Code, Clause 2.8)

267. 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 continued to provide animated explainer videos to support the communication of this information during this period. Screenrights' governance, financial and data information is also available on the corporate website

268. In addition, Screenrights conducted an 8-part webinar series which included information about all of Screenrights' services. The online series is offered at subsidised pricing in order to make it as accessible as possible

269. Screenrights continued to promote its role and functions as a collecting society by sponsoring and participating, either through speaking engagements, digital/online representation or providing attendees with communications about Screenrights at the following events in the Review Period:

- Australian Directors' Guild (ADG) Awards, March 2022;
- Australian Writers Guild "AWGIES" Awards, December 2021;
- Screen Production and Development Association (SPADA) Screen Industry Awards, November 2021;
- Screen Forever (run by Screen Producers Australia), March 2022;
- Australian International Documentary Conference, March 2022;
- Doc Edge Forum, June 2022;

- The Regional to Global Screen Forum (run by Northern Rivers Screenworks), May 2022; and
- Melbourne International Film Festival (MIFF) 37° South Market, August 2021.

270. Screenrights also continued its Cultural Fund competitive grant program in 2021 and 2022. 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 a dedicated marketing and communications campaign.

271. 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)

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

Complaints and Disputes (Code, Clause 3)

273. 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)

274. 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.

275. In the Review Period, Screenrights has also published its 2020/2021 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.

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

277. The Society includes a statement in its Annual Report (under "Governance") on its compliance with the Code.

278. Of course, Screenrights' annual report to the Code Compliance Reviewer is itself directed to its compliance with the Code.

Monitoring, Review and Amendments (Code, Clause 5)

279. In the Review Period, Screenrights initiated a multi-year digital transformation project to transition its proprietary systems for managing royalty claims to the cloud. This project is in early stages and is expected to deliver a modern user experience, significantly increased performance capability and improved security.

280. Screenrights continues to utilise a third-party machine learning platform to leverage AI to improve data management practices. The use of AI in data processing pipelines means members will be notified sooner about

their competing claims, payments will be made more frequently and with a reduced error rate

Phonographic Performance Company of Australia Ltd ("PPCA")

281. PPCA's report on its compliance with the Code was furnished to me on 1 August 2022.

282. PPCA's website is at <http://www.pcca.com.au>.

Legal Framework (Code, Clause 2.1)

283. PPCA reports that during the Review Period, it met its obligations as set out in clause 2.1 of the Code, including, but not limited to, complying with its obligations under the Corporations Act 2001 (Cth), Copyright Act 1968 (Cth) and Privacy Act 1988 (Cth).

284. PPCA reports that its Constitution was amended in November 2021, in order to allow the Board to be expanded to include up to two Board appointed positions. This change was initiated to ensure that the Board had the capacity to address any skill, experience or other gaps that may arise from time to time. Associated amendments to quorum, voting and provisions for alternate directors were also made at that time.

285. During the Review Period, PPCA's Privacy Policy was amended to explain a new way in which PPCA may collect, use and disclose personal information. Several privacy collection statements for various forms, including Artist Registration forms, were also updated to better reflect PPCA's privacy handling practices.

286. 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 Copyright Collecting Societies of Australia (**CCSA**) website.

287. 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 treated. These guides provide a simpler overview of PPCA's distribution practices and provide readers with links to the full Distribution Policy.

Other Legal Matters

288. In April 2021 PPCA, alongside APRA AMCOS and others, filed proceedings in the Federal Court of Australia in respect of unlicensed public performance of protected sound recordings at a number of music events. As an update, in early July 2021 a PPCA representative, together with representatives of APRA AMCOS, attended a formal mediation in an attempt to resolve the matter. The process was successful, and the parties are currently in the process of finalising settlement arrangements in respect of past conduct and how such licensing will be approached in the future.

Members (Code, Clause 2.2)

289. 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.

290. 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 for Australia).
291. PPCA’s relationship with licensors (including its three shareholder members) is mainly 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).
292. Similarly, rather than artist members, PPCA has “registered artists”. Registered Artists can receive a payment under the Distribution Policy’s Artist Direct Distribution Scheme (**ADDS**), 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.
293. As at the end of the Review Period on 30 June 2022, PPCA had approximately 3,563 licensors [2021: 3,215] representing major record companies, smaller record companies, rights management entities (e.g. foreign collecting societies or other entities representing a range of, generally smaller, rights owners) and independent copyright owners (for example, recording artists themselves). The number of registered artists was 5,138 [2021: 4,801].
294. 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 online registration form. An acknowledgment is sent to licensors upon receipt of their track registrations.

295. Similarly, queries from Artists on registering with PPCA's ADDS 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.
296. During the Review Period, PPCA launched the Artist and Licensor Portal – this is an online portal where Registered Artists and PPCA Licensors can view their PPCA statements and other financial documents and update their contact and banking information. Portal users can also share access with a third party, for example their manager or tax adviser, who can also view statements and update contact information, depending on the level of authorisation given by the Registered Artist or Licensor.
297. The purpose of the portal has been to streamline the distribution process, by providing immediate online access to statements, and allowing artists and licensors to update their details (including bank account details) at any time. Use of the portal should thus facilitate faster payment and provide a repository where PPCA registered artists and licensors are able to access financial documents (including for past periods) at their convenience. Registered Artists and Licensors are invited to register with the portal via email after registering their works with PPCA.
298. The PPCA website includes “FAQ” sections for both Licensors and Registered Artists, providing general information about copyright in music and explaining the services PPCA offers. Licensors and Registered Artists can access the PPCA Constitution, as well as a sample copy of the Input Agreement, from the PPCA website, the CCSA website, or can be emailed or mailed a copy upon request.
299. During the Review Period, PPCA emailed Licensors and Registered Artists and posted on its social media channels to provide information on matters of interests and key developments. This included information on support for record labels and artists impacted by the mandatory

lockdowns and live- industry shutdown and restrictions which impacted Licensors and Artists for the first half of the reporting period. This included information on where impacted businesses and individuals could access financial support from government initiatives, as well as wellbeing services offered by Support Act.

Licensees (Code, Clause 2.3)

300. PPCA licences business and individuals both directly and indirectly via OneMusic, the joint initiative of PPCA and APRA AMCOS, the copyright collecting society for musical works. Since mid-2019, OneMusic has been responsible for the administration of PPCA public performance licences. Where previously businesses would have typically needed to acquire a licence from PPCA and a separate licence from APRA AMCOS, OneMusic offers a single blanket licence which covers both sets of rights, licensing the use of music by businesses.

301. As of 30 June 2022, PPCA directly licensed approximately 1,100, businesses, individuals, services and stations for the use of protected sound recordings and music videos.

302. PPCA still offers broadcast, communication, and public performance licences for a range of services, including radio and television broadcast, non-interactive and semi-interactive music streaming services. The type of licences issued by PPCA include:

- radio broadcast licences and simulcast licences for commercial radio broadcasters;
- radio broadcast and optional simulcast licences for members of the Community Broadcasting Association of Australia (**CBA**A) and non-CBAA member community radio stations;
- on demand licences for radio broadcasters;

- broadcast and communication licences for subscription television operators (including IPTV operators);
- communication licences for subscription video on demand (**SVOD**) services;
- television and radio broadcast licences, simulcast licences and on-demand communication licences for ABC and SBS;
- public performance licences for theatrical productions;
- communication for linear music streaming services (such as internet radio stations) and semi- interactive music streaming services;
- communication and broadcast licences for background music services that provide music services to commercial premises by means of broadcast or streaming; and
- live-streaming licences for restricted activities.

303. 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.

304. PPCA's website contains information on the range of broadcasting, digital and joint licences available. An FAQ section is also available which provides general information about copyright in music, when licences are required and PPCA's role in licensing music within Australia. When PPCA is contacted by potential licensees regarding a PPCA licence, information regarding the terms and conditions of the relevant licence, as well as costs involved, are provided upon request. PPCA has Key Terms documents for its licences that provide a summary of the significant

aspects of the licence, such as scope, restrictions, reporting requirements and fees which are also provided on request.

305. In addition, PPCA, continues to collaborate with APRA AMCOS on delivering more joint licensing schemes via OneMusic, as well as regularly reviewing the licensing schemes currently in place. As reported last year APRA and PPCA, through OneMusic, are currently consulting with the live event, festival and promoter sector and expect to be in a position to implement a new, simplified scheme for that sector within the next few months. Further details about the operation of OneMusic was provided in APRA AMCOS' submission to the Code Reviewer.

306. PPCA reports that during the Review Period, it has continued to exercise discretion when dealing with licensees continuing to be affected by the public health ordered lockdowns and natural disaster emergencies. Where licensees were impacted, PPCA placed holds on licensees' accounts and paused all enforcement and debt collection action.

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

307. 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.

308. 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.

309. Two guides are also available from the PPCA website: a guide to the PPCA Distribution Policy and the Undistributed Funds guide. These 'plain-English' guides are designed to be easy to read, giving a simple overview of the operation of the Distribution Policy, and a clear explanation of how PPCA handles any components of net licence fees which cannot, for various reasons, be distributed.
310. During the reporting period, minor updates were made to the Distribution Policy to clarify that OneMusic Australia is a joint licensing initiative with APRA AMCOS and its benefit.
311. PPCA undertakes a single annual distribution for the financial year ending 30 June, which is issued by 31 December that same calendar year. Licensors and eligible artists must register their details, track and music video registration by 31 August to be eligible for that year's December distribution. Following the annual distribution process, Licensors and Registered Artists are provided with statements setting out their earnings on a detailed track-by-track basis.
312. Members of the Distribution team are available to answer questions about distributions via phone and email. During the Review Period, PPCA reports that it did not receive a formal request from any licensee asking for details about how their licence fee was distributed to Licensors and Registered Artists.

Collecting Society Expenses (Code, Clause 2.5)

313. 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, to Licensors and Registered Artists.

314. PPCA's Annual Report for the year ended 30 June 2021 (published during the Review Period) showed that the expense to revenue ratio was 16.6% [2021: 15.4%]. The cause of the rise has been attributed to a substantial reduction in public performance revenue, a result of various COVID-19 public health restrictions and lockdowns and their impact on the businesses of PPCA's (through OneMusic Australia) public performance clients.

315. The Annual Report was published during the Review Period and is available from the PPCA website as well as the CCSA website.

Governance and Accountability (Code, Clause 2.6)

316. PPCA's financial records are subject to an annual external audit.

317. 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.

318. In addition, the Board-appointed Finance Committee continues to meet regularly to review interim financial and monthly management accounts.

319. 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

320. The PPCA Board, Committees and relevant Managers are also provided with PPCA's "Competition and Consumer Compliance Guidelines" and training presentations are held periodically.

321. The PPCA Management Team continues to meet each week to discuss operational and strategic matters.

322. In accordance with PPCA's Constitution, PPCA conducts regular elections to fill the positions for both Licensor and Artist Representative Directors. PPCA has two Board-appointed Committees which meet on a regular basis: the Copyright Committee (quarterly) and the Finance Committee (monthly).
323. In addition, at each meeting of the PPCA Board, directors are reminded of their obligations and duties.
324. During the Review Period, PPCA also introduced a "Board Observer" position, to allow a PPCA Licensor to attend and observe PPCA Board meetings and participate in the structured training program run by The Observership Program, with a focus on the not-for-profit sector. This opportunity runs for calendar year periods, and will be offered again in 2023.

Staff Training (Code, Clause 2.7)

325. 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, Whistleblower Policy, Data Breach Response Plan and the PPCA Complaints Handling and Dispute Resolution Policy, continued to be followed during the Review Period.
326. In addition, periodic training sessions for all staff on the Code are held to explain the purpose of the Code, obligations staff members have towards licensees, Licensors and Registered Artists, PPCA's privacy obligations, and how complaints are handled.

327. PPCA maintains an internal intranet service where all key policy documents are made available. Staff are encouraged to regularly check the intranet and are notified when key policies are amended
328. 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.
329. The Business Affairs and Distribution Departments meet regularly for staff training and internal 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, for both training and process improvement purposes.

Education and Awareness (Code, Clause 2.8)

330. PPCA continues to make available material and content for prospective licensees, licensors, and members of the public about the purpose of PPCA, the benefits of music licensing and the operation of the Code.

PPCA Website

331. From the PPCA website, people can access information about the history of PPCA together with information on all the licences PPCA still directly administers, with links to OneMusic Australia for those seeking public performance licences.
332. A dedicated page on the Code is available from the website, explaining the purpose of the Code, PPCA's compliance and with a link to the CCSA website. A link to this dedicated page is available on every page on the PPCA website (via the footer).

333. PPCA also maintains an extensive FAQ section which provides information about the basics of copyright in music, the role of PPCA in licensing, the difference between PPCA and other music licensing bodies such as APRA AMCOS and OneMusic, as well as information on a number of other related matters.

Communication with Licensors and Registered Artists

334. PPCA engages with Licensors and Registered Artists to educate them on the role of PPCA and informing them of important distribution dates, grants programs, financial and wellbeing support as well as other relevant matters. PPCA achieves this via regular send-outs, as well as frequent posts via the PPCA social media channels.

335. Due to COVID-19 and related lockdowns, PPCA did not attend any in-person conferences or consultations during the Review Period, but continued to make representatives available to participate in conference panels or other engagements (e.g. Indie Con 2021).

Engagement with other Societies and Associations

336. PPCA also works with a number of organisations to raise awareness of the operation of copyright collecting societies and the Code.

