

**Report of Review of Copyright Collecting Societies'  
Compliance with their Code of Conduct  
for the Year 1 July 2020 to  
30 June 2021**

**The Hon K E Lindgren AM, QC**

**13 December 2021**

## **Table of Contents**

<b>A. INTRODUCTION AND SUMMARY CONCLUSIONS .....</b>	<b>3</b>
<b>B. COMPLIANCE WITH CODE REQUIREMENTS OTHER THAN THOSE RELATING TO COMPLAINTS AND DISPUTES .....</b>	<b>7</b>
<b>Australasian Performing Right Association Limited (“APRA”) and Australasian Mechanical Copyright Owners Society Limited (“AMCOS”).....</b>	<b>8</b>
<b>Copyright Agency Limited (“Copyright Agency”) .....</b>	<b>36</b>
<b>Audio-Visual Copyright Society Limited (“Screenrights”).....</b>	<b>49</b>
<b>Phonographic Performance Company of Australia Ltd (“PPCA”).....</b>	<b>60</b>
<b>Australian Writers’ Guild Authorship Collecting Society Ltd (“AWGACS”).....</b>	<b>73</b>
<b>Australian Screen Directors Authorship Collecting Society Ltd (“ASDACS”).....</b>	<b>78</b>
<b>C. COMPLAINTS AND DISPUTES AS REPORTED BY THE COLLECTING SOCIETIES</b>	<b>85</b>
<b>Australasian Performing Right Association Limited (“APRA”) and Australasian Mechanical Copyright Owners Society Limited (“AMCOS”).....</b>	<b>85</b>
<b>Copyright Agency Limited (“Copyright Agency”) / Viscopy.....</b>	<b>101</b>
<b>Audio-Visual Copyright Society Limited (“Screenrights”).....</b>	<b>107</b>
<b>Phonographic Performance Company of Australia Ltd (“PPCA”).....</b>	<b>110</b>
<b>Australian Writers’ Guild Authorship Collecting Society Ltd (“AWGACS”).....</b>	<b>114</b>
<b>Australian Screen Directors Authorship Collecting Society Ltd (“ASDACS”).....</b>	<b>114</b>
<b>D. COMPLAINTS MADE DIRECTLY TO THE CODE COMPLIANCE REVIEWER.....</b>	<b>114</b>
<b>Complaints made by Universities Australia (UA), the Copyright Advisory Group of the Education Council of the Council of Australian Governments (CAG), and the Australian Digital Alliance (ADA) .....</b>	<b>115</b>
<b>Complaints made by the Australian Venues Association (AVA).....</b>	<b>117</b>
<b>E. CONCLUSION.....</b>	<b>124</b>
<b>APPENDIX A - CALL FOR SUBMISSIONS 2021 .....</b>	<b>125</b>

# Report of Review of Copyright Collecting Societies' Compliance with their Code of Conduct for the Year 1 July 2020 to 30 June 2021

## A. INTRODUCTION AND SUMMARY CONCLUSIONS

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1. This report of the Code Compliance Reviewer, the Hon K E Lindgren, AM, QC, is the seventeenth annual report of an assessment of the compliance with their voluntary Code of Conduct (**Code**) of the following seven collecting societies: Australasian Performing Right Association Limited ("**APRA**"), Australasian Mechanical Copyright Owners Society Limited ("**AMCOS**"), Phonographic Performance Company of Australia Limited ("**PPCA**"), Copyright Agency Limited ("**Copyright Agency**" and later "**CA**"), Audio-Visual Copyright Society Limited ("**Screenrights**"), Australian Writers' Guild Authorship Collecting Society Limited ("**AWGACS**") and Australian Screen Directors Authorship Collecting Society Limited ("**ASDACs**"). This "Compliance Report" assesses that compliance during the period 1 July 2020 to 30 June 2021 (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, APRA AMCOS have furnished a single joint report on their compliance with the Code and it is often 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 on compliance (**Accompanying Underlying Documents**).
4. The review and the opportunity to make submissions relevant to it were advertised: see **Appendix A** to this Report for the notice of the review and for details of the publication of the notice.
5. Certain organisations and individuals were individually notified by the Code Review Secretariat. The Secretariat has prepared and holds an alphabetical list of them. It is available for inspection on request. It is so voluminous, however, that in the interests of convenience it is not attached to this Report.
6. Importantly, a significantly revised version of the Code was adopted with effect from 1 July 2019, implementing recommendations of the review of the Code carried out by the Bureau of Communications and Arts Research (**BCAR** and **BCAR Review**) in the Department of Communications, Cyber Safety and the Arts (as the Department of Infrastructure, Transport, Regional Development and Communications was then named).
7. Therefore, the Code as so amended is the version that has operated throughout the Review Period and this is the second 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. 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”).

8. In implementation of a recommendation made in the BCAR Review, there is now a dedicated website for the Code with information and links to documents and information relevant to the Code, including “for publication” versions of each of the societies’ Annual Compliance Reports to me. That website can be visited at [www.copyrightcodeofconduct.org.au](http://www.copyrightcodeofconduct.org.au).
9. The collecting societies’ reports to me indicate general compliance with the Code. There are some non-compliances but they are very few in number and do not detract from the overall picture of compliance by each and every society
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 their 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—see [546] below
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 to remind the reader of this

in advance of every statement made in the Report. It should be understood, however, that in describing what the collecting societies do, I am inevitably relying entirely on their reports to me. I do not conduct an independent investigation of them. In saying this, I do not imply that I have reason to doubt the accuracy of what they report, but it is inescapable, and should be frankly acknowledged, that my paraphrasing of the societies' reports gives them a degree of opportunity of self-promotion. This does not apply so much to the "COMPLAINTS AND DISPUTES" section because, in that section, I am able to test the account given by the society against its correspondence and file notes relating to the complaints or disputes.

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 rights to perform the work in public and to communicate the work to the public: see s31(1)(a)(iii) and (iv) of the Copyright Act 1968 (Cth) (the **Copyright Act**). These rights are the concern of APRA. The copyright in a musical work also includes the exclusive right to reproduce a work in certain circumstances: see s31(1)(a)(i) of the Copyright Act. These rights are the concern of AMCOS.
14. The copyright in a sound recording includes the exclusive rights to make a copy of the recording, 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 performing artists.
16. In the absence of an opt-out by the copyright owner, APRA and AMCOS have the exclusive right to license the use of the musical works that

constitute their repertoire. PPCA is a non-exclusive licensor of sound recordings: it is open to a person to seek a licence directly from the owner of the copyright in a sound recording rather than from PPCA.

17. In the case of a live performance, a licence from APRA alone is required. But in the case of the 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 to take out 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 music and sound recordings.
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**

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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 its compliance with the Code was furnished to me on 2 August 2021.
24. APRA AMCOS's 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 the 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 2019/20 financial year, by way of a link on the website;
  - APRA Statutory Accounts for the 2019/20 financial year;
  - AMCOS Statutory Accounts for the 2019/20 financial year;
  - An organisational chart showing the overall management structure as at 30 June 2021;
  - The Constitutions of both APRA and AMCOS; and
  - APRA AMCOS Privacy Policy.
32. As at 30 June 2021, APRA AMCOS had 340 employees (including casual compliance staff) in Australia and 34 employees in the APRA AMCOS office in New Zealand.
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 *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 2021, APRA had 111,383 [2020: 108,092] Australian and New Zealand members, comprising composers, authors and publishers. Of these, 108,145 [2020: 104,185] were local writer members, and 527 [2020: 557] were local publisher members. In addition, APRA had 2,676 [2020: 2,514] overseas resident writer members and 7 [2020: 8] overseas resident

publisher members. Most Australian and New Zealand composers and publishers of music are members.

35. As at 30 June 2021, AMCOS had 24,177 [2020: 22,224] Australian and New Zealand members, of whom 23,132 [2020: 21,208] were writers and 495 [2020: 499] were publishers. In addition, AMCOS had 545 [2020: 511] overseas resident writer members and 5 [2020: 6] overseas resident publisher members.
36. As at 30 June 2021, APRA AMCOS had 1,781 [2020: 1,704] Aboriginal and Torres Strait Islander (**ATSI**) members, which represented an increase of 4.52% [2020: 7.2%] during the Review Period. Although indigenous membership is still relatively low, APRA AMCOS state that they are committed to increasing awareness through their national indigenous membership strategy, overseen by the National Manager, Aboriginal and Torres Strait Islander Music Office (**NATSIMO**).
37. APRA AMCOS state that their relationship with their members continues to be at the core of their operations, that communication with members is frequent, and that their Member Services staff are expert in advising members on their relationship with APRA AMCOS and on the music business generally. Members continue to be able to interact freely with APRA AMCOS, having direct access to all levels of management.
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 65,210 separate occasions. In addition, over 2,757,860 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 log 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. During the Review Period, Writer Services staff logged 199 phone queries following distributions.
42. During the Review Period, positive feedback was received in relation to the service provided by the Membership Department. Records of the positive feedback were provided in the Accompanying Underlying Documents.

### **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 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 World Intellectual Property Organisation (**WIPO**).

45. In the most recently audited financial statements (which are for the 2019/20 financial year), APRA collected more than AUD\$54.4m [2020: AUD\$45.7m] for the use of Australian and New Zealand repertoire overseas. AMCOS collected over AUD\$1.3m. [2020: AUD\$1.4m] 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 over \$46.7m [2020: \$50.7m] in performing right distributions from affiliate societies to APRA members over 12 monthly distributions. This amount was comprised of 194 [2020: 531] individual distribution records from 26 [2020: 58] affiliate societies. AMCOS distributed over \$779.6k [2020: \$972.6k] in mechanical distributions from affiliate societies to AMCOS members across 4 quarterly distributions. This amount consisted of 71 [2020: 82] individual distribution records from 25 [2019: 27] 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 usages, or to 'license back' specific works for specific usages in Australia and/or New Zealand.
49. During the Review Period, APRA received and approved 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. As previously reported, in 2016 the AMCOS Board approved a variation to the opt out provisions in the AMCOS Input Agreement, to offer increased flexibility to its members in the way in which they are able to withdraw rights from AMCOS for digital music services. For digital music services that operate internationally, AMCOS members are permitted to withdraw their digital reproduction rights specifically in relation to nominated services, rather than for all services within particular categories of usage as used to be the case. Put simply, upon giving AMCOS sufficient notice, members can elect to negotiate directly with particular international digital music services.

## **Member Benefits Program**

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

## **Licensees (Code clause 2.3)**

52. APRA AMCOS have large licensing departments dedicated to liaising with licensees and potential licensees. The two main areas of licensing operations are: OneMusic (previously General Licensing and Business & Events Licensing) and Media Licensing.
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 112,000 businesses and events in Australia and New Zealand during the Review Period. APRA AMCOS report that a decrease in the number of licensees can be attributed to the ongoing terminations and relicensing efforts associated with OneMusic.
55. The fees paid to APRA AMCOS by licensees vary according to the licence scheme applicable to the particular circumstances of use.

### **OneMusic**

56. The OneMusic licensing department administers the vast majority of licences. APRA AMCOS report that since 1 July 2019, OneMusic has licensed both APRA AMCOS rights and PPCA rights under a single licence.
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. Similarly, information on other licences still administered by APRA AMCOS can be accessed on their website.

58. APRA AMCOS report that the Review Period was dominated by the effects of the COVID-19 pandemic on licensees. 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 applied generous fee relief treatment at a state/territory level, to cover periods where businesses were forced to close under government direction. The associated re-licensing of businesses while they were closed was also put on hold, as were most debt collection procedures.
59. During the Review Period 6,882 clients re-licensed their accounts and 906 businesses obtained new licences via the portal.
60. During the Review Period, the OneMusic and Finance (Credit Management) Department engaged in more than 420,680 (2020: 652,044) contacts with licensees, including by letter, email and telephone calls. A breakdown of the statistics has been provided by APRA AMCOS.
61. During the Review Period emails of appreciation from licensees and/or potential licensees were received in relation to the services provided by the Licensing Departments, details of which have been provided by APRA AMCOS.

### **Media Licensing**

62. The Media Licensing Department covers four key areas of licensing: *Broadcast Licensing; Digital Licensing; Recorded Music Licensing; and Key Industries* (previously part of Business & Events Licensing).

63. *Broadcast Licensing* includes commercial and community radio, the ABC and SBS and subscription and commercial television. In total, approximately 715 [2020: 845] licensees were administered by the Department during the Review Period. The Department also administers "Production Music" (AMCOS- controlled Production Music is music specifically written and recorded for inclusion in all forms of audio and audiovisual productions). There were 537 [2020: 602] Australian production music clients licensed during the Review Period.
64. *Digital Licensing* includes video on demand services, digital subscription music services, music downloads, ringtones and general websites. In total, approximately 612 [2020: 470] licensees of this category were administered during the Review Period.
65. *Recorded Music Licensing* includes CD sales, business to business applications, dance schools and videographers. In total, approximately 403 [2020: 528] licensees of this kind were administered during the Review Period.
66. *Key Industries* include schools, universities and colleges licensing, government, airlines, dramatic context, funerals and Eistedfoddau. Approximately 10,221 (2020: 10,200) key industry licensees were administered during the Review Period.
67. Clients of the Media Licensing Department are, for the most part, aware of their copyright and licensing obligations.

### **Information provided to Licensees**

68. APRA AMCOS's website contains a Licensee section with information in relation to the various licences and with contact details for the relevant Licensing Department, including links to public performance licences now



being administered through *OneMusic*: <http://apraamcos.com.au/music-customers/>

69. APRA AMCOS state that information made available to licensees and potential licensees differs according to the nature of the particular licence. For example, sophisticated national broadcasters and telecommunications companies generally require less information than small business operators who have less exposure to copyright law and limited access to specialist legal advice. The level of information provided takes these factors into account.

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

70. 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.
71. In addition, APRA AMCOS consult regularly with relevant trade associations in relation to the introduction of new licence schemes or material variations to existing licence schemes. They say that this approach is demonstrated by the successful negotiation of new licence schemes with relevant industry bodies.

### **Tariff Reviews**

72. APRA AMCOS have previously provided detailed information in relation to the history and development of all significant existing licence scheme tariffs.

73. The following tariffs were introduced, re-negotiated or phased-in during the Review Period.

#### *Media Licensing*

74. As at the end of the Review Period, APRA AMCOS was in the process of renewing or establishing licence arrangements with a number of major media licensing services including Spotify, Apple Fitness, Deezer, Tidal, Twitch, Peloton and TikTok.

#### *SVOD Service Copyright Tribunal Reference*

75. With a significant number of services now operating in a mature SVOD market in Australia, APRA AMCOS came to the view that a single, transparent and easily managed scheme should be available to all services of a similar type in the market and that the licence scheme for SVOD services should be referred to the Copyright Tribunal of Australia (**Copyright Tribunal**). The reference was filed in the Copyright Tribunal on 26 March 2021 and a further notice was filed on 29 March 2021 bringing the scheme into operation from 1 April 2021. The matter is currently before the Tribunal.

#### *Online Streaming*

76. With the restrictions resulting from COVID 19 and the need for many industry sectors to move their services into the online environment, APRA AMCOS implemented interim licences to assist businesses in their operations and to ensure the music they control was appropriately licensed. In particular, focus was placed on music events, fitness classes and cinemas.

#### *Education*

77. Licences for both Universities and Schools were renewed during the Review Period, which involved the expansion of the rights APRA AMCOS provides to

reflect developments in how these sectors deliver education services and specifically in response to COVID 19. The licences were agreed through extensive consultation with Universities Australia and in the case of Schools, the National Copyright Unit.

78. A new licence scheme was implemented with the TAFE sector through consultation with the National Copyright Unit. This scheme has been implemented with five of the states and territories and represents the first time a consistent scheme has been put in place with the TAFE sector.

#### *Funerals*

79. During the Review Period, APRA AMCOS implemented an updated scheme with the funeral sector, largely in response to COVID-19. 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 is currently being implemented by all three industry associations.

#### *OneMusic*

80. During the Review Period progress was made in completing one of the two remaining licence schemes and two of the remaining four tariffs. Amendments were also made to a number of the completed licence schemes in response to continued market feedback and APRA AMCOS were continuing the process of consulting with OneMusic licensees.

#### **Multi-Territory Licensing**

81. 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.

82. 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.
83. 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**

84. During the Review Period, APRA AMCOS report that they have continued their policy regarding Disaster affected licensees.
85. 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.
86. 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*

87. As previously reported, in March 2020, OneMusic moved quickly to respond to lockdown measures issued by the Australian Government, putting approximately 25,000 accounts on hold, with 'on hold' meaning pausing all licensing activity, correspondence, all invoicing and payments

including those managed by external debt collectors. Communications were carried out via email, phone and social media. Any business outside the industries identified as impacted by COVID-19 that have advised of their closure have also been put on hold.

88. 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.
89. As businesses continue to be affected by COVID restrictions and closures, OneMusic is providing further assistance and support by adjusting accounts so licensees are not paying for periods when they are closed.
90. OneMusic has received a high volume of positive feedback from licensees for putting these disaster relief measures in place.
91. In response to the impact on members' lives and their significantly reduced capacity to earn in the wake of the COVID-19 pandemic, APRA AMCOS continues to work with industry partners to lobby government to secure immediate and short-term financial stability for both members and the ecosystem of individuals and businesses that surround them.

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

92. The most recently audited financial statements for the year ended 30 June 2020 show that APRA AMCOS's total combined net distributable revenue for that year was \$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.
93. APRA and AMCOS distribute royalties quarterly.

## **Distribution Rules and Practices**

94. 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 Policy, including how undistributed funds are dealt with.
95. APRA and AMCOS update their Distribution Rules and Practices from time to time, in accordance with their Constitutions. APRA AMCOS regularly consult with their Boards and other key industry groups in relation to changes to Distribution Rules and Practices, considering the views of each membership, objective data regarding performances, the approaches of affiliated societies to the process and methods of distribution.
96. The APRA Distribution Rules were updated in the Review Period to increase the research threshold for unregistered works.
97. The APRA Distribution Practices were updated in the Review Period to:
- Provide a policy to determine when a Background Music Supplier's data is to be included in APRA's distributions
  - Introduce a threshold below which event licence fees may be directed to blanket pools (Performance Reports or Background Audio)
  - Distribute Ringtones revenue using data supplied by Apple's Streaming service
  - Create a direct distribution pool for Optus Sports
  - Amend the Universities and Tertiary Institutions licence distribution practice so that data collected from universities is used to make the distribution
  - Expand the data used in Facebook and Instagram distributions to include User Generated Content

- Remove the end date for the 'Live Stream' distribution policy
- Introduce a new Airlines distribution policy, in which Background Music and Music Accompanying Safety Videos are specified
- Change the way that Screenrights Retransmission revenue is allocated in the distribution
- Introduce a section detailing the process to be followed in exceptional circumstances in which published practices cannot be met
- Update the section on Community Radio to make reference to the use of a Fixed Point Value
- Add the service 'Spotify Duo' to the list of Streaming Services' data sets included in distributions
- Update wording on Restaurants practice for clarity.

98. The AMCOS Distribution Rules were updated in the Review Period to update the details of commission deducted by AMCOS during distribution processing.

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

- Amend the Universities and Tertiary Institutions licence distribution practice so that data collected from universities is used to make the distribution
- Remove the \$20 minimum threshold for payment of Background Music Suppliers' licence fees
- Clarify the treatment of the AMCOS share of OneMusic licence fees
- Expand the data used in Facebook and Instagram distributions to include User Generated Content
- Introduce a section detailing the process to be followed in exceptional circumstances in which published practices cannot be met.

100. 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 deals with, among other things, requests by members for distributions in relation to "unlogged performances". This committee also deals with complaints from and disputes between members. Members are strongly encouraged to resolve disputes between them using Resolution Pathways, APRA AMCOS' external Alternative Dispute Resolution facility.

### **Investment in Systems Development**

101. 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 continue to be delivered across business as usual, automation, business processes, business critical and digital services areas, representing a significant long-term value proposition.

#### *Automation*

102. Extensive work has been 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, the Robotics Process Engineering Automation team had saved over 250 days in people tasks.

#### *Business process improvements*

103. Enhanced cloud-based internal services are being developed to support automation and business process efficiencies for the future. These include:



- Works Ownership
- Distribution Next Generation
- International Data Processing
- Catalogue Transfer

#### *Business critical projects*

104. Enhanced services are being developed to meet members' demands, including:

- VOD Disaggregation Service
- CCID Back Reporting
- CRD Back Reporting

#### *Digital Services*

105. Strategic member-facing projects have also been delivered or enhanced throughout the Review Period, including:

- Writer Portal
- Publisher Portal
- OPUS Portal
- Earnings and Insights Portal
- Mobile App
- APRA AMCOS Website
- Data Ingestion and Matching

106. All projects have received positive customer feedback and provide valuable, feature-rich services to members.

#### *Cyber Security*

107. The pace of digital business and an ongoing transition to cloud are challenging traditional security approaches. APRA AMCOS continuously

monitor and improve their resilience in responding to cyber threats. A cyber security and data management plan and assurance framework has been established to strengthen APRA AMCOS's cyber security posture.

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

108. The APRA accounts show that its operating expenses are deducted from total gross revenue.
109. Commission on revenue pays AMCOS's expenses. The commission rate depends on the source of the revenue.
110. According to the most recent audited financial statements, for the year ended 30 June 2020, APRA AMCOS achieved a group expense to revenue ratio of 14.16% [2020: 12.9%].

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

111. The Annual Report of each of APRA and AMCOS contains the matters set out in clause 2.6(e) of the Code.
112. The relationship between APRA and AMCOS and their respective Boards of Directors is governed by each company's Constitution and Charter of Corporate Governance. The Boards have both established Audit, Risk & Culture Sub-Committees, which continue to meet at least six times a year and which concentrate exclusively on issues relating to Corporate Governance.
113. The APRA AMCOS 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 settings and other matters relating to Human Resources and Industrial Relations, risk management, infrastructure, general administration, and regulatory compliance.

114. 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.
115. APRA AMCOS maintain complete financial records which are audited each year, and a statement by each company's auditors is included in its Annual Report.
116. During the Review Period APRA AMCOS prepared additional detailed information at an anonymised or aggregate level about the accounting and distribution of licence revenue and reporting of expired undistributed funds. The APRA and AMCOS ‘Transparency Reports’ for the financial year ended 30 June 2020 were provided to the Code Compliance Reviewer.

### **ACCC Authorisation**

117. As previously reported, APRA's membership, licensing, distribution and international arrangements are all the subject of an “authorisation” by the ACCC.
118. 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 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.

119. APRA reports that it has complied with all the ACCC's conditions of authorisation.

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

120. APRA AMCOS report that their staff at management level continue to be comprehensively trained regarding the Code.

121. 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.

122. In addition, the wider senior management team meets in the week following each scheduled Board Meeting, providing a cross-departmental opportunity to discuss interaction with stakeholders and wider communities and of reviewing company policies. At these meetings, the Code (including the complaints procedures and the review process) is regularly discussed.

123. 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.

124. The Music Licensing and Membership divisions usually hold staff training conferences at least once per year.
125. 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.
126. 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 the expectations 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.
127. APRA AMCOS have provided details of the induction and training sessions that the Human Resources department provide for staff. The Code and internal Staff Code of Conduct are central components of the induction program that all new staff attend when they join the company. As well as the induction sessions, 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.
128. APRA AMCOS have developed a “brand blueprint” which further outlines their purpose, values and “personality”.
129. APRA AMCOS report that their website continues to include a “live chat” facility so that responses to urgent enquiries can be provided in real time. The staff who respond to live chat enquiries are required to attend two,

two-hour training sessions to understand the live chat service guidelines and to ensure that the highest level of customer service is offered via this channel. A copy of the guidelines have been provided previously. 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.

130. 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

131. 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 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.

132. 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.
133. APRA AMCOS's internal "Wiki" facility continues to form the basis of staff training and is a key information source for all staff. All new APRA AMCOS staff are trained in accessing and using the Wiki facility which contains policies relating to Client Service, Human Resources, Work, Health & Safety and Departmental Organisation Charts.

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

134. 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 Cl 2.8 (a) of the Code. APRA AMCOS have provided a list of the numerous organisations and associations with which they have an ongoing relationship.
135. 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

136. Since July 2020, the Collecting Societies 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/>.

137. 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".

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

- Member Education – 129 events conducted and attended online by local and overseas members;
- Publisher Members – Portal Reference Groups and Publisher Pulse seminars held regularly;
- Licensee Education – attendance at a number of 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.