337. In partnership with the Australia Council for the Artist, PPCA offers five annual recordings grants to Australian artists to help fund the creation of new music. Last year the Australia Council elected to match the PPCA funding, allowing 10 projects to be funded under the 2021 program.

338. PPCA promotes its roles as a copyright collecting society to the industry and general public through sponsoring an award category at the annual ARIA Awards, and in 2021 partnered with ARIA to present the award for the Best Independent Release. Generally, that presentation is broadcast on

free-to-air television but, as a result of restrictions caused by the COVID 19 pandemic, in 2021 the awards were instead live streamed from Taronga on ARIAs YouTube channel and also on the 9NOW platform. The annual Australian Independent Record Label Association Awards were similarly impacted in 2021 and were live streamed on YouTube from Freemasons Hall in Adelaide, including the PPCA sponsored Breakthrough Independent Artist of the Year Award.

339. As a member, PPCA provides funding to the Australian Copyright Council so it can provide information about copyright and advice to creators free of charge. PPCA also supports the Arts Law Centre of Australia, which provides legal advice to Australian artists and independently assists PPCA Licensors and artists with setting up their own direct licensing policies.

340. PPCA raises its profile through continuing to support a number of other organisations representing and providing services to the music industry, including Support Act, Sounds Australia, the Australian Independent Record Labels Association (AIR), and the Association of Artist Managers (Australia).

Complaints and Disputes (Code, Clause 3)

341. 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)

342. Licensors, Registered Artists, licensees and members of the public are notified about the annual compliance report as well as the Triennial Review via the PPCA website.

343. 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. The link to this dedicated page is placed on the footer of the PPCA website, meaning it is visible and can be accessed regardless of the page a PPCA website user may be viewing.
344. Staff members are trained to be able to explain what the Code is, and direct interested parties to PPCA's dedicated Code page as well as the CCSA website. A copy of the Code is provided upon request
345. PPCA also notes the Code Reviewer's report on PPCA's compliance with the Code in its Annual Report.
346. Since the introduction of the CCSA website in July 2019, PPCA's site also provides links directly to that Code specific site
347. Of course, PPCA's annual report to the Code Compliance Reviewer is itself directed to the issue of its compliance with the Code.

Monitoring, Review and Amendments (Code, Clause 5)

348. PPCA reports that it continues to be committed to constantly reviewing and updating its processes and system to improve its efficiency and handling of data. Through its arrangements with OneMusic Australia it has been able to obtain additional data from background music providers to more accurately distribute licence fees from related public performance licence locations.

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

General

349. AWGACS's report on its compliance with the Code was furnished to me on 29 July 2022.
350. AWGACS's website is at <https://www.awg.com.au/awgacs>.
351. AWGACS states that there have been no substantive changes to its practices since the last reporting period in 2021.
352. AWGACS is not a declared society under the Copyright Act.
353. 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.
354. 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)

355. 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)

356. The number of members of AWGACS at 29 June 2022 was 2,156 [2021: 1,971], an increase of 185 since the last report.

357. Membership remains open to all scriptwriters and there has been no changes in membership criteria or constitutional obligations to AWGACS' members since the last report.

358. 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)

359. 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)

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

361. 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.

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

363. In the financial year ended 30 June 2022, AWGACS collected \$1,504,791 [2021: \$2,106,932.61] for distribution in 2022 and distributed \$1,019,853 [2021: \$1,200,178.27] from prior year collections.

Collecting Society Expenses (Code, Clause 2.5)

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

365. 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.

366. 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)

367. 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 or AWG Executive Director.

368. 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.

369. AWGACS voluntarily submits to the extensive governance and accountability reporting measures and reviews of CISAC.

Staff Training (Code, Clause 2.7)

370. AWGACS reports that existing 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)

371. 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.

372. Internationally, the Society's membership of CISAC is directed to accomplish the same purposes.

373. AWGACS seeks to increase awareness among its members and the scriptwriting community via sponsorship of the Annual AWGIE Awards.

374. 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.

375. Similarly, all of AWGACS's foundation documents are available to international collecting societies via the CISAC online portal, and domestically via the AWGACS website.

376. AWGACS continues to provide an advice service to members and to

industry stakeholders on copyright and related issues.

377. AWGACS responds 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)

378. 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)

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

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

Monitoring, Review and Amendments (Code, Clause 5)

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

Australian Screen Directors Authorship Collecting Society Ltd ("ASDACs")

General

382. ASDACS's report on its compliance with the Code was furnished to me on 27 July 2022.

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

384. 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)

385. As previously reported, ASDACS' change to its financial period from a calendar year to an Australian financial year took effect 1 July 2021.

386. During the Review Period, ASDACS undertook a review of its Articles of Association and Memorandum (written in 1995) with the aim to update its constitution in line with modern governance standards. Any proposed changes will be circulated the membership and tabled at the next ASDACS Annual General Meeting in November 2022.

387. ASDACS' Privacy Policy, 2021 Annual Accounts, Articles of Association and Memorandum are available on the ASDACS website.

388. ASDACS consists of three staff members and one casual staff member. The staff list is available on the ASDACS website.

389. 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.

Members (Code, Clause 2.2)

390. Membership eligibility remains open to audio-visual directors and there was no change to the membership rules during the review period.
391. By the end of the Review Period, the membership had grown to 1,428 [2021: 1,343], an increase of 6%. 1114 members were Australian, 198 New Zealander and 116 were international residents for tax purposes.
392. As noted during the previously review period, in 2020 ASDACS changed its constitution to make membership conditional upon directors assigning their retransmission rights to ASDACS. Members were notified throughout the process and have been provided with an 'Assignment of Copyright' form to sign, cover letter, information sheet and notification to provide to contracting parties. The roll out continues with an educational webinar for members on the new membership model planned during the 2022-2023 financial year.
393. 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.
394. All staff are trained to respond to members' queries and complaints in accordance with its complaints policy also available on its website.

Licensees (Code, Clause 2.3)

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

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

396. ASDACS does not collect licence revenue, but instead collects royalties generated from secondary rights. Secondary royalty income for the 2021-22 financial year period totalled \$1,668,069 [2021: \$1,953,769]. This includes an amount of domestic retransmission royalty revenue totalling \$44,951 [2021: \$21,108] (gross) received from Screenrights.
397. A total of \$2,431 bank interest [2021: \$13,429] earned on ASDACS income over the 2022 financial year will be distributed evenly to its members in accordance with its constitutional rules.
398. ASDACS distributes domestic and international income collected the prior financial year to members on an annual basis. During the Review Period, \$1,375,021 [2021: \$1,458,431] of secondary royalties collected in the 2020 year were distributed to the members.
399. In addition, due to the transition from a calendar year to an Australian financial year, ASDACS will make a special one off distribution of income received over an 18mth period (1 January 2021 – July 2022) instead of the usual 12 month period. The membership have been notified and we expect the next distribution to commence November 2022.
400. 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, expired distributions of \$46,959 [2021: \$26,021] were allocated to the development fund. \$7,421 was used on database development, \$21,030 was allocated to governance development (\$6,030 on training and strategy, \$15,000 on legal costs toward a constitutional review) and \$3,685 was paid out to members during the year from previously closed funds. The remaining balance in the development fund at 30 June 2022 is \$48,702.

401. 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)

402. 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 16 per cent, which covers ASDACS' operational expenses;
- **Membership fee:** membership fee of 10 per cent, waived for members of the Australian Directors' Guild (ADG), the Directors and Editors Guild of New Zealand (DEGNZ), beneficiaries and retirees; and
- **Cultural and Charitable Purposes Fund:** cultural and charitable purposes fund fee of 4 per cent. In 2021 – 2022 , \$66,849 was transferred to the fund (adding to an existing \$71,402). \$70,000 was granted to the Australian Directors Guild (ADG) for the ADG Awards and ADG National Industry Development Program, \$5,000 was granted to the Directors and Editors Guild of New Zealand (DEGNZ) for a Director Masterclass, \$12,000 was donated to the Motion Picture Industry Benevolent Society to support industry professionals in need and \$1,000 was donated to the CISAC Ukrainian War Fund to support displaced collecting societies and creators.

Governance and Accountability (Code, Clause 2.6)

403. At its Annual General Meeting, seven members were appointed to the ASDACS Board in accordance with its constitutional rules. The list of the board members appointed is available on the ASDACS website.
404. As mentioned previously, the 2021-22 audited ASDACS Annual Accounts will be made available on the ASDACS website and include details on collections, administration expenses, distributed funds and undistributed funds
405. ASDACS is also a member of the **CISAC** 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)

406. During the Review Period, all staff were made aware of the Code and were given further training on ASDACS's complaints handling procedure, as outlined in the ASDACS complaints policy.

Education and Awareness (Code, Clause 2.8)

407. 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.

408. ASDACS continued to send to its members a quarterly e-news and used social media (Twitter, Facebook and LinkedIn) to keep members informed and aware of its work and progress.
409. 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 un-waivable right to remuneration for audio-visual authors across the globe.
410. 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.
411. 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.
412. 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)

413. 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)

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

415. 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; and
- the 2022 Call for Submissions.

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

Monitoring, Review and Amendments (Code, Clause 5)

417. As previously reported, 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 AS REPORTED BY THE COLLECTING SOCIETIES

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

General

418. The APRA AMCOS Complaints Policy and Procedure can be read at <https://www.apraamcos.com.au/about/governance-policy/policies-procedures/complaints-procedure>.

419. APRA AMCOS states that it has included all documents and correspondence that have been dealt with as complaints during the Review Period in Volume 2 of its Compliance Report to the Code Compliance Reviewer.

420. Member complaints, together with related correspondence and documents are behind Tab 1 of Volume 2. There were three new member complaints during the Review Period and no member complaints were carried over from the previous review period.

421. Complaints by licensees or prospective licensees, together with related correspondence and documents, are behind Tab 2 of Volume 2. There were eight (8) new licensee complaints received during the Review Period and there were none carried over from the previous review period.

422. APRA AMCOS explain that if they are unsuccessful in their attempt to persuade a user of music to take a licence, the matter is referred to APRA AMCOS's external solicitors, and that APRA AMCOS has not characterised

such matters as “complaints”, unless a complaint is made regarding the conduct of APRA AMCOS staff or of the external solicitors.

423. As at 30 June 2022, there were 90 ongoing general compliance matters under the management of APRA AMCOS's Legal Department, of which 27 were under the management of APRA AMCOS's external solicitors. As at 30 June 2021, the corresponding figures had been only 419 and 399 – a substantial reduction in the Review Period.

424. Where a licensee fails to pay invoices issued by APRA AMCOS, the matter is pursued by their Credit Team and, if necessary, referred to APRA AMCOS's external mercantile agent to manage, and, if necessary, to pursue through debt recovery proceedings. As at 30 June 2022, 84 entities were under the management of APRA AMCOS's Australian external mercantile agent, and 170 were under the management of APRA AMCOS's New Zealand external mercantile agent. These matters are not treated as “complaints” unless a complaint is made regarding the conduct of the Credit Team or mercantile agents. No such complaints were made during the Review Period. APRA AMCOS have offered to make available more information regarding the activities of the external mercantile agents if requested by me.

425. In relation to alternative dispute resolution (**ADR**), the “Resolution Pathways” independent ADR facility, which was discussed in the report in respect of the last period of review, has continued to be made available. Details of it can be found at <http://www.resolutionpathways.com.au/>.

426. Under the terms of its authorisation from the ACCC, the ADR facility's independent Resolution Facilitator must submit an annual report to the ACCC detailing the disputes referred to her. Her most recent report to the ACCC (for the year ended 31 December 2021) has been provided to me. It reports that 16 matters were “managed” in that calendar year,

including three that were brought over from 2020 and 13 new ones in 2021.

Complaints by Members

APRA AMCOS Member Complaint 1 – CO1

427. This complaint concerned both a delayed payment of royalty and the communications from APRA AMCOS about the delay. Before they lodged the complaint on 25 February 2022, the complainants had been advised by APRA AMCOS staff to expect payment within various timeframes, all of which passed without payment. Apparently, a work of the complainants was misallocated by APRA AMCOS to another member. A staff member of APRA AMCOS assured the complainants that payment "should" be received by various successive dates, but when payment did not arrive, the complainants contacted their solicitors and briefed them on the matter.

428. On the same date as the receipt of the complaint (25 February 2022), APRA AMCOS's senior lawyer responded assuring the complainants that the matter would be investigated as a matter of urgency and that a response would be provided within 14 days.

429. On 4 March 2022, APRA AMCOS's Director – Membership & Shareholder Engagement wrote to the complainants apologising. The letter concluded with a statement of the writer's understanding that payment had now been received. The letter assured the complainants that the issue of delay in payment and communication by telephone rather than in writing had been raised with the staff member concerned.

430. There was no further complaint by the complainants and APRA AMCOS justifiably treated the matter as ended.

APRA AMCOS Member Complaint 2 – CO2

431. Complainant CO2 complained about being unable to apply for APRA's "Cancelled Gigs Initiative" (**CGI**) after the application deadline had passed. The complainant had sought late acceptance of the application, citing various personal circumstances.
432. The correspondence between the complainant and APRA AMCOS extended from 1 March 2022 to 15 March 2022.
433. The cut-off date for applications was 28 February 2022 (11: 59pm).
434. On 14 March 2022, an APRA AMCOS officer wrote to the complainant explaining that the CGI related to gigs that had been scheduled to take place between 1 October 2021 and 28 February 2022. The letter explained that it was necessary for a strict cut-off date for applications to apply. The letter did, however, offer, instead of a CGI payment, a one-off advance on royalties (recoupable from future earnings). The letter stated that based on the complainant's previous royalty earnings, he could request an amount of up to \$5,000.
435. The complainant accepted that offer, stating "I very much appreciate your email".

APRA AMCOS Member Complaint 3 – CO3

436. In November 2021, there were exchanges of emails and telephone calls between CO3 and APRA AMCOS. CO3 complained about not having received a response to an enquiry he had made regarding unpaid royalties. He claimed to be entitled to \$9,000. The exchanges continued through to January 2022. There was then a lapse until 7 March 2022.

437. On 11 March 2022, an APRA AMCOS staff member called the complainant apologising for the lack of communication with him and said that the reason why payment was being withheld was due to an incorrect matching of his work with another one. Apparently, the complainant found it difficult to accept that explanation, saying that his work had been getting a lot of attention on YouTube so that the earnings should be expected to be his rather than anyone else's.
438. The staff member emailed the complainant requesting his ABN and the complainant acknowledged that he had been asked for this previously but had omitted to provide it. On the same day, the staff member wrote to the complainant confirming the request for the ABN.
439. On 16 March 2022, the complainant wrote to the APRA AMCOS staff member advising that as he did not have a sole trader ABN, he had no option but to accept the payment with tax withheld. Apparently, APRA AMCOS paid the complainant a few days later. APRA AMCOS justifiably treated the complaint as resolved on 16 March 2022.

Complaints by Licensees or Prospective/Potential Licensees

APRA AMCOS Licensee Complaint 4 – CO4

440. CO4 had several complaints. One was that he had wasted time navigating the online renewal system. Another was that OneMusic would not accept payment by cheque, even though his organisation was configured so as to pay by cheque. A third complaint was that he had received eight renewal reminder notices on the same day for an invoice which he considered had been paid. The eight renewal notices had been generated by automation.

441. OneMusic responded on 19 November 2021 undertaking that the complaints would be reviewed as a matter of urgency and a response provided within 14 days.
442. On 19 November 2021, a OneMusic officer spoke with CO4 apologising for the multiple email “glitch”. On 19 November 2021, the Senior Manager, Operations at OneMusic forwarded an account statement and a copy of an invoice for the period 1 September 2021 – 31 August 2022, and advised that a credit to the complainant's account of \$22.42 had been applied to the invoice leaving a balance of \$70.02.
443. Apparently the complainant had not appreciated that there were two invoices outstanding. Once the position was explained, he paid the invoice for 2021 – 2022.
444. CO4 did not raise any further issues. OneMusic considers the matter resolved and I think it is entitled to hold that view.

APRA AMCOS Licensee Complaint 5 – CO5

445. On 2 December 2021, Commercial Credit Services, a mercantile agency used by APRA AMCOS, wrote to the complainant about an overdue sum of \$82.50. Apparently that letter was sent under cover of an email at 15:51:19 on 2 December.
446. At 16:14:56 on the same date, the complainant emailed APRA complaining at this “very, very disappointing conduct” and asserting that APRA had never sent him an invoice for any event licence.
447. The following day, 3 December 2021, at 16:14 pm, the complainant again wrote expressing his disappointment, stating:

"If you are going to escalate a debt I have never received and threaten me I would expect a response the following day.

If this is a legitimate expense I need an invoice showing what it is for.

This is not good enough."

448. On the same day, 3 December 2021 at 16:45pm, a senior lawyer at APRA responded undertaking that the complaint would be reviewed as a matter of urgency and a response provided within 14 days at the latest.

449. On 15 December 2021, OneMusic's Senior Manager, Operations wrote a detailed letter to the complainant apologising for the fact that the first contact he had received from OneMusic in relation to the invoice was from the external credit agency. The letter identified the licence to which the invoice related and enclosed a copy of the licence and the invoice. The letter advised that OneMusic had withdrawn the invoice from the external credit collection agency and that the date for payment had been extended for 28 days.

450. I note that the licence in question was a Casual Public Performance licence and that the complainant had signed the application for it.

451. Interestingly, the invoice was dated 11 February 2021.

452. APRA AMCOS state in their report to me:

"Due to an administrative error, the invoice was posted rather than emailed to the Complainant, who had expected the invoice via email. Accordingly, OneMusic Australia considered reasonable the Complainant's claim that he never received the debt invoice."

453. The complainant paid the invoice after receiving the explanation dated 15 December 2021 and OneMusic treats the complaint as having been resolved on 16 December 2021, as I think it was justified in doing.

APRA AMCOS Licensee Complaint 6 – CO6

454. This complaint related to the amount of licence fees being charged to the complainant by OneMusic. CO6 complained that the fees for the same music use had increased with the transition from APRA AMCOS to OneMusic; that OneMusic's tariff options were confusing; and that a quote was not provided by OneMusic before billing. The complainant said that he was willing to pay the amount that he had previously been charged under his APRA AMCOS licence.
455. Although OneMusic states that the complaint originated with CO6's email of 14 March 2022, in fact there was previous correspondence from at least 25 February 2022. For example, by an email of 10 March 2022, OneMusic forwarded to the complainant its invoice for \$884.37 and requested payment by Friday, 18 March 2022.
456. The complaint as formulated above was indeed made in CO6's email of 14 March 2022 and on that date, OneMusic's Senior Lawyer undertook to investigate the complaint and provide a response within 14 days.
457. On 30 March 2022, OneMusic's Senior Account Resolutions Coordinator wrote a lengthy email to CO6. The email acknowledged that a review of the account showed that CO6 had been billed a higher amount than he should have been, given a declaration of a commencement date of 29 October 2021. The email apologised for the error and noted that the correction would mean that CO6's business was unlicensed for the playing of OneMusic Australia's music for periods before 1 October 2021. The email advised that if in fact OneMusic Australia's music was being played in the earlier period, CO6 should advise of this as soon as possible.

458. The email advised him that the correct annual fee for the licence year 1 October 2021 to 30 September 2022 was \$163.39 (allowing for a one-off credit of \$62.59 from CO6's previous APRA AMCOS licence).
459. The email further pointed out that this fee for Background Music did not cover any use in the form of streaming from digital services like Spotify or Apple Music. The email advised CO6 that if he was using a streaming service he would need to extend the coverage by adding the "Digital Copy/Delivery" add-on, the licence fee for which was \$410.86 annually. This add-on would increase the fees payable for 1 October 2021 to 30 September 2022 to \$574.25.
460. Finally, the email advised CO6 that the licence fee for "Background Music" for the period 1 October 2021 to 30 September 2022 was \$225.98, and, given the credit of \$62.59, the outstanding amount was \$163.39. The email advised CO6 that, as he had requested, OneMusic would be happy to allow that outstanding amount to be paid monthly over six months commencing in April 2022.
461. CO6 replied on 30 March 2022 expressing thanks for the "comprehensive feedback". CO6 advised that he was in the process of selling the business and asked to be invoiced up to 15 April 2022 and stated that he would pay the amount of the invoice in full.
462. The next day, the Senior Account Resolutions Coordinator at OneMusic Australia advised that there was no problem in billing up to 15 April 2022, but enquired whether CO6 had been using Spotify since October 2021, in which case the account would be "pro rated" and a charge made for both Background Music and Digital Copy/Delivery. There was further correspondence in which CO6 sought and obtained clarification as to what was covered by the Background Music licence and the Digital Copy/Delivery licence.

463. An invoice was issued and paid but the APRA AMCOS report to me does not include a copy of it or otherwise make it clear whether it covered only Background Music or both licences.

464. CO6's final email dated 9 April 2022 said: "Hey Keith, all paid". Clearly, CO6 regarded the matter as finalised as did OneMusic Australia.

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

465. The report by APRA AMCOS acknowledges that OneMusic had incorrectly billed approximately 14 months' worth of fees instead of 5 months' worth. OneMusic provided a response explaining the error and apologising for it. OneMusic also clarified the two licence coverages applicable. Close attention should be given to whether the distinction between the coverages of the two licences is adequately brought home to applicants for a licence.

APRA AMCOS Licensee Complaint 7 – CO7

466. The APRA AMCOS report to me describes the complaint as one about lack of access to royalty split information for the AMCOS repertoire, and as having been made on 22 June 2022 and resolved on 5 July 2022. APRA AMCOS describe the complaint as one about lack of access to information on royalty share splits for the musical works in the APRA AMCOS repertoire.

467. In her initial email of complaint dated 22 June 2022, CO7 stated:

"Time after time I've been advised that the public online system is correct and I'm really concerned that without access to split shares, serious errors are being made with our sync licensing because we do not have accurate information.

In this case, a feature film has already been released and publishers have just sent across their licence agreements only for me to find that a 10% writer share is uncleared. Not only has the writer not provided their permission prior to the film being released but their credits have not been submitted accurately."

The final paragraph in the email stated:

"I'm currently clearing [sic- clearing?] thousands of songs for productions across various networks and streamers. Is there not any movement on granting access to music supervisors clearing songs on a regular basis? I've raised this with the publisher and they share my frustration that we do not have access as we support the licensing of their music."

468. On 24 June 2022, APRA AMCOS's Account Manager, Services & Media Licensing replied advising that the issue raised would be investigated as a priority and a response provided within 14 days.

469. On the same day, 24 June 2022, CO7 replied advising that "in the end, the songwriter has approved retrospectively but it could have turned very ugly if they didn't give permission." CO7 advised that she had experienced similar issues with "unsigned writers providing incorrect splits and invoicing in advance of a major publisher, only to find that the splits are incorrect and they have to refund the production company for over claiming their share." The complainant added that she could address any split concerns prior to paperwork if she had access, and that she just wanted to make the process as smooth as possible for publishers and writers to enable income to flow through.

470. The APRA AMCOS Director, Media Licensing wrote a detailed email to CO7 on 7 July 2022. The email advised CO7 of a number of matters:

- that for reasons of confidentiality, APRA AMCOS was unable to offer third party access directly to information on the splits registered for works;
- that while APRA AMCOS tried to keep the free public search facility as accurate and comprehensive as possible, given confidentiality

concerns and the dynamic nature of musical works ownership, detailed particulars such as splits and the status of writers are best confirmed via direct enquiries with rights holders or via the APRA AMCOS “Premium Search facility”;

- that the public search facility did include a disclaimer that it is not suitable as a tool to confirm copyright ownership; and
- that the “Premium Search facility” would probably have forestalled the problems that CO7 recently encountered as it allowed a deeper dig into the ownership of particular works, and while the facility did involve an administration fee per work, APRA AMCOS would be happy to discuss with CO7 a discounted or flat fee for volume enquiries.

471. The email gave CO7 a link by which she could obtain more information on the “Premium Search facility”.

472. In their report to me, APRA AMCOS note that there was no further response or raising of further issues by CO7 and for this reason, APRA AMCOS considers the complaint resolved.

APRA AMCOS Licensee Complaint 8 – CO8

473. This complaint concerned a failure by OneMusic to respond over more than five weeks to the complainant's request for confirmation that her account was cancelled. The complaint was made on 17 April 2022 and resolved on 27 April 2022.

474. On 17 April 2022, CO8 wrote to OneMusic referring to an email that she had sent on 8 March 2022 regarding finalisation of her account. Although I have not been provided with that email, apparently it requested confirmation that her account was closed with no amount outstanding.

475. The letter of complaint (17 April 2022) complained over the lack of a reply and indicated that the email was a "formal complaint".
476. On 20 April 2022, OneMusic replied assuring CO8 that her complaint was being investigated and that a response would be provided within 14 days.
477. On 27 April 2022, OneMusic's Senior Licensing Manager wrote to CO8 confirming that her account was cancelled and that no fees remained payable on the account.
478. The email advised, by way of background, that at the time of cancellation of the account with effect from 3 March 2022, the full annual fee of \$146 for the Licence Year 1 January 2022 to 31 December 2022 was reduced to a pro rated amount of \$24.80 for the period 1 January 2022 to 3 March 2022. The email advised that that was the amount payable under the invoice mailed on 8 March 2022. Apparently, CO8 had written on 8 March 2022 confirming that she had not conducted a relevant class since 2021 and thereupon OneMusic removed the pro rated fees from the account. The email acknowledged that, unfortunately, OneMusic had not updated CO8 advising her of that fact. The email apologised to her for the oversight.
479. APRA AMCOS and OneMusic regard the complaint as having been finalised on 27 April 2022 since nothing further was heard from CO8.

APRA AMCOS Licensee Complaint 9 – CO9

480. In its report, APRA AMCOS record this complaint as having been made on 25 October 2021 and resolved on 16 November 2021 by OneMusic Australia's having issued an apology and counselled a staff member.

481. Elaborating upon that brief account, APRA AMCOS's report to me notes that CO9 "felt pressured and harassed by OneMusic Australia, citing the tone of correspondence and the pushiness and rudeness of the OneMusic Australia staff member seeking a licence from her business".

482. The report states that CO9 complained that the complainant had already returned the licence via email, but that in spite of this, OneMusic continued contacting her business requesting that she provide the licence.

483. CO9's email of complaint dated 25 October 2021 was addressed to the individual staff member at OneMusic of whom the complaint was made. The email began by stating:

"It appears that you have made a phone call to one of my staff this morning looking for me, she politely asked if she could take a message for me as I am currently away and you were very rude to her and practically hung up on her."