139. 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.

140. During the Review Period a new website was developed, built and launched in February 2021, featuring easier navigation, an improved search function and additional details in the public works search function. Full composer details and publisher details are now included when searching for particular works in the APRA repertoire. The new website meets accessibility standards and is mobile responsive.

141. Traffic to the APRA AMCOS website slightly decreased during the Review Period, from 379,410 to 354,073 users. Page views decreased significantly, partly due to improved page structure of the new website, from 3,166,902 to 1,954,561.

142. 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.

143. Increasing importance has been placed on social media as an effective means of communication, and enabler of connection within communities. Social media is a key component of APRA AMCOS's communications strategy. Social media utilised includes Facebook, Twitter, Instagram, YouTube and LinkedIn. APRA AMCOS social media presence allows greater and more time sensitive means of communications, especially with members. Again, in the Review Period, there has been growth in followers on Facebook, Twitter and Instagram; and increased engagement.

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

144. 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)**

145. 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.

146. 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/>).

147. 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

148. Prior to this Review Period, compliance reports were provided to the Code Reviewer on a confidential basis. As a result of the review, societies are now publishing their compliance reports, with any confidential material (such as correspondence between a society and a complainant) redacted.

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

150. 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)**

151. 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.

152. 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.
153. 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”)**

154. Copyright Agency's report on its compliance with the Code was furnished to me on 30 July 2021.
155. Copyright Agency's website is at <https://www.copyright.com.au>.
156. Copyright Agency had 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

157. 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.

158. 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 content creators; and
  - management of the artists' resale royalty scheme; and
- in accordance with the authority of its members, and with the oversight of the Copyright Tribunal, formulation and management of 'voluntary' licensing arrangements, principally for the business sector.”

159. Copyright Agency reports annually to the relevant Minister (currently the Minister for Communications, Urban Infrastructure, Cities and the Arts) (**the Minister**) in accordance with statutory obligations in the Copyright Act and in the *Resale Royalty for Visual Arts Act 2009* (the **Resale Royalty Act**). Its annual reports are tabled in Parliament and are available on the Copyright Agency website.

160. As a declared collecting society, Copyright Agency also operates in accordance with the Australian Government Guidelines for Declared Collecting Societies.

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

161. 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.

162. 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.

163. Copyright Agency's in-house legal team continues to oversee compliance issues, monitors relevant legal and regulatory developments, and implements any necessary or desirable changes to its policies or practices.

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

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.
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.
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 regular monthly member communications;
  - social media posts;
  - broadcast and one-on-one communications about changes to membership, distribution or payment arrangements;
  - responding to enquiries in accordance with the Service Charter;
  - providing secure online member accounts which enable members to review their membership, distribution and payment details; and
  - information in its annual reports, which are published on the website.

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

168. Copyright Agency reiterates what it has said in relation to members as recounted at [165] above, substituting "licensees" for "members" and "licence agreements" for "membership agreements".

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

- plain English guides for different types of businesses;
- pay-per-use plain English guides;
- information for media monitoring organisation customers;
- data processing protocols for schools, universities, TAFEs; and
- information in annual reports to the Minister.

170. 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.

171. 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.



172. 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.
173. Further, Copyright Agency asserts that its policies, procedures and conduct in connection with the setting of licence fees are fair and reasonable.
174. For the statutory licences for education and government, Copyright Agency mostly deal with bodies or departments representing a class of licensees (such as Universities Australia (**UA**), Copyright Advisory Group to the Education Council (**CAG**) for most schools and TAFEs, and the Department of Infrastructure, Transport, Regional Development and Communications for the Commonwealth) rather than individual licensees.
175. Copyright Agency also have individual licence agreements with more than 1,000 other education providers, such as registered training organisations, and with licensees for its voluntary licences.
176. Copyright Agency reports that it is currently engaged in proceedings in the Copyright Tribunal with:
- data collection arrangements and equitable remuneration relating to the 39 members of UA; and
  - licence fees payable by two media monitoring companies – Meltwater and Isentia.
177. Copyright Agency acknowledge the role of industry associations with which they have dealings. These include Public Relations Institute of Australia, Australian Local Government Association, Association of Corporate Counsel, Early Childhood Australia and Independent Tertiary Education Council Australia.

178. There were no new relevant terms and conditions for consultation with industry associations in 2020-21.

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

180. In the Review Period, no requests for ADR were received.

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

181. On its website, Copyright Agency publishes its Distribution Policy; its Distribution Schedule; payment timetable (when payments are made to members' bank accounts following processes such as their confirmation of entitlement to an allocation, or approval of a new member application); information sheets about individual distributions, and information regarding deductions before distribution.

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

183. Copyright Agency informs members of changes to distribution policies and processes via a range of channels, including one-on-one communications, group meetings, the corporate website, information sheets for each major distribution, and the eNewsletter entitled '*Creative Licence*'.

184. Copyright Agency reports that during the Review Period it did not receive any requests regarding rights payments, apart from any requests associated with legal proceedings in the Copyright Tribunal.

185. Also in the Review Period, Copyright Agency consulted with author and publisher representatives, and informed members, about proposed changes to the methodology for distributing licence fees from schools in June 2021. This was partly related to the 'pause' of surveys in schools in March 2020, that Copyright Agency also informed members about.
186. Communications included: an article in Creative Licence: "*Supporting teachers and students during COVID-19*"; an article in Creative Licence: '*Update on schools survey*'; an article in Creative Licence: '*An update on member payments*'; and an Infosheet on 2021 distribution of licence fees from schools.
187. Copyright Agency's distribution policy, and information sheets about individual distributions, are in Plain English.

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

188. Copyright Agency reports that the operating costs associated with managing the statutory and voluntary licence schemes continue to be met from its revenue. In some cases, the deduction is a fixed percentage but in most cases the deduction represents the actual and projected costs relevant to the particular licence scheme.
189. 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.
190. Copyright Agency's Board of Directors approves the society's annual operating budget and reviews the budget at each Board meeting.

191. 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)**

192. 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.

193. 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.

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

195. Copyright Agency's annual reports provide information about:

- total revenue for the period;
- total amount, and nature of, expenses;

- total amounts allocated and paid to members, including breakdowns by licence sectors;
- the accounting and distribution of licence revenue, including:
  - classes of Licensees from whom licence revenue was received;
  - classes of Members to whom licence revenue was paid
  - categories of copyright material for which licence revenue was received; and
  - domestic vs international payments of licence revenue
- information about expired undistributed funds, including:
  - the reason/s why funds remain undistributed to rightsholders;
  - the steps taken to locate rightsholders and distribute funds to; and
  - information on the allocation and use or proposed use of the funds

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

196. 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)**

197. 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).

198. 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.

199. Information on the website relating to membership includes:

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

200. Information on the website relating to licensing includes:

- licences available for various sectors (e.g. business, not-for-profit, education);
- pay-per-use licences;
- plain English guides;
- works excluded from voluntary licences;
- benefits of obtaining a licence, including a video for individually licensed education institutions and a webpage for businesses;
- 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).

201. 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.

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

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

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

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

205. The annual reports also provide information regarding:

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

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

206. 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)**

207. 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.

208. 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.

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

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

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

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

### **General**

212. Screenrights' report on its compliance with the Code was furnished to me on 30 July 2021.

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

214. 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.

215. 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.
216. 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).
217. As at 30 June 2021, Screenrights had 4,897 members [2020: 4,712] and 1,530 licensees [2020: 1,485]. 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	4,897
Licensees	1,530
<i>Schools -- Government, Catholic Systemic, Independent -- Peak Bodies</i>	40
<i>Higher education including universities</i>	66
<i>Private Vocational Education/Training Organisation (inc ELICOS)</i>	26
<i>Government Agency</i>	424
<i>TAFE (including individual institutions and Departments representing multiple institutions)</i>	12
<i>Resource Centre</i>	6
<i>Retransmitter</i>	3
<i>NZ -- Tertiary</i>	30
<i>NZ – Schools</i>	921
<i>NZ – Resource Centre</i>	2

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

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

219. At a Meeting of Directors on 23 September 2020, the Board approved an amendment to the Corporate Governance Statement. A Diversity Statement was added as a new clause 12.2. A copy of the updated Corporate Governance Statement can be accessed from Screenrights' website, along with other key governance documents, including the Constitution, Privacy Policy, and its dispute and complaints management procedures.
220. Screenrights made no material changes to any other documents relevant to the legal framework in 2020-2021.
221. 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.
222. 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)**

223. Membership of Screenrights remains open to all eligible rightsholders. Membership increased in the Review Period from 4,712 to 4,897 members.
224. Screenrights states that it adopts policies, processes and practices to ensure that members are treated fairly, honestly, impartially and courteously in accordance with its Constitution and the Membership Agreement. This includes staff training such as a comprehensive induction process and Code of Conduct training. Screenrights' Member Services team engages in frequent communication with members via phone and email and through its

online membership portal *MyScreenrights*, as well as meeting in person where possible.

225. Screenrights adopts a continuous improvement approach to information management and information systems in the interests of transparency and efficiency. It reports that it undertakes numerous initiatives each year to improve the quality of information captured and the ease with which information can be provided to it by its members. The Society also undertakes initiatives to streamline information processing within its in-house systems to deliver efficiencies to royalty distribution.

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

- Improvements to the *MyScreenrights* online membership portal. After a system rebuild last year, Screenrights was able to continue to customise the website based on internal requirements and member feedback.
- Improvements to in-house systems, by way of an upgrade of Screenrights' in-house application used to collect, store and manage member claims to royalties. The new application includes a range of new features to support the efficient management of information.
- The leveraging of AI, as Screenrights integrated a third-party machine learning platform that enables early identification of competing claims to royalties. This allows members more time to resolve claims before the expiration of royalties.

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

227. 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.
228. 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.
229. 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.
230. 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.
231. 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.
232. The educational scheme agreement covering 98% of Australian schools expired on 31 December 2020. While the terms of a new agreement to 31 December 2024 have been largely agreed in principle, the Agreement is anticipated to be executed in the fourth quarter of 2021.

233. 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 were still in the process of being finalised as at the end of this reporting period.
234. In relation to retransmission statutory licences, Screenrights largely deals with Foxtel. The remuneration agreement with Foxtel expired on 31 December 2019, and the parties have not been able to reach an agreement on the amount of equitable remuneration payable for the retransmission of free to air broadcasts under a new agreement. Accordingly, on 22 July 2020, Screenrights filed an application in the Copyright Tribunal for a determination of the equitable remuneration payable by Foxtel. The litigation has been ongoing and it is expected that the final hearing will take place in or around March 2022. An agreement for an interim payment was reached on 6 October 2020. In its report to the Code Compliance Reviewer, Screenrights has said that more information can be provided upon request
235. 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.
236. 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)**

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

238. 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.

239. Under the Distribution Policy, royalties relating to the 2015, 2016 and 2017 distribution years expired on 30 June 2021. This signified Screenrights' change from a six-year distribution period to a four-year distribution period. All undistributed royalties from the 2015, 2016 and 2017 years have been rolled over to the 2021 distribution year. Any royalties still in dispute from the aforementioned years have moved into the Competing Claims Fund year (CCF), which allows members an additional 12 months to resolve their competing claims to the royalties.

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

240. 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.

241. Screenrights' expenses for the Review Period were approximately 15.87% of gross revenue subject to audit review. The audited figure will be in Screenrights' Annual Report.
242. 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.
243. Detailed information on Screenrights' expenses including the expenditure to collections ratio for the financial year 2020/2021 is found in Screenrights' Annual Report, where a comparison with the years 2018/2019 and 2019-2020 is depicted. This report was made available in October 2021.

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

244. 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.
245. The Audit, Risk & Governance Committee of the Board met three times during the Review Period. Its principal functions are to ensure that accounting records are maintained in accordance with statutory requirements, to ensure that financial controls are sufficient, to review the operational and strategic risk assessments, and to review the financial statements and consult with the external auditors.



246. 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.
247. Screenrights' Annual Report for 2020-21 became available in late October 2021, including the audited accounts as at 30 June 2021. 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.
248. Annual Reports are published on the corporate website and presented to the members in preparation for the Annual General Meeting. A copy is provided to the Minister and is tabled in Parliament.

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

249. 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 and on the internal intranet.

## Education and Awareness (Code, Clause 2.8)

250. 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 created 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

251. In addition, 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, October 2020
- Australian Writers Guild "AWGIES" Awards, December 2020
- Screen Production and Development Association (**SPADA**) Screen Industry Awards, October 2020
- Screen Forever (run by Screen Producers Australia), February 2021
- Australian International Documentary Conference, February/March 2021
- Doc Edge Forum, May 2021
- The Regional to Global Screen Forum (run by Northern Rivers Screenworks), March 2021

252. Screenrights also continued its Cultural Fund competitive program in 2020 and 2021. 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.

253. 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)**

254. Screenrights' Annual Report provides the information required by clause 2.9(a) of the Code.

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

255. 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)**

256. 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.

257. In the Review Period, Screenrights has also published its 2019/2020 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.

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

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

260. 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)**

261. In the Review Period, Screenrights upgraded its in-house application used to collect, store and manage claims to royalties for film and television titles. The new application includes a range of new features for the efficient management of claim information.

262. Screenrights also integrated a third-party machine learning platform to leverage AI in the identification of competing claims. The use of AI in data processing pipelines means members will be notified sooner about their competing claims and will have more time to resolve the competing claim before royalties are due to expire.

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

263. PPCA's report on its compliance with the Code was furnished to me on 30 July 2021.

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

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

265. PPCA reports that during the Review Period, it met its obligations as set out in clause 2.1 of the Code.
266. PPCA reports that its Constitution did not change during the Review Period.
267. During the Review Period, PPCA's Privacy Policy was updated to reflect new information collection methods used when collecting information from PPCA Licensors and Licensees.
268. 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.
269. PPCA has also made available a plain English guide of the PPCA Distribution Policy as well as a plain English guide explaining how Undistributed Funds are handled. These guides provide a simpler overview of PPCA's distribution practices and provide readers with links to the full Distribution Policy.

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

270. 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.

271. 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).
272. 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).
273. 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.
274. As at the end of the Review Period on 30 June 2021, PPCA had approximately 3,215 licensors [2020: 2,900] representing major record companies, smaller record companies and independent copyright owners (for example, recording artists themselves). The number of registered artists was 4,801 [2020: 4,575].
275. Also during the Review Period, the Distribution Policy was updated to better reflect current sources of playlist data which impact the distribution of licence fees received, as well as more information about the type of licences from which PPCA derives licence fee income.
276. The Input Agreement was not amended during the period under review.

277. 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.
278. 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.
279. The PPCA website includes "FAQ" sections for both Licensors and Registered Artists, to explain the services provided by PPCA. Licensors and Registered Artists can access the PPCA Constitution from the PPCA or CCSA website, or are supplied with a copy upon request.
280. In addition to the publication of its newsletters, during the Review Period PPCA emailed its Licensors and Registered Artists to provide information on matters of interest and key developments to those stakeholders, including information on support for record companies and artists impacted by the COVID-19 pandemic and live music industry shutdown. In particular, PPCA continued to share information on how individuals could receive financial and mental health support from Support Act, a music industry-focused charity of which PPCA is a key stakeholder and supporter and provided updates on support initiatives of both State and Federal Governments.

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

281. 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. OneMusic is administered by APRA AMCOS. Since its launch, OneMusic has been responsible for the

administration of PPCA public performance licences, licensing the use of music in businesses.

282. As of 30 June 2021, PPCA directly licensed around a thousand businesses and individuals for the use of protected sound recordings and music videos. The reduction of the number of licensees from last year is reflective of the overwhelming majority of PPCA public performance licensees now acquiring their licences from OneMusic instead of PPCA directly.

283. 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 separate simulcast licences for commercial radio broadcasters;
- radio broadcast and optional simulcast licences for members of the Community Broadcasting Association of Australia (**CBAA**) and community radio stations that operate independently of the CBAA;
- on demand licences for radio broadcasters;
- broadcast and communication licences for subscription television operators (including IPTV operators);
- communication licences for subscription video on demand services;
- television and radio broadcast licences, simulcast licences and on-demand communication licences for the ABC and SBS;
- communication licences for linear music streaming services (such as internet radio stations) and semi-interactive music streaming services;
- 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 particular activities and events.

284. 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.

285. PPCA's website contains information on the range of broadcasting, digital and joint licences available, the application process, and a range of FAQs covering matters both specific to OneMusic and on copyright issues more generally.

286. In addition, PPCA, continues to collaborate with APRA AMCOS on potential new licensing schemes and changes to current licences offered by OneMusic. As a consequence of APRA's role in administering OneMusic, further detail on the development of OneMusic licensing schemes can be found in the APRA submission.

287. PPCA reports that during the Review Period, it has continued to exercise forbearance when dealing with licensees, especially in regard to their individual circumstance considering the ongoing COVID restrictions. This has included stopping debt collection and waiving licence fees for individuals and businesses whose activities have been severely impacted by COVID restrictions and lockdowns.

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

288. 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.
289. 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.
290. 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.
291. During the Review Period changes were made to the Distribution Policy. These changes provided more detail about the type of licences PPCA offers, and included new methods being used by PPCA to gather data and make allocations for the purposes of the annual distribution, including the use of proxy streaming data and data sourced from Music Recognition Technology (**MRT**) providers.
292. PPCA undertakes a single annual distribution for the financial year ended 30 June, which is made prior to 31 December in each calendar year. Licensors must register their details and sound recordings to by 31 August the same year to be eligible for the December distribution.

293. During the period under review, PPCA did not receive any requests from licensees asking for details about how their particular licence fee was distributed to licensors and artists.

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

294. 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.

295. PPCA's Annual Report for the year ended 30 June 2020 (published during the Review Period) showed that the expense to revenue ratio was 15.4% [2020: 13.9%]. The cause of the rise has been attributed to several unexpected events which occurred in the first half of 2020 – primarily the COVID-19 pandemic and various lockdowns and restrictions which led to an unanticipated decline in public performance revenue.

296. The Annual Report was published during the reporting period and is available from the PPCA website.

297. PPCA maintains a fund for charitable, educational and like purposes. The fund represents 2.5% of the annual distributable funds (after expenses) allocated to the local (Australian) repertoire pool. Due to the unexpected reduction in the net surplus (including the local repertoire pool) for FY2020, no payment was made to the PPCA Performers' Trust in respect of this distribution period.

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

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

299. 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.
300. In addition, the Board-appointed Finance Committee continues to meet regularly to review interim financial accounts, and the outgoings and expenses referred to in them.
301. 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
302. The PPCA Board, Committees and relevant Managers are also provided with PPCA's "Competition and Consumer Compliance Guidelines" and training presentations are held periodically.
303. In accordance with PPCA's Constitution, PPCA conducts regular elections to fill the positions for both Licensor and Artist Representative Directors. In addition, at each meeting of the PPCA Board, directors are reminded of their obligations and duties.
304. The PPCA Management Team continues to meet each week to discuss operational and strategic matters.

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

305. PPCA's practice of providing staff at the commencement of their employment with a number of key documents, including the Code, the PPCA Privacy Policy and the PPCA Complaints Handling and Dispute Resolution Policy, continued to be followed during the Review Period.

306. 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.
307. The Business Affairs and Distribution Departments meet regularly for staff training and process review purposes. Department managers are provided with copies of any complaints received, relevant to their department, so they can be discussed and reviewed at team meetings.
308. In addition, periodic training sessions for all staff on the Code are held. PPCA maintains an in-house intranet which makes available all key policy documents, including the Code. Staff are encouraged to review the intranet regularly and are notified when changes are made to PPCA policies.

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

309. 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.
310. From the PPCA website, people can access information about the history of PPCA alongside information on all the licences PPCA still directly administers. 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). 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.

311. PPCA engages with Licensors and Artists to educate them on the role of PPCA through regular meetings and the publication of the newsletter *On the Record*. The newsletters provided specific information about well-being support and financial assistance available to artists during the COVID pandemic. PPCA also engages both current and prospective artists and licensors through its social media channels. Several posts are made on a weekly basis, informing users about developments within the music industry, the availability of COVID related support, and opportunities for Australian artists. Due to the COVID pandemic and restrictions, PPCA representatives did not physically attend any conferences where explanatory materials are traditionally distributed during the reporting period. However, PPCA did participate in some virtual conferences, producing short video content explaining the role of PPCA and how to register as a Licensor or Artist.
312. PPCA also engages with a number of organisations to raise awareness of the operation of copyright collecting societies and the Code.
313. In addition, PPCA continues to collaborate with APRA AMCOS on producing materials that help raise awareness of both organisation among songwriters, artists, and prospective licensees. For example, within the reporting period PPCA and APRA AMCOS trialled a commercial radio advertising program undertaken by OneMusic to make potential licensees aware that they may need to acquire music licensing when playing background music in their business.
314. During the reporting period, PPCA partnered with the Association of Artist Managers (**AAM**) to produce a guide for music managers. This guide covered several issues, including some copyright basics, the role of PPCA, how to register Artists and individual tracks, a brief outline of the PPCA distribution policy and allocation process, and other associations and resources managers may want to review to help them manage and

administer their artists' rights, particularly in relation to sound recordings. PPCA representatives have also regularly met with managers during the reporting period to answer specific questions about the guide or other related-matters and provide information on types of assistance they or their artists could access.

315. PPCA raises public and industry awareness of its role through its support of:

- Sounds Australia
- the PPCA Performers' Trust Foundation
- the Why Music Matters initiative
- The Arts Law Centre of Australia
- Membership of the Australian Copyright Council
- NATSIMO
- the Australian Independent Record Labels Association (AIR)
- Support Act;
- the AAM, and
- the Australian Songwriters Association Awards.

316. Awareness is further enhanced through the grants program conducted in partnership with the Australia Council each year, through which the creation of new Australian recordings is facilitated. During the Review Period, the Australia Council, ARIA and PPCA announced a new and additional round of grants, specifically for First Nations artists. Grants were awarded to five recipients to assist with the production of new music and providing access to managerial and industry support.

317. PPCA raises its profile and awareness of its role in music licensing through sponsoring individual awards at the AIR Awards, ARIA Awards, and ARIA Week. In the ARIA Awards, the PPCA-sponsored award, 'Breakthrough Artist of the Year', is awarded on-air during the free-to-air broadcast, with the presenter providing references to PPCA's role as a copyright collecting society.

318. PPCA continues to collaborate with APRA to improve current OneMusic licensing schemes. Ongoing consultations are still taking place with various industries and stakeholders in regard to the consolidation of one area of separate pre-existing APRA and PPCA licence schemes. It is expected that consultation, which has been delayed due to the impact of COVID on the broader music industry, will be concluded during the 21/22 reporting period.

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

319. 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)**

320. PPCA publishes notification of the Annual Code of Conduct Review Process on its website, and also in its newsletters. The Code itself is available on the PPCA website, together with all historical reports on Code compliance issued by the Code Compliance Reviewer, and all reports issued in relation to the various Triennial Review processes undertaken since the Code was first introduced.

321. PPCA also notes the Code Reviewer's report on PPCA's compliance with the Code in its Annual Report.

322. Since the introduction of the CCSA website in July 2019, PPCA's site also provides links directly to that Code specific site

323. 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)**

324. PPCA is committed to improving business practices and efficiencies, and regularly reviews its own processes and methods of collecting data in order to continuously meet this objective.
325. During the 2020/21 Review Period PPCA introduced a new pool of relevant proxy data to assist in the distribution of general public performance revenues, having been able to acquire data relating to premium subscription streaming services.
326. Also during the Review Period, PPCA directed considerable attention to responding to the particular unexpected business challenges resulting from the impact of COVID-19, adjusting many of its processes and procedures to accommodate the necessity for the PPCA employees to spend a considerable portion of the year working remotely. Despite the challenging conditions PPCA was able to ensure that licensees, artists and licensors were able to seamlessly contact PPCA staff via all of the usual means, and those staff were able to maintain normal response times.

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

### **General**

327. AWGACS's report on its compliance with the Code was furnished to me on 2 August 2021.
328. AWGACS's website is at <https://www.awg.com.au/awgacs>.
329. AWGACS states that there have been no substantive changes to its practices since the last reporting period in 2020, and confirms that the

issues with domestic collection and distribution with Screenrights previously raised with the Code Reviewer, have now been resolved.

330. AWGACS is not a declared society under the Copyright Act.

331. 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.