The email went on to refer to the fact that the OneMusic staff member had left a voicemail message on CO9's phone saying that the matter had been handed over to the internal legal team at OneMusic.

484. The email of complaint also said that if the staff member cared to check emails he would see that CO9 had returned the licence to OneMusic Australia on Monday, 18 October.

485. On 4 November 2021, a senior lawyer at APRA AMCOS wrote to CO9 apologising for the delay in acknowledging receipt of the complaint and assuring CO9 that the matter was being investigated as a matter of urgency and that a formal response would be provided within 14 days.

486. On 16 November 2021, OneMusic wrote a lengthy email to CO9 apologising for the fact that a staff member had upset CO9's employee and had left CO9 feeling harassed and pressured.

487. The email also explained that a review of CO9's account revealed that OneMusic's email filter had wrongly classified certain emails sent by CO9 as junk mail, resulting in their not being read. The email advised that in what was suspected to be a related matter, OneMusic had not been able to locate any email from CO9 on or around 18 October 2021. The email advised that while OneMusic was endeavouring to remedy the issue with its email filter, it would be appreciated if CO9 could re-send her email along with the attached licence, so that it could be "processed".
488. On 15 December 2021, OneMusic wrote to CO9 advising that it was confident that the issue with the email filter had been resolved, and asked again that CO9 re-send the licence so that a licence for CO9's business could be established.
489. Finally, on 20 January 2022 OneMusic wrote to CO9 noting that no reply had been received from her to OneMusic's emails dated 16 November and 15 December 2021. The email pointed out as CO9 would be aware, in the absence of a licence her business was exposed to the risk of infringement of copyright if performance of music represented by OneMusic should occur.
490. The email gave a link to a portal through which CO9 could lodge an application for a licence.
491. The email concluded as follows:

"OneMusic Australia will not contact you further in respect of this matter and you do not need to respond to this email. However, as you will understand, OneMusic Australia has an obligation to uphold the rights of its members and, in the event that we become aware that music represented by OneMusic Australia has been performed at your business without an appropriate licence in place, you can expect to hear from us regarding that unlicensed use."

492. Apparently nothing further has been heard from CO9 and APRA AMCOS treats her complaint as resolved.

APRA AMCOS Licensee Complaint 10 – C10

493. In the “Complaints Summary” APRA AMCOS notes this complaint as having been made on 28 October 2021 and resolved on 5 November 2021 by OneMusic’s having issued an apology and readjusted fees. The Summary states that invoices were erroneously issued while billing was suspended as a COVID-19 relief measure.

494. APRA AMCOS explain that the period for which C10 was billed was from 1 July 2021 to 31 December 2021 when COVID-19 trading restrictions were on foot.

495. APRA AMCOS summarise their review of C10’s account as having revealed that an administrative error caused OneMusic to issue two invoices that should have been withheld as a COVID-19 fee relief measure. This, of course, caused C10’s balance outstanding to be higher than it should have been.

496. APRA AMCOS report that the account was rectified, after which OneMusic, through its Senior Management, issued a written apology to C10 and explained the error and confirmed reduction of the balance outstanding on the account.

497. OneMusic states that C10 did not respond or raise any further issues following OneMusic’s email of 5 November 2021, and that APRA AMCOS consider the complaint as resolved.

498. C10’s email of complaint dated 28 October 2021 explained that the use made of music was by way of background music in a 60-seat restaurant.

The email queried why licence fees of the magnitude in question had to be paid when the music is played from an iPad as background music only. In addition, the email complained that due to COVID-19, the restaurant had not been open most of the time.

499. The email of complaint attached a tax invoice issued by OneMusic Australia dated 16 December 2020 showing \$248.63 as an “overdue amount” and a further \$499.96 for the six-month period 1 April 2020 to 30 September 2020 making a total of \$748.59 payable by 15 January 2021.
500. Several other tax invoices were also provided by C10.
501. On 29 October 2021, a senior lawyer at OneMusic wrote to C10 assuring her that the complaint would be investigated as a matter of urgency and a response provided within 14 days.
502. On 5 November 2021 the Senior Licensing Manager at OneMusic wrote a lengthy email advising that a review of the account revealed that due to an administrative error, COVID-19 fee relief had not been applied to the account, with the result that Invoice 147477 for the licence period 1 July 2021 to 30 September 2021 for \$284.82, and Invoice 170689 for the licence period 1 October 2021 to 31 December 2021 for \$299.95 had been issued in error. Those two amounts total \$584.77. When that amount is credited off, the erroneous balance of \$955.08, the correct balance outstanding was reduced to \$370.31, and the email from OneMusic explained this position. It also explained what was comprised in the balance of \$370.31.
503. The email of 5 November 2021 enclosed tax invoices and statements which were in accordance with the position explained above.

504. C10 did not respond or raise any other issues, and even though the balance remains unpaid, OneMusic considers the complaint made to have been resolved. I think it was justified in taking that position.

APRA AMCOS Licensee Complaint 11 – C11

505. In their Complaints Summary, APRA AMCOS note this complaint as having been made on 3 September 2021 and resolved on 14 September 2021 by OneMusic. The Complaints Summary describes the complaint as the issue of overdue payment notices even though C11 always paid on the due date. The Complaints Summary records that the billing system has been adjusted to allow for more time before an automated payment reminder is issued.

506. Elaborating on this, the APRA AMCOS Complaints Summary states that C11 had “expressed various frustration with being issued unwarranted overdue payment notices, including that it was upsetting, the notices were unfair and time was wasted rechecking payments”.

507. The APRA AMCOS report to me states that prior to lodging the complaint, C11 had raised the issue with a staff member in the OneMusic Credit Team who had apologised for the inconvenience but advised that the overdue payment notices were issued automatically by the system and were beyond her control. It was because C11 was dissatisfied with that response that the complaint had been made with the request that OneMusic change its billing system to allow for more time to ensure that payments were credited before overdue payment notices were issued.

508. In his email of complaint dated 3 September 2021, C11 stated that when he receives an invoice from OneMusic Australia, he schedules the payment for the due date. He stated that “even though payment is made on the due date, he receives annoying and unjustified emails from

OneMusic about overdue payments". His email stated: "Your company should NOT claim any overdue payment, unless you are absolutely sure."

509. C11's email of complaint attached a "OneMusic Invoice Reminder – Overdue Notification" dated 2 September 2021 and a standard form OneMusic "Reminder Notice" also dated 2 September 2021 calling for payment of \$539.57 in respect of the period 1 August 2021 to 30 October 2021.
510. On 3 September 2021 a Credit Officer at OneMusic replied to C11 acknowledging receipt of payment of \$539.57 and confirming that this brought the account up to date. The Credit Officer's email advised that the Reminder Notice had been sent automatically from OneMusic's "system" and that it was beyond the Credit Officer's control. The email also apologised for any inconvenience that may have been caused.
511. On 2 September 2021 at 8:33 am C11 wrote complaining of another computer-generated reminder and pointed out that payment had been made the preceding day.
512. On Friday, 3 September 2021 at 5:45 pm a senior lawyer at OneMusic wrote to C11 advising that the issue raised would be investigated as a matter of urgency and a response provided within 14 days.
513. On 14 September 2021, a Director at OneMusic wrote to C11 advising that the point made by him had been "taken on board" with the result that the billing system had been altered so that the first reminder notice was not to be issued for 5 days of an invoice's due date (previously the system was set to one day).
514. On 14 September 2021, C11 replied as follows:

“Thank you so much for the feedback and for taking effective actions to correct the issue. I was very glad to read your very [sic] message. It showed a high level of professionalism.

Thank you also too [sic – for?] providing your contact details, should I need further assistance. I really appreciate that.”

515. OneMusic justifiably regarded the complaint as resolved on 14 September 2021.

Copyright Agency Limited (“Copyright Agency”)

General

516. In its report to me, Copyright Agency sets out cl 2.3 of the Code, and addresses, in turn, the subparagraphs (a) – (h) of that clause.

517. In relation to *paragraph (a)*, Copyright Agency reports that it has adopted a range of policies and processes aimed at ensuring that licensees are treated fairly, honestly, impartially, courteously and in accordance with its Constitution and licence agreements. Those policies and processes include a “Service Charter”, induction training for new staff, and periodic updates to staff on the requirements of the Code.

518. In relation to *paragraph (b)*, Copyright Agency’s report identifies information on its website about licensing. Copyright Agency has data access arrangements with the Copyright Advisory Group to the Australian Education Senior Officials Committee (**CAG**) and with Universities Australia (**UA**) to provide access to data from surveys in schools, universities and TAFEs. The survey records are “processed” by Copyright Agency for the purpose of providing information that forms the basis of estimates of content usage under the statutory licence, in accordance with data processing protocols agreed with CAG and UA. The information is taken into account in licence fee negotiations. Surveys in schools have been

“paused” since March 2020 by agreement between Copyright Agency and CAG

519. In relation to *paragraph (c)*, Copyright Agency publishes information about licences and licence schemes on its website and on its RightsPortal website (rightsportal.com.au), and in other ways. Its report states that it regularly reviews the terms of its licence agreements to ensure that they are written in plain language, correspond to the society's mandate and reflect feedback from licensees.
520. In relation to *paragraph (d)*, Copyright Agency deals mostly with bodies or departments representing classes of licensee, eg CAG, UA and the Attorney-General's Department. According to Copyright Agency's report to me, it was, at the time of that report, in negotiations with CAG in relation to new arrangements for 2023 for the school sector and the TAFE sector. Copyright Agency has informed me that it subsequently reached a new agreement with CAG for the schools sector for 2023-2025 (with an option to extend to 2026), and for the TAFE sector for 2023-2024.,
521. In May 2022, the Copyright Tribunal issued its determination regarding licence fees payable by the 39 UA members: *Copyright Agency Limited-v-The University of Adelaide* [2022] ACopyT 2. In June 2022, however, the respondent universities applied to the Federal Court for judicial review of aspects of the Tribunal's determination. That application (*The University of Adelaide-v-Copyright Agency Limited* NSD 486/2022) was fixed for hearing on 28 November 2022 but the Court advised the parties that for COVID-related reasons the matter was not able to proceed then and would be rescheduled for a date in the February 2023 sitting period.
522. During the Review Period, the Copyright Tribunal issued a determination regarding the licence fees payable by media monitoring organisations. The applicants in the proceeding were Isentia Pty Limited (**Isentia**) and

Meltwater Pty Limited (**Meltwater**). On 15 October 2021 the Tribunal published a redacted version of its determination. The final public version was issued on 18 July 2022 (itself containing redactions): see *Application of Isentia Pty Ltd* [2021] ACopyT 2. Copyright Agency sought judicial review of certain aspects of the Tribunal's determination. A full court of the Federal Court heard the application in May 2022 and the Court's decision was reserved. Copyright Agency and Isentia subsequently reached a settlement. In that state of affairs, with judgment scheduled to be delivered on 23 September 2022, at 3.00 am on that date a notice of discontinuance was lodged as between Copyright Agency and Isentia. The Court delivered judgment later that day as between Copyright Agency and Meltwater: see *Copyright Agency Ltd-v-Isentia Pty Ltd* [2022] FCAFC 163. I am informed that Copyright Agency remains in discussions with Meltwater. For discussion of a submission made by Isentia to the Code Compliance Reviewer, see [644]ff below.

523. In relation to *paragraph (e)*, Copyright Agency acknowledges the role of industry associations, including the Public Relations Institute of Australia, the Australian Local Government Association, the Association of Corporate Counsel, Early Childhood Australia and Independent Tertiary Education Council Australia.
524. In relation to *paragraph (f)*, Copyright Agency's Commercial Licensing team worked with the Australian Psychological Society (**APS**) to develop a licence for its sole practitioner members which the APS considered would be of benefit to them.
525. In relation to *paragraph (g)*, Copyright Agency provides information in response to requests for further information in connection with the negotiation of licence fees.
526. In relation to *paragraph (h)*, Copyright Agency reports that it did not

receive any request for an alternative dispute resolution facility in the Review Period.

Particular Complaints

Copyright Agency Complaint 1 – CA1

527. The first complainant describes itself as a “small publisher”. In its letter of complaint dated 17 June 2022, it stated that until 2019 more than 90% of its sales were within a particular state. It states that for many years it has been attempting to expand its national footprint and that in 2020, 2021 and 2022 its national sales have grown considerably. In fact, sales in the other states have now exceeded sales in the “home state”.
528. The complaint is that there has not been a corresponding increase in royalties paid to the complainant. More precisely, the complaint is that Copyright Agency has not conducted surveys of the use made of its works in schools.
529. There are related complaints: that Copyright Agency did not reveal until the very end of the financial year that no survey had been conducted and that a calculation of averages had been used instead; and that Copyright Agency had not provided a sufficiently detailed insight into how the royalty income for the publisher for 2020, 2021 and 2022 were calculated.
530. Copyright Agency replied at some length on 24 June 2022. That letter attached correspondence extending over a period from 1 February 2021 to 25 January 2022.
531. There has been more recent correspondence between the complainant and Copyright Agency. On 24 June 2022 Copyright Agency wrote to the complainant at length, replying to the letter of complaint dated 17 June

2022 referred to above. Copyright Agency's letter provided links to information sheets that were published on Copyright Agency's website for the last four years' distributions (2019, 2020, 2021 and 2022). The letter provided other links to communications from Copyright Agency to its members. The letter concluded by advising that Copyright Agency would include CA1's concerns in Copyright Agency's report to the Code Compliance Reviewer.