332. 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)**

333. 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)**

334. The number of members of AWGACS at 1 July 2021 was 1,971 [2020: 1,971], an increase of 109 since the last report.

335. Membership remains available to all scriptwriters.

336. 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)**

337. 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)**

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

339. 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.

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

341. In the financial year ended 30 June 2021, AWGACS collected \$2,106,932.61 [2020: \$2,131,387.39] for distribution in 2021 and distributed \$1,200,178.27 [2020: \$1,076,964.84] from prior year collections.

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

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

343. 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.

344. 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)**

345. 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.

346. 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.

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

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

348. AWGACS reports that its employees are aware of the Code and of its requirements and particularly of the Society's Complaints Handling Procedure.

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

349. 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.

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

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

352. 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.

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

354. AWGACS also provides an advice service to members and to industry stakeholders on copyright and related issues.

355. AWGACS continues to respond individually to all telephone and email enquiries from members, potential members and the general public about the society's purposes and practices.

356. In addition, in May 2021, AWGACS began the process of creating an educational video for current and potential members. The video was due to be available to the public later in the year.

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

357. 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)**

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

359. 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)**

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

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

### **General**

361. ASDACS's report on its compliance with the Code was furnished to me on 28 July 2021.

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

363. 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)**

364. A final determination was made by the ACCC on 28 August 2020 (effective 19 September 2020) granting approval to ASDACS to change its constitution to make directors assigning their retransmission rights to ASDACS a condition of membership for a period of 5 years. The relevant constitutional changes were passed at an ASDACS Extraordinary General Meeting on 20 October 2020. The full application and responses are available on the ACCC Public register at:  
<https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/australian-screen-directors-authorship-collecting-society-ltd-asdacs>.
365. During the review period, ASDACS changed its financial year from a calendar year (1 January - 31 December) to an Australian financial year (1 July - June 30). The amendment to the ASDACS' accounting period was passed at the ASDACS' Extraordinary General Meeting on 20 October 2020, effective 1 July 2021 (with a 6 month transitional financial period 1 January 2021 - 30 June 2021).
366. ASDACS' Privacy Policy, 2020 Annual Accounts, Articles of Association and Memorandum are available on the ASDACS website
367. ASDACS consists of three staff members and one casual staff member. The staff list is available on the ASDACS website.
368. 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)**

369. Membership eligibility remains open to audio-visual directors and there was no change to the membership rules during the review period.
370. By the end of the Review Period, the membership had grown to 1,343 [2020: 1,267], an increase of 6%. 1055 members were Australian, 183 New Zealander and 105 were international residents for tax purposes.
371. As noted, during the Review Period, 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. An educational webinar for members on the new membership model is also planned for the second half of 2021.
372. 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.
373. 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)**

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



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

375. ASDACS does not collect licence revenue, but instead collects royalties generated from secondary rights. Secondary royalty income for the 2020 calendar year period totalled \$1,953,769 [2019: \$1,982,630]. This includes an amount of domestic retransmission royalty revenue totalling \$21,108 [2019: \$10,867] received from Screenrights.
376. A total of \$13,429 bank interest [2020: \$27,697] earned on ASDACS income over the 2020 calendar year will be distributed evenly to its members in accordance with its constitutional rules.
377. ASDACS distributes domestic and international income collected the prior calendar year to members on an annual basis. During the Review Period, \$1,458,431 of secondary royalties collected in the 2019 year were distributed to the members.
378. 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 \$26,021 were allocated to the development fund. \$15,030 was used on database development and \$420 was paid out to members during the year from previously closed funds. The development fund increased by the remaining balance of \$10,571.
379. 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)**

380. ASDACS's members received the full amount of gross royalties that ASDACS received from reciprocal collecting societies internationally for their works, less the following amounts:

- **Administrative fee:** administrative fee of 15 per cent, which covers ASDACS's operational expenses.
- **Membership fee:** membership fee of 10 per cent, waived for members of the ADG, the Directors and Editors Guild of New Zealand (**DEGNZ**), beneficiaries and retirees; and
- **Cultural Purposes Fund:** cultural fund fee of 4 per cent. In 2020, \$78,151 was transferred to the fund; \$50,000 of which was granted to the Australian Directors Guild (ADG), \$5,000 was granted to the DEGNZ and \$10,000 was donated to the Motion Picture Industry Benevolent.

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

381. At its Annual General Meeting, six members were appointed to the ASDACS Board in accordance with its constitutional rules.

382. As mentioned previously, the 2020 audited ASDACS Annual Accounts are available on the ASDACS website and include details on collections, administration expenses, distributed funds and undistributed funds

383. 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)**

384. 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)**

385. 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.

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

387. 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.

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

389. 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.

390. 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)**

391. 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)**

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

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

- the Code Reviewer's latest Report on Compliance with the Code;
- the Code Reviewer's Triennial Review of the Operation of the Code 2017; and
- the 2021 Call for Submissions.

394. 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)**

395. 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

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

#### **General**

396. The APRA AMCOS Complaints Policy and Procedure can be read at

<https://www.apraamcos.com.au/about/governance-policy/policies-procedures/complaints-procedure>.

397. 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.

398. 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 none carried over from the previous period of review.

399. Complaints by licensees or prospective licensees, together with related correspondence and documents, are behind Tab 2 of Volume 2. There

were two new licensee Code complaints received during the Review Period and one held over from the previous period of review.

400. APRA AMCOS explains that if it is unsuccessful in its attempt to persuade a user of music to take a licence, the matter is referred to APRA AMCOS's external solicitors, and that such matters are not characterised as "complaints" unless a complaint regarding the conduct of APRA AMCOS staff or of the external solicitors is received.
401. As at 30 June 2021, there were 419 ongoing general compliance matters under the management of APRA AMCOS's Legal Department, of which 399 were under the management of APRA AMCOS's external solicitors. As at 30 June 2020, the corresponding figures had been only 102 and 83. APRA AMCOS explains that the increase in the number with external solicitors results from a bulk referral of infringement matters arising from the process of transitioning from APRA AMCOS and PPCA licences to OneMusic licences. APRA AMCOS has offered to make available more information regarding the activities of external solicitors, including litigation commenced during the Review Period, on request by me.
402. Where a licensee fails to pay invoices issued by APRA AMCOS, the matter is pursued by its 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 2021, 94 entities were under the management of APRA AMCOS's Australian external mercantile agent, and 81 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. There were no such complaints made during the Review Period. APRA AMCOS has offered to make available more information regarding the activities of the external mercantile agents if requested by me.

403. 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/>.
404. 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 2020) has been provided to me (Volume 2, Tab 3).

## **Complaints by Members**

### ***APRA AMCOS Member Complaint 1 – CO1***

405. Complainant CO1 made two complaints: lack of action on the *321 Home Sessions* program, and more general non-responsiveness.
406. By an email dated 15 July 2020, CO1, who said that she was an artist registered with APRA AMCOS, said that in April 2020 she signed up for the *321 Home Sessions* program during the COVID-19 lockdown and was paired with someone who unfortunately had to drop out of the program before it commenced. She said that after he and she notified APRA AMCOS of this, she was told to stand by as she would be paired with someone else but she did not hear further.
407. CO1 also complained that in respect of certain other programs that she had applied for, she did not receive a response or an update on her status. She said that she felt that she had lost opportunities because of this and felt discouraged after filling out forms expressing her interest and signing up for opportunities, to be left with only automated responses.

408. She also complained that she had seen the same artists being repeatedly promoted in the newsletters that she received from APRA AMCOS, but felt that there was no point in her opening the newsletters. She felt that APRA AMCOS was yet another organisation in which it was necessary to have connections if doors were to be opened for the independent artist.
409. She said, on the other hand, that she had had "great experiences" with the "Meet the Locals" programs although they were very general in nature.
410. On the same day (15 July), someone from APRA AMCOS made a telephone call to CO1 to discuss her complaint, but no file note exists recording the content of the conversation.
411. Later on the same day (15 July), the Senior Manager – National Engagement of APRA AMCOS, wrote to CO1 referring to a conversation that he had just had with her and undertook to be in contact with her the following week. In particular, he said that in the following week she would be paired with someone "to write with".
412. The following day (16 July) CO1 replied saying "Thanks for the chat yesterday! I really appreciate the time you took and your efforts don't go unnoticed!"
413. APRA AMCOS say that CO1's complaint concerning the repeated promotion of the same artists in the newsletters was part of her broader complaint, which has been addressed by her positive interactions with APRA AMCOS staff and her successful participation in the *321 Home Sessions* program. APRA AMCOS say that while they disagree with the complaint about the newsletters, they will not seek to refute it by giving an



analysis. They say, however, that they are willing to analyse their newsletters if this course is recommended.

414. APRA AMCOS say that on 24 July 2020, CO1 was paired with the replacement partner for the second round of the *321 Home Sessions* program.

415. On 29 July, CO1 wrote to the officer at APRA: "Thanks...! Really appreciate it."

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

416. APRA AMCOS should make a study of their newsletters to ascertain whether there is substance in CO1's complaint and if so, redress the matter. It is obviously a major source of grievance if people placed as CO1 was feel that there is no point in their applying because the same individuals are repeatedly favoured. APRA AMCOS should ask themselves whether a person in CO 1's position might reasonably feel as she did and ensure that in fact there is no ground for a perception of bias.

### **APRA AMCOS Member Complaint 2 – CO2**

417. By email dated 17 August 2020, CO2 complained about the unlicensed use of his music on a free-to-air television channel. His first complaint was that there had been no response from APRA AMCOS in over five months to his having raised the matter. The second complaint was over the low amount (\$3.99) that he had received. The "APRA Royalty Statement", also dated 17 August 2020, was in respect of the period from 1 January 2020 to 31 March 2020 and stated that the complainant's "August royalty payment (P2007)" had been released to his nominated account.

418. On the same day, "Complaints" at APRA AMCOS replied undertaking that the issue raised would be investigated as a matter of urgency and that a formal response would be provided within 14 days.
419. APRA AMCOS discovered that there had been no response because they had been awaiting information from "a third party" and had omitted to follow up the third party. The third party was in fact the free-to-air television channel.
420. On 28 August 2020, the Manager – National Engagement in the Queensland office of APRA AMCOS wrote responding to the complaint of 17 August 2020 and apologising for the "extended delay" in responding to "the most recent" of CO2's emails. The email explained causes for the delay but acknowledged that this did not excuse the lack of response from APRA AMCOS.
421. APRA AMCOS referred to earlier correspondence between CO2 and APRA AMCOS in which there had been discussion about the complainant's reviewing the television programs and advising APRA AMCOS of the "timestamp/duration" of the broadcast of the works in question, so that APRA AMCOS could follow up the matter with the television channel.
422. APRA AMCOS requested CO2 to carry out that exercise and provided him with *YouTube* links to the two episodes in question.
423. In relation to the payment of \$3.99, the email explained that this was a royalty payment for other broadcast/s of CO2's musical works.
424. APRA AMCOS have explained that CO2's complaint within the Review Period represents only part of an ongoing issue in relation to the use of his music by the television channel. There is correspondence dating from

October 2019 between CO2 and APRA AMCOS staff. APRA AMCOS requested the television channel to provide cue sheets in respect of the episodes in question to enable APRA AMCOS to determine if CO2's works were used in them. APRA AMCOS explain that they use broadcast logs and cue sheets from broadcasters as the primary means of determining the repertoire used and royalties payable for use of APRA AMCOS repertoire in programming broadcast on commercial free-to-air TV.

425. APRA AMCOS report that the cue sheets were eventually provided and the royalty distributions for the episodes in question were paid. However, CO2 did not receive a royalty under that distribution as no works associated with him were reported in the cue sheets provided by the broadcaster.
426. An email dated 3 March 2020 from CO2 to APRA AMCOS made the point that there were various versions of his song and that it was necessary to know which version went out in the past.
427. APRA AMCOS have reported, in response to questions by me, as follows:

"The permission for use of CO2's works in the episodes may already be covered by either a production music licence (typically held by the production company) or blanket licence held by the broadcaster. If that is not the case and the use of the work is unlicensed, CO2 will likely need to raise the issue directly with the program's producers or the broadcaster in his personal capacity.

The [issue] continues to be dealt with by the APRA AMCOS Writer Services Team and CO2."

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

428. APRA AMCOS regard CO2's complaint as having been resolved on 28 August 2020 but it seems that it has not been finally resolved, as APRA AMCOS's response to me quoted above indicates.

429. I take the opportunity of noting a difficulty that I have had in grappling with the “high-level summary” provided by APRA AMCOS. No doubt the societies hope that their high-level summary will make the task of the Code Compliance Reviewer easier but in this case it has made it more difficult because the summary omits important detailed background.

### **APRA AMCOS Member Complaint 3 – CO3**

430. On 10 August 2020 the complainant wrote to the CEO of APRA AMCOS posing eight questions which the APRA AMCOS Compliance Report summarised as follows:

- (1) that APRA AMCOS maladministered the registration of CO3's works in respect of publisher details and the publisher's share of the royalties (the complainant asserted that he had never had any contract or other arrangement with the publisher in question);
- (2) that APRA AMCOS wrongly applied royalties accrued for CO3 towards drawing down a debit on his account (revival of a dispute that CO3 had raised and had been responded to by APRA AMCOS in 2009);
- (3) that account statements were not readily available to CO3;
- (4) that APRA AMCOS did not notify CO3 that another party had contested the royalty split on two works that CO3 had registered.

431. CO3's email of complaint to the CEO dated 10 August 2020 enclosed copies of earlier correspondence of 2003 and 2009.

432. On 15 September 2020, the Head of Legal & Corporate Services at APRA AMCOS replied to CO3. He advised that he was gathering the necessary information to provide a more formal response which he hoped to do by the end of the following week.

433. On 6 October 2020 and 3 December 2020, the Head of Legal & Corporate Services provided a substantive response. The response on the latter date advised that APRA AMCOS had concluded its investigation in relation to two particular works composed by CO3 and confirmed that no dispute was on foot in respect of either of those works, and, accordingly, the “dispute hold” had been lifted from both works and their status regularised.

434. The earlier letter dealt with issues 1 to 4 mentioned above as follows:

- (1) No action was required as only a change of name of the publisher had been involved and APRA AMCOS had acted in accordance with the publisher’s direction in accordance with their standard practice;
- (2) APRA AMCOS explained why the original debit of \$24,735.40 which represented overpayment by APRA AMCOS to the complainant over the period July 1995 to December 1998 was correct and why royalties accruing between July 1998 and December 2013 were offset against the debit for the overpayment. APRA AMCOS confirmed that in December 2013, they wrote off the then remaining debt (of \$6,791.02), and that royalties accruing after that time should have been credited to CO3’s account with no offset. APRA AMCOS advised that the member’s account would be released from “hold” and would be credited with amounts of \$0.18, \$213.84 and \$808.76.
- (3) APRA AMCOS confirmed that CO3 had not received payments, statements or updates because the account had remained in a “hold” status since the dispute was raised in October 2009. To resolve this issue, the account was released from “hold” and CO3 was advised that henceforth he would receive standard statements and payments.
- (4) APRA AMCOS confirmed that they should have notified CO3 about the contested ownership claim that arose around October 2013 but

that a breakdown in internal processes at APRA AMCOS had led to that not occurring. APRA AMCOS apologised and undertook to progress the dispute while keeping CO3 updated. Further investigation by APRA AMCOS resolved the dispute concerning the contested royalties split, and CO3 was advised of this by email.

435. APRA AMCOS took the view that as there was no further communication from CO3, the complaint should be taken to have been resolved on 3 December 2020.

436. I questioned APRA AMCOS about their statement that the royalties split issue had been resolved on 3 December 2020. They have elaborated on that issue by explaining that back on 20 September 2013, another person (Disputing Writer) claimed a 100% royalty entitlement in respect of two works which CO3 had registered as a 50/50 royalty split between CO3 and the Disputing Writer. APRA AMCOS have provided to me the Disputing Writer's email of 20 September 2013.

437. Briefly, the Disputing Writer claimed to be the author of the melody and lyrics of two songs and that CO3 was the arranger. The Disputing Writer accepted that she had agreed to a 50/50 royalty split but said that due to her youthfulness, inexperience and lack of knowledge, the agreement should be set aside. She sought advice from APRA AMCOS.

438. APRA AMCOS responded to the Disputing Writer advising that the society's ADR services were available only in respect of works that generated earnings over a certain threshold and that there were no such earnings on either song. However, the works were noted as being in dispute and APRA AMCOS undertook to contact CO3 to enquire whether he maintained his claim.

439. On 3 November 2020, APRA AMCOS wrote to the Disputing Writing advising that the “hold” on both works would soon be lifted and the 50/50 split restored unless she revived her claim to 100%. APRA AMCOS allowed the Disputing Writer until 17 November 2020 to respond and when she did not do so, they removed the “hold” status.

440. On 3 December 2020, APRA AMCOS wrote to CO3 confirming that no dispute was on foot and that the “hold” had been lifted from both works.

441. APRA AMCOS regarded their email on 3 December 2020 to CO3 as marking the date of resolution of the complaint.

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

442. As in the case of CO2, it is only the elaboration by APRA AMCOS in response to the Code Compliance Reviewer’s query that the story on the disputed 50/50 split becomes anything like clear. That elaboration should have been included in the material originally submitted to the Code Compliance Reviewer

## **Complaints by Licensees or Prospective/Potential Licensees**

### **APRA AMCOS Licensee Complaint 4 – CO4**

443. This complaint was made during the previous period of review directly to the Code Compliance Reviewer and was dealt with at [719] – [731] of the Report on Compliance dated 30 November 2020.

444. CO4’s complaint is that entities that were in competition with it were taking a “Consumer Licence” from APRA AMCOS and using it in their business of providing background music in competition with the business of CO4. The ACCC Determination recorded at [3.13] that a number of

background music suppliers submitted that APRA AMCOS should make it clear that “licensees using personal streaming services in a commercial setting are in breach of the terms of use of those services”. The ACCC included Condition C1.8 in its Determination which set out a statement that must be prominently displayed on the OneMusic website to the effect that even with a OneMusic licence, the use of digital music streaming services by the licensee might be a breach of the terms and conditions of the licensee’s end user agreement in relation to that service, and that the licensee should check with its service provider. CO4 sought a further or more elaborate statement by APRA AMCOS, but APRA AMCOS said that the wording sought by CO4 was not acceptable.

445. At [731] of the previous Compliance Report I suggested that the parties meet with the aim of agreeing upon a wording.

446. It is that recommendation that has led to APRA AMCOS’s updating report now before me.

447. APRA AMCOS report that they met with CO4 in December 2020 and that as a result, APRA AMCOS have made certain changes to its OneMusic information guides and FAQs on the OneMusic website, all of which were aimed at addressing CO4’s concerns. The changes in wording are set out and I need not repeat them here.

448. APRA AMCOS acknowledge that the changes are not as extensive as CO4 requested but contend that they are clear and transparent and are not inconsistent with Condition C1.8 of the ACCC Determination. APRA AMCOS contend that their conduct, the subject of CO4’s complaint, does not constitute a breach of the Code of Conduct.



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

449. As this is no more than an updating report, no more need be said about it.

#### **APRA AMCOS Licensee Complaint 5 – CO5**

450. This complaint relates to a non-receipt of OneMusic's COVID-19 fee rebate, and the receipt of payment reminders.

451. CO5 wrote to APRA AMCOS on 16 February 2021 advising that she had received no advice about COVID relief. Indeed, she had received on 13 February 2021 a reminder to pay an outstanding invoice.

452. The complainant's email of complaint was sent at 3.31 pm on 16 February 2021. Earlier on the same day, at 9.46 am, OneMusic had referred in a standard form of letter previously sent to Victorian businesses to invoices that may have been received and had stated that the invoices were for licensees' records only and that no payment was required.

453. Apparently, CO5 had not read that standard form of notification when she wrote her email of complaint later on the same day.

454. On 26 February 2021, APRA AMCOS wrote to CO5 apologising for the oversight that had occurred in relation to her account. The email explained that at the end of 2020, APRA AMCOS had applied an eight-month credit to accounts in Victoria, and because CO5 had been licensed from 1 January 2019, APRA AMCOS had applied accidentally the credit to her 2019 fees rather than to her 2020 fees. This had been reversed and the eight-month credit had now been applied to CO5's 2020 fees.

455. The email explained that the current outstanding balance was \$247.25 which took CO5 through to 31 March 2021. That was following the allowance of the credit.
456. On 17 March 2021, a Director of OneMusic wrote a further email of apology.
457. No further issues were raised by CO5 and OneMusic deemed the complaint resolved as at 17 March 2021.
458. OneMusic also reports that it is undergoing a process of streamlining and improving various “staff-facing and client-facing aspects of its billing systems”.
459. APRA AMCOS have provided the following detailed supplementary information.
460. OneMusic issued an email to all Victorian clients regarding its COVID Fee Relief credit package which included an instruction to disregard a first round of forthcoming invoices and statements from OneMusic but to take heed of a second round which would follow the first.
461. On 13 February 2021, OneMusic issued a payment reminder to CO5. It referred to an invoice amount of \$300.56 and an “outstanding amount” of \$279.06. These amounts related to an invoice period of 01/04/20 – 31/12/20. APRA AMCOS have explained as follows:

“That payment reminder and accompanying invoices were issued in error to CO5 due to OneMusic misapplying CO5's COVID relief credit to her billing for 2019 instead of 2020. Had that misapplication not occurred, CO5 would not have received a payment reminder and the billing system would not have identified as outstanding her fees for the period 1 April 2020 to 31 December 2020.

Assuming CO5 never received the 9 February 2021 mailout as she claims, then at the point of receiving the payment reminder on 13 February

2021, CO5 would have been unaware of OneMusic Australia's COVID Fee Relief program and the related instructions to disregard invoices and statements."

462. As noted above, at 3:31pm on 16 February 2021, CO5 made her complaint noted at the outset, apparently unaware of the previously noted automated communication sent to CO5 at 9:46 am. Until she read that communication, CO5 would have been unaware of the COVID Fee Relief program and of the associated instruction to disregard invoices.

463. APRA AMCOS acknowledges that CO5 was justified in making her complaint at 3:31 pm on 16 February 2021 querying the payment reminder of 13 February 2021.

464. APRA AMCOS adds:

"The billing documentation included with the payment reminder received by CO5 on 13 February 2021 was issued in error and was not the documentation that OneMusic intended clients to disregard – CO5 was therefore right not to disregard it"

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

465. It is unfortunate that CO5 had not received or taken on board the "disregard" email when she complained at 3:31 on 16 February 2021. Although APRA AMCOS cannot be blamed for that, it can be criticised for the fee credit error.

### **APRA AMCOS Licensee Complaint 3 – CO6**

466. On 6 May 2021, CO6 complained about an email that he had received withholding his OneMusic licence because of non-payment of an invoice. He complained that this contravened cl 2.3(c) of the Code of Conduct, although I think it is clear that the complaint does not fall within that paragraph.

467. On 10 May 2021 OneMusic replied to the effect that although it may have appeared that the licence was being withheld at no time was this the case, and that the licence had in fact been granted with effect from 1 December 2020 and remained in effect.

468. The email from OneMusic said that what was being withheld was a hard copy confirmation of the details of the licence. The email from OneMusic stated:

“As you would appreciate, we are unable to issue such a certificate in circumstances where we do not have confirmation that the licence has, in fact, been paid for the licensing period that would be confirmed by that certificate. At the time of the email, there was an outstanding invoice on your account”

469. Apparently the amount of that invoice had been paid and so the email from OneMusic confirmed that the account was now in order and up to date and so the licence certificate had been issued and was in fact attached to the OneMusic email.

470. On 10 May 2021, CO6 replied:

“With all due respect, I find that response pretty average at best.

If someone has a licence, when you are asked for documentation to prove this, you need to provide it.

Let's face it, the issue is only “resolved” because I pay up”.

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

471. The email from OneMusic that gave rise to the complaint read as follows:

“OneMusic Australia can issue the requested licence certificate once you have confirmed payment to us of the outstanding invoice (attached).”

It is true that there is a distinction between the existence of a licence

and a certificate that a licence exists, but this is altogether too fine a distinction to support the position that OneMusic took. Moreover, once the overdue invoice was paid, the certificate was issued. The wording of the certificate, which was undated, was “Congratulations! You’ve been granted a licence for the use of ... for the period 01/12/2020 – 30/11/2021”. Apparently, the licence was granted on or about 1 December 2020, but the opening words in the certificate, expressed as they were in the perfect tense, suggested that it had just been granted (on or about 10 May 2021).