532. On 11 August 2022, CA1 responded expressing thanks for the information provided and making requests for further information, to which Copyright Agency responded on 22 August 2022. That letter provided further information and noted that a meeting was scheduled to take place in the near future between representatives of the complainant and the publisher.

533. Copyright Agency's Manager of Partnerships and Stakeholder Engagement had an in-person meeting with representatives of the complainant in their home city. The subsequent correspondence, which has been provided to me, makes it clear that cordial relations were established between the parties. In an online meeting between Copyright Agency's Policy Director and representatives of CA1 on 3 November 2022, the latter expressed satisfaction with the information that Copyright Agency had provided to them.

534. It seems to me appropriate that Copyright Agency regarded the complaint as having been resolved.

Copyright Agency Complaint 2 – CA2

535. This complainant was a publisher. It publishes books on such subjects as (quoting from one of its emails): “backyard chooks, backyard pizza ovens, backyard permaculture, eco-friendly home renovations, aquaponics, and organic gardening”.

536. CA2 complained that of "35 + works" which it had published, only two works were picked up in Copyright Agency's survey each year. It asserted that it had far more copies of its titles in TAFE libraries than the two picked up in the Copyright Agency surveys. As well, it complained that the two titles picked up had less sales than others of its publications.
537. Essentially, then, the complaint was that the Copyright Agency surveys were faulty for failing to pick up all, or at least sufficient, of its works. The complainant asserted that the deficiency means that it may be missing out on \$30,000+ per year and that that has been the case for years.
538. Copyright Agency replied that it surveys a number of schools and TAFEs each year and that only a few teach "agricultural subjects" and the suggestion made was that this might explain why the complainant's works were not being picked up in large numbers in the surveys. Copyright Agency said that its surveys "move around schools, TAFEs, universities etc, and also between city and country and across the states".
539. Copyright Agency made the point that "ELR/PLR" should be paying the complainant for works held in libraries so long as the works are registered with them. I take the acronyms to refer to the Educational Lending Rights scheme and the Public Lending Rights scheme administered by the Commonwealth Department of Infrastructure, Transport, Regional Development and Communications – Office for the Arts.
540. The complainant was not satisfied with this explanation. It stated that the readers of its works were about 50/50 amongst city and country dwellers and that not one of its publications is "agricultural".
541. Copyright Agency suggested that due to the subject matter of the complainant's titles, it was not likely that they would be widely copied.

Copyright Agency stated in an email dated 28 April 2017:

"If your works are not copied and picked up in the surveys we are unable to make allocation of funds.

We do not pay on works either copied or held in libraries, neither do we pay royalties on the sales of titles.

Publications which sell well are less likely to be copied. Once again, if titles are not picked up in our copying surveys, they are not remunerable."

542. On 23 June 2022, the complainant asserted that it had published more than 50 books, yet Copyright Agency was deeming only two of them to be eligible for royalties. The complainant said it had been patiently waiting for an analysis and reply but nothing had been forthcoming. It said that it wished to make a formal complaint to the CEO of Copyright Agency.

543. The CEO referred the matter to the Policy Director of Copyright Agency who wrote to the complainant on 24 June 2022 explaining Copyright Agency's system and provide a link to a summary of it. The Policy Director's email stated:

"As explained in the information sheet, we select titles for distribution from our database, which currently includes more than 620,000 book titles. The selection of titles for the books and journals pools each year is based on a "subject matter profile": the subject matter areas likely to be used in governments and the relative proportions of each. We conduct a statistically random selection process to select titles with the relevant subject matter. There were about 33,000 titles in the data set for distribution of the pool for books and journals in 2022.

The process of distribution of licence fees from corporations to books is similar.

For distribution of licence fees for TAFEs, we primarily use library holdings data provided by TAFEs. You can see the information sheet for the 2021 of licence fees from TAFEs **here** [link provided].

Your titles have not appeared in surveys conducted in schools. Most of the materials copied in schools has been published specifically for the school sector. You can see the sorts of titles commonly copied in schools **here** [link provided]."

544. The Policy Director's email went on to refer to a provision of the Distribution Policy which allows for the making of discretionary (ex gratia)

payments to rights holders who can establish that their work was substantially copied under a licence administered by Copyright Agency, but who received little or no payment from Copyright Agency for that use.

545. The complainant responded on 27 June 2022 advising that it was aware of most of the information in the email but that its complaint stood.

546. The complainant remains dissatisfied with what it describes as “an appalling organisation”.

547. The complainant regarded Copyright Agency as “stonewalling” and Copyright Agency said that the matter would be referred to the Code Reviewer.

548. CA2’s complaint concerns the adequacy of Copyright Agency’s survey system. Apparently, the complainant is not in a position to prove that the titles in question have in fact been copied but is confident that they must have been. Apparently, therefore, CA2 considers that for lack of evidence, it is not in a position to seek an ex gratia payment under the Distribution Policy. In order to know whether there is substance in CA2’s complaint, I would need to conduct a significant investigation into the methodology underlying the survey, which may well, in any event, lie outside the scope of clause 2.2 of the Code. Having said that, I would be willing to convene an online meeting of representatives of CA2 and Copyright Agency to explore the issues further if both parties are willing to participate in such a meeting. I have found that such meetings have often been useful.

Copyright Agency Complaint 3 – CA3

549. CA3's complaint related to Copyright Agency's Cultural Fund. CA3 complained about a publisher-recipient of the funding which, he believed, had misused the funds.
550. Apparently, the Cultural Fund provided funding for a certain literary award which was administered by a publisher. Last year, CA3 learned that he had won the award. A few days prior to his email of complaint, he learned that the publisher had decided to withdraw its offer to publish his book.
551. CA3 complains that the publisher had exploitatively used his project to apply to the Australia Council for the Arts for a \$40,000 grant and that the grant was refused, one of the grounds of refusal being that CA3 was not to receive any part of the \$40,000. CA3 asserted that since February 2022 he had worked with a typesetter to develop his book, and the publisher later informed him that that was to be at his expense. He states that the publisher's editor provided limited feedback but pressured CA3 to contribute additional funds on multiple occasions. He states in his email of complaint (dated 2 May 2022) that some of the other runners-up expressed similar grievances to CA3, stating that the publisher had requested financial contributions from authors to fund publication. He added: "I do not believe that artists should have to sacrifice the little prize money they receive in order to compensate for a publisher's budgeting miscalculation".
552. CA3 was provided, apparently by the publisher, with a draft contract and the typesetting was finalised. He showed the draft to a lawyer who had a number of reservations about the fairness of it, and this prompted CA3 to seek clarification from the publisher. It seems to have been in response to

CA3's statement that he was awaiting legal advice that the publisher advised that the offer of publication had been withdrawn.

553. CA3 concluded:

"I am deeply concerned with how this publisher has used the Copyright Agency Cultural Fund grant they received. I believe they have exploited me and other writers in the process. I hope that the Copyright Agency will follow up this complaint and take it seriously."

554. Copyright Agency replied on 5 May 2022 undertaking to give a substantive response within 21 days.

555. On 6 May 2022, CA3 acknowledged receipt and assured CA3 that his complaint would be investigated and that Copyright Agency would respond substantively within 21 days, ie by Friday 3 June.

556. On 6 May 2022, CA3 wrote to Copyright Agency stating that he had not made the complaint lightly and felt that it was necessary to make it in order to ensure that other writers were protected.

557. On 2 June 2022, Copyright Agency wrote to CA3 giving the result of its investigation which was that the Cultural Fund grant money had been used by the publisher in accordance with the conditions of the grant. Copyright Agency's letter stated:

"We understand, for example, that the withdrawal of the offer of publication by the Publisher occurred following a breakdown in negotiations between you and the Publisher in relation to the manner and scope of the publication, rather than a misuse of grant funds by the Publisher."

Copyright Agency's letter stated that in light of this, it considered that the matter had now been concluded but that in any event the complaint and the response to it would be made available to the Code Reviewer.

558. Finally, on 9 June 2022, CA3 wrote to Copyright Agency:

Copyright Agency "I accept your review and appreciate you treating my complaint seriously."

559. Nonetheless, CA3 asserted that the withdrawal of the offer of publication did not occur because of "negotiations...in relation to the manner and scope of the publication", but on account of his questioning the fairness of the contract that had been proffered by the publisher.
560. He stated: "I do not believe the contract I was presented with was fair with respect to the recommendations made by the Australian Society of Authors and the legal advice I was given". He added: "If the Copyright Agency does not regard this circumstance as a misuse of funds, then it is certainly an inefficient use of funds". He explained that thousands of dollars and hours of work had been invested with no cultural output to show for it.
561. He finished by expressing the hope that Copyright Agency would take the feedback seriously and that the Copyright Agency Cultural Fund would prioritise awarding grants to publishers who budget responsibly and are fair to authors.
562. On 14 June 2022, Copyright Agency responded, thanking CA3 for raising his concerns and assuring him that Copyright Agency took complaints of the kind raised by him seriously and that his comments and concerns had been taken on board for consideration.
563. In response to a request from me, Copyright Agency has provided the underlying documents. They show that the application for the grant was made by the publisher, not by the author. The publisher's application explained that it offers an annual literary award. The application stated that the award: "provides significant remuneration to authors producing high quality examples of the short fiction form and assists them to find wider audiences for their work". The publisher's application stated: "Submissions are called for nationally and each year the winner and two

finalists are awarded prize money and digital publication contracts with [the publisher]”.

564. The publisher sought funding of \$9,000 per year over three years (a total of \$27,000). According to the publisher’s budget, the \$9,000 included a winner’s prize of \$3,000 and two runner up prizes of \$1,000 each. The remaining \$4,000 was to fund a “judge fee” of \$1,000, “editorial fees” of \$1,000, a “creative director fee” of \$1,000 and an “artist commission” of \$1,000. Over and above this, there would be “digital production fees” and “audio production fees” aggregating \$5,000, which would be funded by the publisher itself to the extent of \$4,000 and from sales to the extent of \$1,000.
565. The application was made on 11 May 2020 and on 28 May 2020 Copyright Agency wrote to the publisher advising it that a grant of \$9,000 had been approved for the project (apparently at that stage the approval was only for the first of the three years). The letter set out certain conditions associated with acceptance of the grant. One of these was that a satisfactory “acquittal report” was to be submitted within two months of completion of the project.
566. The publisher provided the Acquittal Form on 19 May 2022. It reported that CA3 had been the winner and had been paid the winner’s prize of \$3,000. It also identified the two runners up who had each received \$1,000. Then the Acquittal Form stated that for the first time in the history of the award, it had been decided to release all titles in print as well as in digital format. It reported that the manuscripts of the two runners up were released in ebook, audiobook and paper back formats on 1 January 2022, and that the winning manuscript was due for release in ebook and print formats on 1 June 2022, but that “due to a breakdown in relations, the offer of publication was withdrawn on April 30, 2022”.
567. On page 3 of 7 of the Acquittal Form, the publisher explained this in some detail. The report describes CA3 as a “digital literature expert” and said

that he requested the “use of a complex code which typifies contemporary digital literature”. Apparently, this could be achieved within the publisher's technical expertise, but not within its budget. The Acquittal Form states that to that end, it was agreed that CA3 would seek additional funding, and a release date of 1 June 2022 was set. But since by 30 April 2022, CA3 had not signed the publishing agreement and was still seeking edits to the manuscript, the publisher withdrew the offer of publication.

568. The outcome was unfortunate. But it must be remembered that the application for the grant from the Cultural Fund was made by the publisher, not by CA3. There was no contractual arrangement between Copyright Agency and CA3, who does not suggest otherwise. His point is that he was treated shabbily by the publisher in relation to (1) its unexpected demand that he find funding for the project, and (2) its unwillingness to negotiate over the terms of the publishing agreement. It would require some time, effort and expense on the part of Copyright Agency to delve into the rights and wrongs of the dealings between CA3 and the publisher. I do not think Copyright Agency can be criticised for being unwilling to undertake that task. The ultimate question that Copyright Agency would have to answer is whether CA3 or the publisher had behaved unreasonably in their dealings with one another—dealings in which Copyright Agency had no part.

Copyright Agency Complaint 4 – CA4

569. CA4 was a local government council. The letter of complaint was written by its General Counsel. The background to the complaint is that the council had about 100 “positions” that may use copyright material in the performance of their duties and that a licence linked to those positions would be reasonable and appropriate.

570. The complaint was that an officer of Copyright Agency had asserted that

because creators of the material believed that they were not being adequately compensated, council must pay Copyright Agency for **all** council FTE (Full Time Equivalent) staff, regardless of whether they actually used any copyright material.

571. What seems to have sparked the complaint was that the Copyright Agency officer had stated in an email dated 4 March 2022 that unless council accepted Copyright Agency's position, the officer would "request our legal and compliance team to take further legal action against council for your copyright infringement".
572. The letter of complaint indicated that the writer was not aware of any previous legal action or of the infringement to which the Copyright Agency officer was impliedly referring. Of course, General Counsel also (rightly) complained about the threatening, coercive and intimidatory language used by the Copyright Agency officer.
573. The letter of complaint concluded with a statement that council was open to continuing discussions and requested Copyright Agency to nominate someone within its organisation with whom the discussions could continue "in a reasonable and responsible manner".
574. Copyright Agency replied on 6 April 2022 apologising and explaining that the officer had intended to convey a meaning different from that which his email in fact conveyed.
575. In its report to me, Copyright Agency concludes to the effect that Copyright Agency's Director of Commercial Licensing spoke to the council representative by phone on 17 June 2022, and that the discussion was "amicable", with a resolution that the council would consider an offer by Copyright Agency of an amended licence.

Code Compliance Reviewer's comments (if any, and to the extent called for

576. The communication from the Copyright Agency officer was clearly inappropriate. It is fortunate that council was prepared to be conciliatory, notwithstanding the offensive email.

Audio-Visual Copyright Society Limited (“Screenrights”)

577. Screenrights reports that its procedures with respect to clause 3 of the Code are available in the Corporate Governance section of its website, which includes information on complaints handling procedures and on procedures for resolving disputes between Screenrights and licensees and between Screenrights and its members.

578. The Society reports that through its yearly Code of Conduct training and staff inductions, Screenrights ensures that staff are trained to understand that responding to complaints and resolving disputes in a timely manner is a key priority.

579. Happily, Screenrights reports that it received no complaints in the Review Period.

580. Screenrights reports that in the Review Period it received over 83,000 registrations of claims from members. This brought the total number of registrations up to almost 1.7 million. Members can claim royalties currently held by Screenrights, or in anticipation of royalties to be potentially collected in the future, by registering their claimed entitlements to collect and warranting to Screenrights that they are entitled to claim.

581. When members register a claim to an entitlement, they provide details to Screenrights indicating that they own or control the right(s) to collect Screenrights royalties and the extent of their entitlement to collect

royalties for a title, including the type of royalties that they are claiming and the percentage claim of each copyright material being Film, Script or Commissioned Sound Recordings. When a member registers a claim, the member warrants that the information provided is correct.

582. If more than one member asserts a claim to the same royalty, this triggers a 'competing claim' mechanism. A competing claim arises when Screenrights receives more than one registration for a title from different members asserting a claim to the same royalty. Over the Review Period, Screenrights opened competing claims in respect of 363 series and 891 one-off programs. It notified the members that they had competing claims through direct communication and via Screenrights' online portal, "MyScreenrights".

583. Screenrights' "Competing Claims Resolution Procedures" (**CCRP**) sets out options for resolution of competing claims, which includes Independent Expert Determination under the Alternative Dispute Resolution Procedure (**ADR**). Screenrights reports that in the Review Period it made no substantive changes to the CCRP which is available on its corporate website.

584. Finally, Screenrights reports that at the date of its report to me, competing claims had been closed for 503 series and for 1,271 one-off programs. No requests were received from members for a determination to be referred to an Independent Expert.

Phonographic Performance Company of Australia Ltd ("PPCA")

General

585. PPCA states that it has a Complaints Handling Policy which provides the framework for the handling of complaints in a fair, reasonable and timely manner. The Policy is available on the PPCA website.

586. Staff members are informed about the Policy upon commencement of their employment at PPCA and are provided with a copy of the Policy with their orientation package. They are regularly reminded about the Policy at staff meetings and at "Code of Conduct training".

587. The Policy is overseen by a "Complaints Officer" who has access to all staff members, PPCA documents and correspondence.

588. The Policy was not updated during the Review Period.

589. During the Review Period, PPCA received one complaint from a third party who was not a licensor, Registered Artist or licensee.

PPCA Complaint 1

590. In July 2021 a recording artist contacted PPCA complaining that a PPCA licensor had infringed copyright in the artist's recording by distributing it without authorisation. PPCA's Complaints Officer responded the same day, thanking the artist for that information.

591. The Complaints Officer and other PPCA staff checked the recording to which the artist was referring and informed the artist that the licensor had not attempted to register the recording with PPCA.

592. As a result, the dispute was a matter between the artist and the licensor, and PPCA could not provide any further assistance, although it undertook to inform the artist if the licensor attempted to register the recording with PPCA.

593. The artist replied to PPCA on the same day thanking PPCA for its response, and PPCA considered the complaint closed, as it was entitled to do.

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

594. 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 (International Confederation of Societies of Authors and Composers) and Australian Standard AS4269-1995 (Complaints Handling).

595. During the Review period, AWGACS received no requests from members for these documents and received no complaints from its members or affiliates.

596. During the Review Period, the Procedures were reviewed by CISAC.

Australian Screen Directors Authorship Collecting Society Ltd ("ASDACs")

597. ASDACS reports that in the Review Period no formal complaints were lodged. It reports that its system is such that if there had been any, they would have been identified in its dedicated Complaints Register, separate from other general interactions with members.

D. COMPLAINTS MADE DIRECTLY TO THE CODE COMPLIANCE REVIEWER

598. Submissions were received from Ausdance QLD, Isentia Pty Ltd, Live Performance Australia and Nightlife Music in response to the advertisement inviting submissions.

599. Nightlife Music withdrew its submission and therefore it remains with me to deal only with the remaining three submissions.

Ausdance QLD

600. Ausdance QLD made a submission dated 28 July 2022. The submission states that “[t]he Australian Dance Council, Ausdance (QLD) Inc, is the industry association (peak body) for dance in the state [Queensland]”. It states that it is a registered non-profit membership organisation serving all forms of dance in the state, and that its members are individuals, companies, organisations and community groups across all styles and cultures, from First Nations to ballet, contemporary dance and multicultural dance. Ausdance QLD is a member of the federated Ausdance network.

601. Ausdance QLD has 1,612 members, individuals, groups and organisation representing the dance community of approximately 25,000 dance practitioners.

602. According to the submission, Information relating to the submission was gathered in July 2022 as follows:

- 7 live online consultation sessions attended by 133 members;
- in-person consultations in Brisbane, Toowoomba, Townsville and Cairns attended by 101 members; and

- responses to a survey distributed to all members and completed by 113 members.

603. Ausdance QLD states that it has advised over 100 individual members about music licensing since August 2021. In its submission, Ausdance QLD lists 13 organisations of which its members and major stakeholders form part. It says that these organisations alone represent audiences/participants of over 100,000 Queenslanders annually.
604. The submission states that all dance organisations, groups, individuals or businesses using music in the practice and performance of dance should hold a “music copyright licence”; that most dance organisations should hold OneMusic licences; and that there should be no barriers to the holding and maintaining of a licence.
605. Ausdance QLD’s substantive submission is divided into 8 sections, to all of which APRA AMCOS has replied, setting out what Ausdance QLD has said and the replies to it in a table. I have decided to set out that table below, and for that reason will give only the briefest of summaries here..
606. In *Section 1* it is stated that those consulted agreed that the Code has not been adequately referred to in dealings between APRA AMCOS and licence holders or potential licence holders, The submission continues by asserting that much should be done by APRA AMCOS to inform dance participants.
607. *Section 2* states that all dance organisations, groups, individuals, or businesses using music in the practice or performance of dance should hold a music copyright licence”. *Section 2* goes on to state that there should be no barriers of any kind to the holding and maintenance of a licence.
608. In *Section 3* of its submission, Ausdance QLD states that the existing system

relies on an assumed level of knowledge that does not in fact exist. It also complains about the complex administration of OneMusic and asks for clearer processes.

609. *Section 4* of the submission identifies, in general and summary terms, what it says are breaches of cll 2.3 and 2.4 of the Code.
610. According to *Section 5* of the submission, Ausdance National, SA, ACT, Vic, NSW and WA do not have financial or personnel resources to address, oversee or manage improvements in music licensing/copyright collection, and there are no representative Ausdance organisations in The Northern Territory or Tasmania. *Section 5* goes on to state that the national Ausdance network has agreed that Ausdance QLD should have the role of securing improvements on behalf of the broader dance sector.
611. *Sections 6, 7 and 8*, respectively, recommend a staged approach to improvement over the next 5 years; acknowledge a difference between larger and smaller businesses in their ability to administer copyright licences; and recommend "General Actions" and "First Nations Actions" required to improve the transparency and effectiveness of music licensing.
612. The submission concludes with a number of recommendations which are set out in the table below together with APRA AMCOS's responses to them.
613. APRA AMCOS provided a detailed response to the eight sections of Ausdance QLD's submission. APRA AMCOS repudiate many of Ausdance QLD's allegations but, of course, agree with the statements in section 2 of the submission.
614. For present purposes the most pertinent part of the Ausdance QLD's submission is *Section 4*, but I am quoting below the table that provided

the core of the APRA AMCOS submission which set out the completing positions of Ausdance QLD and APRA AMCOS on all 8 Sections (the first column inevitably contains some repetition of what I have said above):

Ausdance QLD statements	OneMusic response
<p>1. Code of Conduct for Copyright Collecting Societies In considering whether the code of conduct covers all principles required for the Australian dance context, it was agreed the code of conduct has not been adequately referred to in dealings between collecting societies and license-holders or potential license-holders. It was agreed there is a lot of work required to properly articulate, resource and guide safeguarding First Nations intellectual property by all collecting societies.</p>	<p>APRA AMCOS rejects the suggestion that OneMusic has failed to adequately refer to the <i>Code of Conduct for Collecting Societies (Code)</i> in its dealings with Ausdance Qld members. APRA AMCOS regrets that the existence of the Code or its application may have been unclear to Ausdance QLD or its members. However, both APRA AMCOS and PCCA (the parties that have agreed to be bound by the Code) make information available to the public on their respective websites (see https://www.apraamcos.com.au/about/governance-policy/code-of-conduct and https://www.pcca.com.au/code-of-conduct).</p> <p>While APRA AMCOS appreciates that the intellectual property framework in Australia is often deficient with regards to supporting indigenous peoples and practices, APRA AMCOS strongly supports any action that will promote and safeguard indigenous intellectual property, including by our operational and financial commitment to the <i>National Aboriginal and Torres Strait Island Music Office (NATSIMO)</i> and the creation of a dedicated full-time <i>Senior Manager Culture & Engagement</i> position to assist with implementation of a <i>Reconciliation Action Plan</i> for APRA AMCOS.</p>
<p>2. Organisations that should hold licences or pay copyright fees All dance organisations, groups, individuals, or businesses using music in the practice and performance of dance should hold a music copyright license. It is important to ensure there are no First Nations Cultural, cultural (non-Indigenous) social, geographic, communication or economic barriers to holding and maintaining a license. The vast majority of dance organisations should hold OneMusic licenses.</p>	<p>We wholeheartedly agree that those organisations and businesses using musical works and recordings that are protected by copyright, should hold appropriate permissions of the holders of that copyright or their agents. We note, of course, that in some instances – such as for personal use in the home or when all such material is in the public domain – a public performance licence is unnecessary.</p> <p>We also agree that any and all barriers to holding and maintaining an appropriate music licence should be minimised to the greatest extent possible. In that regard, OneMusic sets its rates and rates structures with due regard to equity (with larger licensees paying considerably more than small licensees), competitive neutrality (with like businesses being licensed in a like way) and simple dispute resolution processes (with the establishment of the</p>

Ausdance QLD statements	OneMusic response
	independent alternative dispute resolution provider, <i>Resolution Pathways</i>).
<p>3. Consultation response summary</p> <p>The unanimous opinion of participants in consultations is that the current music licensing system is inadequate. The current system relies on assumed general knowledge, goodwill, and commitment by organisations to comply, as well as capability in a diverse range of business administration and dance group situations. A lack of consistent messaging, clear processes, ongoing training, transparent and effective royalty payment systems and leadership in this area means members often elect to avoid acquiring a license altogether rather than navigating the complex administration of OneMusic. Broader community awareness is required alongside improved and consistent collaboration with OneMusic.</p>	<p>APRA AMCOS disagrees that the current licensing system for dance is inadequate, albeit we are always willing to listen and understand how we may be able to enhance our licensing practices where there are broad industry concerns.</p> <p>In that regard, we believe we have already moved some way towards a simpler and more user-friendly music licensing environment for dance.</p> <p>In 2019 APRA AMCOS and PPCA partnered to offer musical works and sound recording licences under a single 'one stop shop' with OneMusic. Dance schools now generally require just one licence to use our music - the <i>Dance & Performance Instructors and Dance Schools</i> licence. Prior to OneMusic, dance schools would often require three separate licences with three separate payment terms and conditions: one from APRA for the performance of musical works, one from PPCA for the performance of sound recordings and one from AMCOS/ARIA for the reproduction of musical works and sound recordings.</p> <p>While we acknowledge that effective communication requires constant attention and maintenance, we always endeavour to provide relevant and simple information to our licensees.</p> <p>It is our view that the current arrangements provide for administrative simplicity and clarity, including through the publication on the OneMusic website of plain English information guides for all our scheme, including <i>Dance & Performance Instructors and Dance Schools</i>. However, if Ausdance QLD is able to identify any specific concerns with our standard correspondence, agreements and associated documentation, we would be happy to work with them to improve any gaps in clarity and transparency.</p> <p>Lastly, we note that the licence scheme for <i>Dance & Performance Instructors and Dance Schools</i> has not changed during the reporting period and, accordingly, no industry consultations have been requested nor taken place in that period.</p>
<p>4. Breaches of Code of Conduct for Copyright Collecting Societies (May 2022)</p> <p>Through consultation, Ausdance QLD has identified instances of apparent breaches of the</p>	<p>APRA AMCOS is very concerned to hear reports of behaviour that may constitute breaches of the Code. APRA AMCOS takes its responsibilities under the Code very seriously and we always endeavour to conduct our interactions with licensees in accordance with our responsibilities. To date,</p>