472. Apparently, these certificates are not issued in all cases when a licence is issued but are issued only when an individual licensee requests one.

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

473. In view of what has just been said, the remedy of issuing certificates as soon as possible after a person becomes a licensee is no solution (except in the case where the person makes known at the outset that a certificate will be required). A solution of general application would be for a certificate to state that the licence is current and effective only to the end of the period for which licence fees have been paid. In saying this, I assume, but do not know, that a licence does indeed come to an end once the period for which licence fees were paid expires. I am not proffering legal advice and understand that OneMusic is investigating the matter.

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

474. Copyright Agency reports that it has developed procedures for management of complaints and disputes that meet the requirements of cl 3 of the Code, about which there is information on the Copyright Agency website ([copyright.com.au/client-service-standards](http://copyright.com.au/client-service-standards)).

475. Copyright Agency reports that those procedures comply with the requirements of Australian Standard ISO 10002 *Customer Satisfaction*.
476. Copyright Agency states that the procedures apply to any complaint about a matter covered by the Code.
477. I turn now to the complaints that were made during the Review Period. There were three of them.

### **Copyright Agency Complaint 1**

478. The complainant was a journalist and author who complained by an email dated 19 May 2021.
479. The complainant said that he received an email from Copyright Agency about his entitlement to a share of payments for four of his books. The communication asked him to “request a share” which it said had to be approved by the relevant publisher. The complainant said that he “did make the online request”.
480. The email of complaint continued as follows:

“Sounds okay but then I realised that there are flaws in the new process. What about the books published decades ago and the publisher has disappeared or has been subsumed by another publisher? Would the new publisher spend considerable time to dig out a 30 year-old contract? Some don't have the capacity to respond in a timely manner. All publishers are not a paragon of virtue. If publishers receive the authors' share, some will be too slow to forward it to authors, some will find ways to appropriate the money such as the amount is too low to forward, the author's royalties have not covered the advance and so on. This the process puts some authors at a disadvantage.

I decided why to wait for a response from the publishers when I can send a legal statement detailing my share of each of the four books (see below). As an author, I also have the right to provide the details of share as I'm one of the two signatories of the publishing contract, the publisher is the other signatory.”

The complainant said that a response from the Manager, Member Services of Copyright Agency declined to accept the complainant's statement and wanted to follow the "flawed" process.

481. The complainant's email continued as follows:

"The new process raises a legal question: Why do the Copyright Agency place more value on the word of a publisher than that of an author when both are equal signatories of a publishing contract? In a fair system, the author should also be given an opportunity to provide evidence of their share. Both parties have access to the same publishing contract and only the same contract.

The new process is skewed in favour of publishers (the reasons I can only speculate) and discriminates against authors. Authors are now second-class members as the Agency do not trust them to provide the true information.

I request you to explain why do you believe the new process is legally sound and fair to both parties, authors and publishers."

482. The complainant identified four books of which he was the author and stated that his entitlement was to 50% of the royalties. He accepted that the publisher was entitled to the other 50%

483. On 21 May 2021, Copyright Agency replied referring to the society's "new system". By the email, Copyright Agency explained that under the new system, Copyright Agency first asks the publisher to provide the share information, because some publishers want to provide the information in bulk for a large number of titles. When a publisher provides share information for a title, Copyright Agency notifies the author so that the author can check the correctness of the information provided by the publisher. If a publisher fails to provide the information requested, the author has an opportunity to request registration of the shares as identified by the author. The process is governed by Copyright Agency's *Distribution Policy and Processes* document which has been provided to me, in particular at sections 8.4, 8.5 and 8.6

484. Copyright Agency assured the complainant that it was monitoring the requests made by the complainant with a view to ensuring that the matter was resolved as soon as possible.
485. On 21 May 2021, the complainant replied. The complainant was not satisfied with Copyright Agency's response and indicated that he wished to terminate his membership of Copyright Agency.
486. After further correspondence, the complainant, on 22 June 2021, by email to Copyright Agency made the complaint a "formal complaint" so that he could access the society's dispute resolution process. His email stated:

"The legal question at the heart of the problem: the author and the publisher sign the same contract which sets out the author's and the publisher's share of the copying fee (distributed by the Copyright Agency). Therefore, both parties have equal rights."

487. On 2 July 2021, the complainant wrote to Copyright Agency noting that his membership would have been cancelled by then, but enquiring as to what had happened to payments due to him. His email concluded:

"Could you now please 'inform them' (whosoever they are) to reinstate my membership? Do let me know when the membership has been reinstated."

488. On the same day, 2 July 2021, Copyright Agency, through its CEO, wrote a detailed email to the complainant advising that his membership had been reinstated and explaining the way in which the "new system" operated.
489. On the same day, 2 July 2021, the complainant wrote to the CEO of Copyright Agency noting that if a detailed response to his initial complaint of the kind that the CEO had now provided had been sent back then, the matter would not have gone so far. However, the complainant said that still wanted a response to his complaint.



490. There was an issue as to the amount held by Copyright Agency for the complainant and on 8 July 2021, Copyright Agency advised him that it was \$1,200.
491. There was communication about a donation of the amount to charity and on 8 July 2021, the complainant wrote to the CEO of Copyright Agency: "consider my complaint closed; there is no need to reply".
492. Finally, on 8 July 2021, the complainant wrote to the CEO making "one last suggestion", which was that if Copyright Agency was unable to find an author, the author's share should not be paid to the publisher but should be held in a fund while the author's name was published on the Copyright Agency website. The email continued by stating that authors' and writers' organisations can publicise the fact that the author cannot be found and if the money were not claimed for three years, Copyright Agency should use it to help authors in some way.
493. It is clear that the particular complaint was resolved so far as the complainant was concerned, as his email dated 8 July shows.

### **CA Complaint 2**

494. On 18 September 2020 [the heading states "2021" but this is most likely wrong] Copyright Agency wrote to the complainant advising that the society had recently made a payment into his bank account for royalties on his work/s. The email attached details of the payment online.
495. Later on the same day the complainant responded to the effect that he had not yet received money from "the bigger State and National Galleries".

496. On the same day, the complainant wrote to two individual members of the society's staff enclosing details of payments he had received for online use of his images. He made the point, however, that the payments had come from smaller, regional galleries which were "doing the right thing".
497. On 22 March 2021 the complainant wrote again complaining, this time about the "free" use of artists' images.
498. Correspondence extended over a period in March 2021. On 31 March 2021, Copyright Agency wrote confirming that it did collect licensing fees from some institutions for the complainant, eg from the National Gallery of Victoria. In April 2021 the complainant threatened legal action. On 8 April 2021 an officer of Copyright Agency had what appears to have been a lengthy telephone discussion with the complainant. The staff member's note of the conversation records that the complainant said that the staff member could inform the CEO that the complainant "felt placated by [the] phone call" and wished they had spoken earlier. The staff member noted that the complainant now had her mobile and landline phone numbers.
499. In early July 2021, the Manager, Visual Arts telephoned the complainant and left a voicemail message inviting him to call if he had any questions about the payments just made to him. It is noted that he did not call.
500. Copyright Agency justifiably treats the matter as concluded.

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

501. An association of artists wrote to Copyright Agency on 11 August 2020 raising an issue that one of its members had raised, namely, that in certain cases cheques for resale royalties were being distributed via community

arts centres. In substance the complaint was that Copyright Agency was not dealing directly and confidentially with the individual artists. The email from the Association stated:

"In summary, an artist's business and their finances are their own business and, in the Association's view, funds from the scheme should flow directly to artists' bank accounts not via any intermediary."

502. On 12 August 2020, Copyright Agency wrote to the Association advising, among other things, that it would pay directly into the bank account of an artist if the artist so wished. Copyright Agency asked the complainant to request an artist who wished that course to be followed to contact Copyright Agency.

503. Copyright Agency's email dealt with a number of other points that had been raised in the Association's letter and there appears to be no ongoing complaint (it is not clear to me that the communication from the association was a "complaint" as distinct from a request for a different administrative arrangement).

## **Audio-Visual Copyright Society Limited ("Screenrights")**

### **General**

504. Screenrights reports that its procedures with respect to complaints and disputes comply with cl 3 of the Code. It states that those procedures can be accessed via its website: <https://www.screenrights.org/about-us/corporategovernance/>.

505. Screenrights makes the point that through its yearly Code of Conduct training and in staff inductions, it ensures that staff are trained to understand that responding to complaints and resolving disputes in a timely manner are key priorities for Screenrights.

506. During the Review Period, Screenrights received one formal complaint from a member in addition to one informal complaint from a member (see below).
507. In the Review Period, Screenrights made no substantive changes to its Competing Claims Resolution Procedures which are available on the corporate website: <https://www.screenrights.org/wp-content/uploads/2019/10/Screenrights-CCRP.pdf>.
508. In the Review Period, Screenrights received over 137,000 claims to royalties, bringing total member claims to more than 1.6 million. This is the total number of claims to which members have warranted an entitlement and which have been registered with Screenrights. A claim is not necessarily tied to a particular Usage Event or Distribution Period (to use Screenrights' terminology). The claims could be, and once were, entitled "title registrations". A registration may occur in response to Screenrights' contacting a potential rightsholder or at a rightsholder's own initiative. Either way, Screenrights holds 1.6 million registered claims so that if a program is identified as copied and is not the subject of an unresolved competing claim, Screenrights is in a position to process a payment to the registered claimant.
509. Over the Review Period, Screenrights opened competing claims involving 497 series and 1,894 one-off programs, and notified members of the competing claims via the MyScreenrights portal. As at 30 June 2021, competing claims had been closed for 228 series and 645 one-off programs. No requests for an expert determination had been received from any member.
510. I turn now to the complaints.

### ***Screenrights Complaint 1***

511. On 21 March 2021 a member commenced a proceeding against Screenrights in the Federal Court in relation to uses that the member alleged had been made of films that the member had registered with Screenrights.
512. The member discontinued the proceeding by filing a notice of discontinuance and there has been no further contact from the member.

### ***Screenrights Complaint 2***

513. On 19 April 2021, a member complained about delay in receipt of a payment which was to be made in resolution of competing claims. Apparently, the settlement was arrived at in October 2020 and in response to an enquiry made on 12 March 2021, Screenrights advised that the first payment run of 2021 would be at the end of March 2021 so that the complainant should receive the payment then.
514. Apparently what then happened is that the payment was not received and in April 2021, Screenrights advised the member that she had been misinformed for which Screenrights apologised. Because the money arose out of a resolution of competing claims, the payment was not made as part of the end of March run of payments. Screenrights advised that payment would be made in the next payment run in June 2021, and the Screenrights staff member in question advised that she would notify the complainant once she knew the exact date.
515. The letter of complaint of 19 April 2021 said that the June payment run was far too late, having regard to the fact that the competing claims issue had been resolved before the end of October 2020. The complainant forwarded a copy of her email to the CEO of Screenrights.

This led to an email dated 19 April 2021 from the Head of Member Services apologising for Screenrights' having "fallen short on this occasion", especially given that a large part of Screenrights' work over the last year had been to try to support members through the pandemic by advancing rather than delaying payments.

516. The Head of Member Services again apologised and said that efforts were being made to release the payment during that week.

517. On the following day, 20 April 2021, the complainant responded to the effect that the email from the Head of Member Services had "gone a long way to restoring our faith in Screenrights" and that the payment had reached the complainant's bank account that morning (20 April 2021).

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

518. I do not know what the circumstances were surrounding the competing claims or the resolution of them in October 2020, but observe that it would be no satisfactory explanation to the complainant to advise that because the money came from one pool or as a result of one set of circumstances, it could not be paid at the same time as money coming from a different pool or as a result of a different set of circumstances. So far as the complainant knew, the issue had been resolved in October and payment should have been made in the December quarter.

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

### **General**

519. In Section 9 of its report on compliance, PPCA confirms that it has a PPCA Complaints Handling and Dispute Resolution Policy which sets out

guidelines and procedures to ensure that all complaints are handled in a fair and reasonable manner. The Policy is available on the PPCA website.

520. All PPCA staff members are provided with information on the Policy when they commence employment and are encouraged to ask questions and review processes regularly.

521. The Complaints Officer continues to oversee the complaints process on behalf of the Society and she has access to all PPCA staff members so as to address properly any issues raised by complainants.