Ausdance QLD statements	OneMusic response
<p>Code of Conduct by the primary collecting group, OneMusic. These breaches have been reported by multiple members, and do not include breaches reported by single members.</p> <p>a. 2.3(a)</p> <p>i. OneMusic's customer service and advice has lacked consistency</p> <p>ii. OneMusic staff are regularly discourteous to license holders</p> <p>iii. OneMusic staff investigate license holders without their knowledge</p> <p>b. 2.3(b)</p> <p>i. All respondents believe dealings with OneMusic are not transparent, including but not limited to</p> <p>1. 2.3 (c) i Lack of transparency about the manner in which the Collecting Society collects license fees for the use of copyright material</p> <p>2. 2.3 (c) ii license fees, terms and conditions are not plainly understandable to licensees</p> <p>3. 2.3 (f) OneMusic has not consulted in good faith with relevant industry associations. Ausdance QLD is the largest peak industry association of the dance sector. There are other state Ausdance organisations and a national Ausdance (part of a federated network), however Ausdance QLD is the most appropriate key organisation. Ausdance QLD does not believe we have been properly consulted (issues of members heard, reflected and resolved satisfactorily)</p> <p>4. 2.4 Ausdance QLD members do not believe payments are distributed equitably to rights holders of music used in dance activities. Members have requested</p>	<p>OneMusic is not aware of any dance licensee complaints in respect of OneMusic's conduct that would rise to a breach of the Code, despite APRA AMCOS having recently filed all complaints to the Code Reviewer for the period between 1 July 2021 to 30 June 2022.</p> <p>In that regard we would be very open to review and address particular instances of alleged discourteous behaviour, if Ausdance QLD were minded to pass on the details of those particular reports.</p> <p>That said, we reject any suggestion that our customer service is intentionally providing inconsistent advice to Ausdance QLD members or otherwise. Again, if there's specific clarity that Ausdance QLD members require APRA AMCOS and/or OneMusic Australia staff are available.</p> <p>With regard to point (a)(iii), we strongly reject that our compliance regime should, by its very nature, be seen as an act in breach of the Code. Compliance work is regularly carried out to ensure that licensees are properly licensed, both to ensure equitable licensing across the industry and to avoid unintentional copyright infringement by inaccurate declarations of music use. While this is often done without the knowledge of the licensee - so as to avoid circumvention – we always do so without disruption. It is our view that this is an integral part of equitable licensing practice and should not been considered in any way as an inevitable breach of the Code.</p> <p>OneMusic rejects the suggestion that it lacks transparency in the way it collects fees for copyright material. OneMusic's rates and rate structures are readily available on its website, including in further detail in our plain English guides. While we acknowledge that there's a level of complexity to music licensing due to the nature of copyright, we note that our terms and conditions are written in a 'plain English' style and we have acted to reduce 'legalese' with the advent of the OneMusic licences.</p> <p>We categorically reject the claim that OneMusic has not consulted in good faith. Instead, we would point out that OneMusic undertook a detailed consultation for dance starting in November 2017, which concluded with the release of a Final Position Paper in September 2018.</p> <p>During that time we made all of the then current dance school licence holders aware of the consultation and consulted with over 40 state and national dance organisations, including Ausdance QLD. The feedback we received from organisations</p>

Ausdance QLD statements	OneMusic response
<p>detailed information and have not been satisfied with OneMusic's response. Whilst OneMusic's website explains it isn't practical to pay rights holders for every piece of music, a copy of OneMusic's distribution policy does not appear to be published on its website.</p> <p>5. Sectors and states/territories with insufficient peak body representation Ausdance national, SA, ACT, VIC, NSW and WA do not have financial or personnel resources to address, oversee or manage improvements in music licensing/copyright collection. There are no representative Ausdance organisations in NT or TAS. The national Ausdance network has agreed that Ausdance QLD lead improvements in this area on behalf of the broader dance sector.</p>	<p>and licensees led to changes being made to the proposed OneMusic licence scheme. We note that, while Ausdance QLD agreed to notify its members about the consultation, it did not lodge its own submission.</p> <p>Since the introduction of the OneMusic scheme in 2019, we have conversed via email and online meetings with Ausdance QLD, including to discuss improved collection of music use data. At no stage have concerns such as those put forward in this submission been raised during those discussions.</p> <p>In relation to point (b)(i)(4), OneMusic rejects the allegation that it does not distribute equitably to its members and other rights holders.</p> <p>To correct a misunderstanding in that regard, OneMusic does not undertake distributions itself, rather the licence fees are paid through to APRA and PPCA (and in the case of the dance school licence, AMCOS and ARIA also) and those companies undertake distributions to each of their members, licensors and affiliates.</p> <p>As a result of above, the distribution rules and practices for each of the licensors is available for their individual websites, and not the OneMusic site (albeit that a link is provided see https://onemusic.com.au/faqs/#1621).</p> <p>For completeness on this matter, APRA AMCOS has recently introduced a series of Distribution Guides, with a dedicated one for dance schools available here https://www.apraamcos.com.au/about/governance-policy/distribution-rules-practices/distribution-information-guides/dance-schools.</p> <p>APRA AMCOS (on behalf of itself and PPCA) has held numerous discussions with Ausdance QLD and other industry associations - such as the <i>Royal Academy of Dance</i> - to explore ways in which it can improve the accuracy of its royalty distributions from the sector. However, despite APRA AMCOS' best efforts, these discussions have yet to bear fruit. In parallel, APRA AMCOS has trialled music recognition technology (MRT) and is now moving to employ MRT in numerous licensee premises to enable accurate recording of music use data. We expect to commence discussions shortly with licensees for the placement of audio meters across a range of business types later this calendar year, with a focus on dance schools given their concerns. We would appreciate Ausdance QLD's assistance in that regard.</p>

Ausdance QLD statements	OneMusic response
	We note Ausdance QLD's contention that other Ausdance bodies have nominated Ausdance as the prime point of contact for OneMusic licensing, and await confirmation.
<p>6. Staged approach Ausdance QLD recommends a staged approach to improve accuracy, transparency, and value of music licensing/payments to rights holders over the next five (5) years.</p>	OneMusic and its licensors are open to seeing further detail regarding a "staged approach".
<p>7. Preparedness Larger organisations, in particular successful dance companies and schools are better prepared than smaller businesses to administer music licences. Commercially focussed organisations are also prepared pay license fees. Community organisations, small businesses, regional, rural, and remote dance groups/activities are not adequately prepared to administer music licences. All members consulted indicated an absolute willingness to ensure creators are adequately and transparently compensated for their work.</p>	<p>OneMusic has developed its <i>Dance & Performance Instructors and Dance Schools</i> scheme in a manner that, it believes, is simple with as little administrative burden as possible. In that regard, the rate structure under the licence is an annual fee for music used for dance classes, with four individual types of cover (tariffs) according to the way music is used by the dance school.</p> <p>This structure ensures that smaller schools will pay lower rates than larger schools and that reporting is minimal (with only the number of classes and average number of students being a reporting requirement).</p> <p>OneMusic agrees wholeheartedly with Ausdance QLD's members that music creators should be adequately and transparently compensated for their work.</p>
<p>8. Actions required to improve transparency and effectiveness of music licensing</p> <p>a. General Actions</p> <p>i. Develop and launch a major national public advertising and promotion campaign (similar to anti-piracy campaigns of the 1990s/2000s)</p> <p>ii. Develop and launch a major national dance community awareness campaign about various license requirements to be developed in consultation with the dance sector</p> <p>iii. Develop and launch a national licensing scheme for</p>	<p>OneMusic is aware of the need to constantly and effectively promote awareness of music licensing. In that regard, we are happy to advise Ausdance QLD and its members that OneMusic is set to launch a significant national marketing campaign that will act to inform businesses, including dance businesses, about the need to properly license the public performance of OneMusic's music.</p> <p>OneMusic welcomes Ausdance QLD's initiative in support of better compliance across the dance sector and is very willing to continue the discussions between OneMusic staff and Julie Englefield (Ausdance's Executive Director) to improve licensing compliance and reporting in the sector. OneMusic's relevant staff include Anne Blair (Marketing Manager), Richard Mallett (Head of Licensing &</p>

Ausdance QLD statements	OneMusic response
<p>the dance industry in partnership with Ausdance QLD (similar to the National Licensing Scheme for Gymnastics Australia)</p> <p>iv. Ausdance QLD to find funding to recruit two full time staff (2 x FTE) for a period of two years to implement the project including supporting community awareness campaigns and to administer the national licensing scheme on an ongoing basis.</p> <p>b. First Nations actions</p> <p>i. Ausdance QLD's philosophy is to develop operational systems with and for First Nations Communities first.</p> <p>ii. Music licensing must be understandable, manageable, and delivered Culturally appropriately. This must be guided by First Nations leaders and processes must be either led by First Nations organisations or developed in collaboration with First Nations organisations.</p> <p>iii. Ausdance QLD is exploring how best to engage First Nations communities to support First Nations leadership of accountability, checks and balances for First Nations dance organisations and performers.</p>	<p>Operations) and Linda Hale (National Licensing Manager).</p> <p>If Ausdance QLD is of the view that a national umbrella licensing model may assist, OneMusic would be very happy to enter into commercial discussions with Ausdance QLD in that regard. We do have similar arrangements in other licensing areas, including with Gymnastics Australia.</p> <p>We refer to our earlier comments regarding our approach and support of indigenous Australians.</p>

615. Ausdance QLD made 6 recommendations, which, with the APRA AMCOS responses are set out in the following table taken from the APRA AMCOS response:

Ausdance QLD	OneMusic response
1. The dance sector should be better informed about music licensing through public awareness campaigns and education	We would be happy to work with Ausdance Qld on such an initiative.
2. Music licensing systems should be more transparent, understandable, and accountable to license- holders	We believe our "licensing systems" are transparent and can only respond if provided with specific details of where Ausdance QLD considers they are lacking.
3. OneMusic should partner with Ausdance QLD to administer a licensing scheme for the dance sector	While we can discuss commercials, there should be no obligation on either party to enter into such an agreement, nor on individual dance school operators to avail themselves of any such arrangement.
4. Implementation of strategies for the whole sector can be achieved within five years, providing First Nations' Peoples are prioritised and there is ongoing comprehensive training, capability building and public awareness campaigns.	Without more detail of these strategies or where Ausdance QLD considers OneMusic is failing in regard to indigenous peoples, it is difficult to provide any specific feedback to this recommendation.
5. A music licensing system must be flexible enough to be used by small and large organisations and there should be no Cultural (First Nations), social, geographic or economic barriers to access.	We consider that the user-pays structure of the <i>Dance & Performance Instructors and Dance Schools</i> licence already provides flexibility and is unaware of any specific barriers to access.
6. Communication, community awareness campaigns and music licensing administration must be Culturally (First Nations) appropriate, flexible, adaptable and available in multiple formats to ensure universal accessibility	OneMusic broadly agrees with Ausdance QLD's goals. However, without identification of specific failures in OneMusic's licensing processes, it is difficult to comment on what Ausdance QLD sees as the path forward.

616. I took up the 6 recommendations with APRA AMCOS and Ausdance QLD in an online meeting on 21 November 2022 with the outcomes indicated below (Julie Englefield represented Ausdance QLD and Jonathan Carter and Richard Mallett represented APRA AMCOS). Ms Englefield confirmed that Ausdance QLD is authorised to speak on behalf of the entire national Ausdance network in response to the invitation to make submissions to the Code Compliance Reviewer.

617. **Recommendation 1** Ms Englefield estimated that less than 50% of her

members hold licences and that her organisation's membership represented something less than 50% of all dance participants who use recorded music in their activities. She suggested that this is not because of an unwillingness to pay but because of unawareness of the requirement to hold a licence and of the mechanics of obtaining one.

618. There was a consensus that the starting point to address the problem is not for APRA AMCOS to prepare a booklet etc (although this may come later) but for an assessment to be made of the end users and of the kind of information that they lack at present. This kind of assessment could be made by, for example, the convening of focus groups. The primary organiser of such groups would have to be Ausdance QLD, but APRA AMCOS would have to be involved as well in order to maximise the utility of the exercise and to ensure that APRA AMCOS develop an understanding of the nature of the problem.

619. **Recommendation 2** Ms Englefield made the point that in her view licensees and potential licensees would be more disposed to apply for a licence if they knew in whose pockets licence fees would end up. She said that she did not feel at liberty to identify particular individuals or companies but, by way of illustration, referred to one large dance company with substantial administrative support which would like to have used music for a recent photo shoot, but told her that the "red tape" associated with obtaining a licence was such that it decided not to use music at all — an unsatisfactory result from all points of view.

620. APRA AMCOS had previously explained that licence fee income does not go to OneMusic Australia, but to APRA AMCOS or PPCA according to the entitlements of the various rightsholders. They, in turn, distribute to the rightsholders. APRA AMCOS is able to put this in writing for the benefit of members of Ausdance QLD. In my view, it should do so, and in "plain English" terms that Ms Englefield could pass on to dance participants.

621. **Recommendation 3** Under this proposal, there would be an industry-wide licence granted by APRA AMCOS to Ausdance QLD which would be authorised as their agent to grant sublicences to its members. The arrangement would be akin to one that exists between APRA AMCOS and Gymnastics Australia.
622. This would take some working up. Both parties accepted that if such an arrangement were to be entered into, it would not be mandatory for people to take the sublicense offered by Ausdance QLD: they would have to remain free to apply directly to APRA AMCOS for a licence. Ms Englefield suggested that the advantage in such an arrangement would enure mainly to small operators who lacked administrative support.
623. **Recommendation 4** APRA AMCOS indicated that their thinking was in line with that of Ausdance QLD but made the point that in the absence of more detail they cannot see where they are falling short at present. Ms Englefield will look into whether particular examples can be given to APRA AMCOS without revealing the identity of the individuals concerned.
624. **Recommendation 5** See under “Recommendation 4” above. Mr Mallett made the point that the existing *Dance & Performance Instructors and Dance Schools* licence has a very wide coverage and that it can accommodate bespoke detail relevant to the individual case. Ms Englefield will investigate whether she can provide detailed examples to APRA AMCOS, while preserving the confidentiality of the individuals concerned.
625. **Recommendation 6** APRA AMCOS agrees with the goals as stated by Ausdance QLD which will provide to APRA AMCOS some examples which will “highlight the gaps” in universal accessibility.

Live Performance Australia

626. Live Performance Australia (**LPA**) made a submission dated 11 August 2022 and APRA AMCOS responded to it on 5 September 2022.

627. LPA's submission is divided into three sections as follows:

- (1) Dramatic context licensing;
- (2) Administration and reporting;
- (3) Consultation with industry associations.

628. In relation to Section (1), the basis of the problem seems to lie in the ambiguity of the concept of “dramatic context”. The difficulty is illustrated by a reference made by LPA in its submission: a producer believes that he or she is producing a “cabaret show” which the producer believes qualifies as a “musical event”, but because it incorporates the telling of anecdotes, APRA AMCOS categorises it as a live performance of music “in a dramatic context”, which attracts a higher licence fee.

629. LPA also asserts that APRA AMCOS does not take a consistent approach in identifying what is, and what is not, “dramatic context”.

630. LPA draws attention to the fact that, according to the submission, the rules and practice surrounding dramatic context are not in alignment with the approach taken in in the UK and the USA, where cabaret shows are licensed “more in line with concerts”. According to the submission, this means that in Australia “there are no guarantees that the necessary approvals will be granted, jeopardising the presentation of the show—yet the same obstacles do not exist in other countries”.

631. LPA refers to the budgetary difficulties that its members experience when they have been issued with a particular class of licence by PPCA and

have budgeted on that basis, only to be told later that they need the more expensive Dramatic Context licence.

632. In its responsive submission, APRA AMCOS accepts that the concept of Dramatic Context licensing is complex and generates understandable frustration. APRA AMCOS has therefore explained the background to Dramatic Context Licensing at some length as follows:

“This category of licensing imports a level of complexity as compared to the standard process for licensing of musical works for other types of non-dramatic performance.

To better understand those complexities, APRA believes it is important to provide some background for the licensing of musical works used in a Dramatic Context.

First, APRA does not receive the rights to license musical works in a Dramatic Context under our typical rights input arrangements. That is, the public performance of musical works in a Dramatic Context (see definition below) is excluded from the assignment of performing rights assigned to APRA and is instead retained by the APRA Member to license as they see fit. In that regard, APRA has been asked by some rightsholders to license and administer the public performance of their repertoire in a Dramatic Context on their behalf, subject to some conditions and provisos. This arrangement is facilitated by the rightsholders appointing APRA as their agent for this purpose.

The specific right that sits outside APRA's standard rights mandate is:

“the right to the performance of musical works:

- a. *in conjunction with a presentation on the live stage that has:*
 - i. *a storyline; and*
 - ii. *one or more narrators or characters; or*
- b. *as a Ballet”*

The practical effect of the above is that APRA is consistently tasked with drawing a clear distinction between what is and what is not a public performance in a Dramatic Context.

While we know that there is an unavoidable level of subjectiveness when drawing that distinction, APRA rejects the claim that it does anything other than apply a consistent approach. APRA has a dedicated Dramatic Context licensing team, experienced in these types of performances, that apply the same criteria and the same level of careful consideration to each licence application. Our Dramatic Context team regularly reaches out to applicants for information and material that would allow them to appropriately and consistently apply the Dramatic Context criteria.

In that regard, APRA is not aware of any specific instances where like performances have been licensed in an unlike manner and would be very interested if there are any specific instances that LPA could draw our attention to. Further, where a licensee, or indeed a rightsholder, believes that a categorisation decision has been made in error, the matter can be immediately referred to APRA's independent Alternative Dispute Resolution facility.

APRA also acknowledges that LPA members may experience frustration as a result of different approaches to Dramatic Context licensing between international jurisdictions. We appreciate that this would be especially frustrating for international tours trying to license in different territories under different 'rules'. However, the inter-jurisdictional issues are not something APRA can do much to unilaterally resolve. For instance, even if APRA's

criteria were identical to that, for instance, in the UK,¹ that would not solve the problem that criteria may differ from that applicable in other jurisdictions. In

respect of the specific example, cabaret shows, APRA notes that these shows are not necessarily excluded or included from the definition of Dramatic Context. That is, a particular cabaret show may indeed satisfy the criteria for a Dramatic Performance in Australia, while another may not. There are a number of cabaret style shows that have been licensed by APRA under our concert blanket licence as a result of them not falling into the Dramatic Context exclusion due to the specific elements of that show.

APRA notes the specific issue raised by LPA with respect to the licensing of PPCA sound recordings in a dramatic context. While we understand that PPCA's approach to the licensing of music in a dramatic context is relatively consistent with that of APRA's, APRA (on its own or under the auspices of OneMusic Australia) does not currently license PPCA sound recordings under its Dramatic Context agency arrangements. It is always OneMusic Australia's intention to be clear and transparent regarding the avenues for licensing of music in a Dramatic Context and, to that end, we publish a specific guide that's sets out those paths (available [HERE](#)). We are unable to address the specific query regarding PPCA's licensing practice, other than to note that we understand PPCA's licensors are, like APRA's, dedicated to retaining an appropriate level of control over how their repertoire is used in a dramatic context.

In summary, APRA acknowledges that there are a number of frustrations and perceived barriers to the licensing of public performance of works in a Dramatic Context. However, within the confines of a justifiably protective licensing framework, APRA endeavours to assist licensees in as an efficient and consistent manner as possible. Of course, there are always ways we can improve and we would be open to reviewing any specific claims of inconsistent or unfair application of APRA's processes around the licensing of Dramatic Context performances."

633. The definition (quoted above) of Dramatic Context that lies outside the APRA AMCOS mandate is located in the APRA Constitution and can be amended only by amendment to the Constitution. Absent such an amendment, APRA AMCOS have to seek approval of the rightsholders in relation to each particular case. In effect, APRA AMCOS act as an "agent" or intermediary between the LPA member and the rightsholders, a role which APRA AMCOS acknowledge is time consuming, but which is probably preferable to the producer's having to seek a licence directly from the rightsholders.
634. I convened an online meeting on 18 November 2022 between Ms Kim Tran representing LPA and Mr Jonathan Carter representing APRA AMCOS. They are, of course, very familiar with the difficulties associated with any attempt to resolve the problem. For both organisations the present state of affairs is unsatisfactory. From the viewpoint of LPA's members, the main aim is to secure a licence with a minimum of delay. APRA AMCOS state that they are

very willing to explore further improvements in the terms of their “Dramatic Context Agency Appointment” from relevant rightsholders with the aim of reducing any existing market uncertainty regarding their “Dramatic Context” licence offering and making music licensing in this context as efficient as possible.

635. Mr Carter volunteered an undertaking by APRA AMCOS to continue to work with LPA towards finding a solution.

636. *Section (2)* of LPA’s submission, headed “*Administration and reporting*”, records a suggestion by some members of LPA that the administration of OneMusic licences would be improved “if the functionality of the online portal could be expanded”. The LPA submission continues: “The current portal has very limited functionality and the current process, while fairly straightforward, is a basic system of sharing an Excel spreadsheet via emails”.

637. The LPA submission continued by indicating specific functionalities that its members considered would be of benefit to them.

638. APRA AMCOS responded by acknowledging that any increase in functionality of the OneMusic online portal would assist in giving greater efficiency in licence administration across all the licensing sectors. They advise that an updated portal was recently released.

639. APRA AMCOS acknowledge that the portal still does not enable the licensing of events online, but say that OneMusic is “constantly reviewing and upgrading its technology for improved scope and efficiency in its licensing function”. At the meeting on 18 November 2022, Mr Carter acknowledged that the portal will be an increasingly important part of the APRA AMCOS licensing system in the future.

640. *Section (3) (Consultation with industry associations)* of the LPA submission recounts negotiations that have taken place between LPA and APRA AMCOS, OneMusic and PPCA, and the disruption to those negotiations caused by the COVID-19 Pandemic. The submission noted that LPA is continuing to negotiate with APRA AMCOS over an “Events licence scheme” and has had some concerns relating to the timeline for the associated consultation and implementation.
641. APRA AMCOS's response confirms that discussions have taken place about “a revised approach to events licensing”, and notes that the discussions have recently borne fruit with the advent of a number of “new OneMusic Australia event licensing schemes”. APRA AMCOS acknowledge that the input from the sector has significantly improved those licensing schemes.
642. Specifically in relation to the timeframe issue, APRA AMCOS state that they are of the view that they have provided the sector with “appropriate and generous notice of [the] intention to revisit the rates and rate structures for event licensing”.
643. At the meeting on 18 November 2022, Ms Tran and Mr Carter referred to the fact that discussions between their two organisations on “events licensing” have continued since their written submissions were provided and are continuing.

Isentia Pty Ltd (“Isentia”)

644. Isentia made a submission dated 29 July 2022, to which Copyright Agency provided a written response, to which, in turn, Isentia replied on 23 November 2022. The procedural background is recounted at [522] above.
645. Isentia and Meltwater provide newspaper clipping services. They applied to the Copyright Tribunal of Australia pursuant to s157 of the *Copyright Act 1968* seeking reasonable licence terms for the copying and communication of copyright works for the purpose of their media monitoring services.
646. The Tribunal issued confidential reasons for determination on 15 October 2021 and a public version (still with redactions) on 18 July 2022: see *Application by Isentia Pty Ltd [2021] ACopyT 2*.
647. The history of the matter, including reference to a settlement that was arrived at between Copyright Agency and Isentia, is set out at [522] above which I will take as read.
648. In its responsive submission, which was made before the settlement was arrived at, Copyright Agency stated:
- “Copyright Agency accepts that it was unsuccessful in the Proceedings [a reference to the proceeding before the Copyright Tribunal], and that in its determination the Tribunal made a number of comments that are critical of Copyright Agency. Copyright Agency has appointed a third party to review the determination and will implement any changes that are recommended to improve Copyright Agency’s processes”.
649. Copyright Agency contended that while its application for judicial review was pending in the Federal Court, I should decline to address Isentia’s submission. But that application ceased to be pending as between Isentia and Copyright Agency on 23 September last, having been overtaken by the settlement and discontinuance as between those parties. Moreover, as noted at [522], Judgment was given as between Meltwater and Copyright Agency.

650. I have not explored with the parties the terms of the settlement, or whether the terms or some of them are subject to confidentiality constraints, and, if so, the relationship, if any, between those constraints and the published judgment of the full court of the Federal Court in *Copyright Agency Limited-v-Isentia Pty Ltd* [2022] FCAFC 163. If I were to take the matter further I would convene an online meeting between representatives of Copyright Agency and Isentia in order to explore their opposing written submissions. It would be necessary in my subsequent report to distinguish between the concerns of the Code and other matters and to concern myself only with the former.

651. I have spoken to representatives of Isentia and Copyright Agency, who have agreed that in view of the settlement, I should keep their submissions “on file” to be returned to if either party so wishes, in the context of next year’s compliance review and arising out of the parties’ dealings with each other during that year. It will be clear from this that I have not reached any conclusion on Isentia’s submission or Copyright Agency’s response to it.

Nightlife Music

652. Nightlife Music made a submission dated 26 July 2022 and withdrew it on 20 September 2022. It is important to record that the withdrawal did not signify that Nightlife Music’s grievance had disappeared. Nightlife Music stated that the withdrawal resulted from business pressures associated with the COVID-19 Pandemic.

E. CONCLUSION

653. As contemplated by cl 5.1 (c) (i) of the Code, I conclude that, overall, there has been a high level of compliance with the Code.

654. This report is now submitted to the societies and to the Attorney-General's Department.

Dated: 30 November 2022

A handwritten signature in blue ink, appearing to read 'K Lindgren', with a long horizontal flourish extending to the right.

**The Hon Kevin E Lindgren, AM, KC
Code Compliance Reviewer**

APPENDIX A - CALL FOR SUBMISSIONS 2022

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 2022, 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 18 June 2022 and it was also placed on the websites of the societies. It was in the following terms:

COPYRIGHT COLLECTING SOCIETIES CODE OF CONDUCT CALL FOR SUBMISSIONS 2022

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. The most recent update came into effect on **20 May 2022**.

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. His current task is to review the Societies’ compliance with the Code during the period **1 July 2021 to 30 June 2022**.

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. If you wish to make a submission, **please inform the Code Review Secretariat** by email (codereviewer@gmail.com). The Secretariat will send you details about the procedure for making a submission.

The closing date for completing the submission process is **31 July 2022**.