522. All complaints are recorded in the Complaints Register database and are reviewed regularly in order to identify any recurring issues.

523. Attachment 23 to PPCA's compliance report is its Complaints Register for the Review Period which contains a summary of the three complaints that were made during that period, including the action taken to resolve them.

524. Attachment 24 to PPCA's compliance report is the correspondence relating to the three complaints to which I now turn.

### ***PPCA Complaint 1***

525. On 22 July 2020 a licensee complained that as at 31 December 2019 he had a credit balance with PPCA of \$80.63 and had received renewal notices from OneMusic, with which he had renewed, but credit had not been allowed for the \$80.63; nor had it been refunded.

526. On 23 July 2020, PPCA explained that OneMusic was a separate entity from PPCA and added that if the licensee would give details of the

appropriate bank account, PPCA would transfer the amount into it as soon as possible.

527. The licensee provided these details and PPCA processed the refund but the licensee subsequently complained that an administration fee had been deducted. PPCA apologised for this and refunded the amount of the administration fee.

### ***PPCA Complaint 2***

528. On 9 October 2020, a potential licensor complained that he had not received paperwork from PPCA in order to enable him to move forward with his registration, notwithstanding that two and a half weeks had passed.

529. On 12 October 2020, the PPCA Distribution Manager wrote a detailed response and provided an "Input Agreement" and a "Recording Details Form" for completion by the complainant. It was explained that as the initial registration form was received after the cut-off date of 31 August 2020 for inclusion in the current year's Distribution (year ended 30 June 2020) the registration, once completed, would be held for processing for the Distribution period commencing in the year ended 30 June 2021.

530. On 25 May 2021, PPCA contacted the complainant reminding him that registration could not proceed until a completed Input Agreement was received and the complainant said that he would attend to the matter.

531. As at 30 June 2021, the end of the Review Period, the complainant was yet to return the completed Input Agreement.



### **PPCA Complaint 3**

532. On 11 June 2021, a record label contacted PPCA advising that it had been informed by its digital aggregator that PPCA had made conflicting neighbouring rights claims on eight identified music releases. The email asserted that the complainant had “the exclusive right to make available worldwide the[se] original recordings, since [the complainant] had been recorded and produced the recordings and acquired the proper copyright licences acquired”. The complainant said that there was no record of any agreement with any other party to administer the complainant's musical works “especially in Australia”.
533. The recording label requested that PPCA withdraw the claims that it had made.
534. PPCA explained that it was not PPCA which had made the conflicting claims but other PPCA licensors who had made claims after the label's digital aggregator registered those recordings with PPCA.
535. In addition, PPCA advised that several of the conflicting claims had already been withdrawn.
536. PPCA also enquired whether the record label's digital aggregator was authorised to register their tracks with PPCA.
537. As at 30 June 2021, the end of the Review Period, no response had been received.

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

538. AWGACS reports that its complaints handling procedure and dispute resolution procedure was developed in line with the requirements of cl 3 of the Code, the requirements of CISAC, and Australian Standard AS4269-1995 (Complaints). Handling).
539. During the Review Period, AWGACS did not receive any requests for a copy or any complaint from a member.

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

540. ASDACS reports that the Review Period covers the distribution of 2019 royalty income.
541. ASDACS reports that it maintains a Complaints Register in which any complaints made are recorded, but that none were made during the Review Period.

## **D. COMPLAINTS MADE DIRECTLY TO THE CODE COMPLIANCE REVIEWER**

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542. Under this heading I deal with complaints that have been made directly to me as Code Compliance Reviewer, as distinct from complaints made to a collecting society on which it reported to me, dealt with in Section C above.

## **Complaints made by Universities Australia (UA), the Copyright Advisory Group of the Education Council of the Council of Australian Governments (CAG), and the Australian Digital Alliance (ADA)**

543. The following submissions and responses to them were before me:

Submission by UA dated 26 July 2021

Response by Copyright Agency dated 9 August 2021

Submission by CAG provided on 6 August 2021

Response by Copyright Agency dated 20 September 2021

Submission by ADA provided on 6 August 2021

Response by Copyright Agency dated 20 September 2021

544. I convened a meeting of representatives of UA, CAG and ADA and the collecting societies that was held online on 29 November 2021.

545. My principal reason for doing so was to inform the submitters, UA, CAG and ADA, that I considered that their submissions were not directed to non-compliance with the Code as it exists, but were rather in the nature of complaints about the system of governance represented by a voluntary code of conduct, and would be appropriately addressed as part of the triennial review of the content and operation of the Code (the Triennial Review is well in hand). The submitters accepted that proposition.

546. Accordingly, the submissions and responses listed at [542] above will be provided to The Hon Alan Robertson SC, the Triennial Code Reviewer. It has been made clear to the submitters that they will each nonetheless be at liberty to make further or supplementary submissions to him, preferably in a single document for each submitter.

547. At the meeting on 29 November 2021, I outlined the history of the challenges that have been made to the system represented by the voluntary (non-mandatory) Code, and to discussions of those challenges. For the record, I note that I referred to the following documents:

- (1) 30 September 2014 – my first triennial report – see [55] – [65]
- (2) 28 October 2015 – Supplementary Report
- (3) 20 December 2016 – Report of the Productivity Commission – see Recommendation 5.4
- (4) December 2016 – advertisement for public meeting to be held on 13 February 2017 and inviting submissions on the content and operation of the Code as part of the Triennial Review
- (5) 13 February 2017 – Public meeting
- (6) March 2017 – Amendment of the Code, *inter alia*, to introduce new cl 2.9 relating specifically to declared collecting societies
- (7) 10 April 2017 – my second Triennial Report
- (8) July 2017 – Discussion paper issued by the Bureau of Communications and the Arts Research (BCAR)
- (9) February 2018 – Draft Report issued by BCAR
- (10) April 2019 – Final Report issued by BCAR
- (11) 1 July 2020 – Effective date of amendments of the Code made in consequence of the BCAR recommendations
- (12) 13 July 2020 – ACCC Determination extending the authorisation of APRA for four years to 4 August 2024 – see esp paras 2.71 – 2.75

## Complaints made by the Australian Venues Association (AVA)

548. Unlike UA, CAG and ADA, AVA's submission dated 30 July 2021 is directed to alleged non-compliance with particular provisions of the Code as it exists. APRA AMCOS responded on 1 October 2021.

549. I will deal with AVA's complaints and the responses of APRA AMCOS in sequence.

### (1) Clause 2.1 of the Code

550. As AVA notes, cl 2.1 of the Code, headed "Legal Framework", provides that each collecting society must comply with various regulatory instruments. I think that AVA is correct in understanding that para (vii) of subclause 2.1(a) encompasses the ACCC Determination dated 13 July 2020 that gave APRA a conditional authorisation.

551. AVA submits that APRA has not complied with Condition C1.1 of the ACCC Determination, para (i) of which requires that APRA publish "comprehensive plain English guides...that outline each of the licence categories individually...which must also be published as a single document [and must] also include" "a table summarising each type of licence and licence category, the basis on which fees are determined, and the range of fees payable for each licence and licence category listed". AVA says that it has not been able to find such a table on the APRA website.

552. APRA responds pointing out that Condition C1.1 obliges APRA to "continue to maintain and publish comprehensive plain English guides" in respect of each licence category which, as noted by the ACCC, have

been called “information guides” by APRA. APRA says that it had published Information Guides or “Information Sheets” for each licence category on the APRA website prior to 1 July 2019 and in fact since the condition was first imposed on APRA by the ACCC in 2014, and on its OneMusic website since 1 July 2019.

553. APRA’s argument seems to be that since the ACCC used the word “continue” and the ACCC has not raised any complaint, Condition C1.1 must be taken to have been satisfied by APRA’s continuing to do what it was doing prior to the advent of the ACCC Determination.
554. If I understand APRA’s contention correctly, I respectfully disagree. The second sentence in Condition C1.1 says: “The guides, which must also be published as a single document, must **also** include” (my emphasis), relevantly, the **table** described. Each guide and the compilation of the guides in the single document must contain a table.
555. APRA does not suggest that its guides contain such a table, even though the information referred to in (i) may be provided in a different form.
556. There seems to be a non-compliance with Condition C1.1 of the ACCC Determination and therefore with cl 2.1 of the Code. I say nothing about the reasonableness of the ACCC’s condition.
557. The second alleged non-compliance with cl 2.1 of the Code to which AVA points arises from its assertion that APRA has not complied with ACCC Condition C6.22. Condition C6.22 provides that the APRA website ([www.apraamcos.com.au](http://www.apraamcos.com.au)) and OneMusic website ([www.onemusic.com.au](http://www.onemusic.com.au)) “must have **a prominently displayed link** to information about available dispute resolution processes **on all pages of the websites**, including the Scheme, which must be visible on landing on all pages of these websites” (my emphasis).

558. APRA has attached to its response screenshots of the footer that appears on each page of the APRA AMCOS website and the footer that appears on each page of the OneMusic website. Both websites comply. The OneMusic footer, under a heading "One Music", has an item "Complaints and dispute resolution" which is in fact a link to information about ADR. The APRA AMCOS footer, under the heading "ABOUT APRA AMCOS", has an item "Alternative dispute resolution", which is in fact a link to information about the ADR processes available. There is an argument as to whether the links satisfy the condition's requirement of "prominence". I am inclined to think that they do not but no doubt opinions on this will differ. I suggest that they be given greater prominence eg by providing them under their own dedicated heading or stating them in a different typeface.

559. APRA also explains that all OneMusic licences and their associated information sheets that are published on the OneMusic website include clear references and information regarding alternative dispute resolution.

## **(2) Clause 2.3(b) of the Code**

560. AVA complains that APRA has not complied with cl 2.3(b) of the Code, which requires that each collecting society (APRA and AMCOS) ensure "that its dealings with licensees are transparent".

561. AVA says that it has reason to believe that the collecting societies make "individual deals with licensees which are subject to confidentiality agreements" and that these include "blanket deals with industry groups or groups of licensees". The complaint is that these "deals" are not offered to other licensees or their representatives, and that transparency would require such disclosure. AVA says that it has spoken to APRA AMCOS and PPCA about this matter but has never been provided with a satisfactory

answer.

562. APRA responds that it is unclear what “individual deals” are being referred to, and that this makes it impossible to respond properly to the allegation. I agree. It says that OneMusic, acting on behalf of APRA, AMCOS, PCCA, and, less often, ARIA, does not negotiate “individual deals” for licensees where a licence scheme applies to that licensee, “other than occasionally for complex or high music users”. APRA explains this in some detail. AVA’s generalised allegation is not established.

### **(3) Clause 2.3(d) of the Code**

563. AVA’s third complaint is that APRA AMCOS have not complied with cl 2.3(d) of the Code which requires that “each collecting society’s policies, procedures and conduct in connection with the setting of licence fees for the use of copyright material will be fair and reasonable”. It is important to observe that the requirement is that the policies, procedures and conduct be fair and reasonable, not that the licence fees themselves be fair and reasonable—a matter within the jurisdiction of the Copyright Tribunal. The provision goes on to say that in setting or negotiating licence fees, a collecting society may have regard to matters mentioned in para (d).

564. AVA’s complaint seems to be directed specifically to the Recorded Music For Dance (**RMFD**) licence. The submission asserts that the RMFD licence “has targeted music venues with a dance floor and nightclubs unfairly”.

565. APRA AMCOS argue that a distinction drawn by AVA in its submission between reasonableness which must be taken into account by the Copyright Tribunal and fairness which para (d) also requires, is a false distinction. I agree.

566. As noted above, the chapeau to para (d) makes it clear that what must



be fair and reasonable is a collecting society's "policies, procedures and conduct in the setting of licence fees". The requirement is careful not to intrude on the substantive reasonableness or fairness of levels of licence fees.

567. APRA AMCOS refer to the Tribunal's decision in *Phonographic Performance Company of Australia Ltd (ACN 000 680 704) under Section 154(1) of the Copyright Act 1968 (Cth)* [2007] ACopyT 1;(2007) 73 IPR 162, in which the Tribunal approved of a scheme proposed by PPCA (including level of equitable remuneration) for the use of sound recordings in connection with dancing in nightclubs and at dance parties.
568. Finally, APRA AMCOS note that OneMusic has recently embarked on an industry consultation, including meetings with representatives of AVA, where many of the issues raised by AVA have been canvassed, albeit without the reaching of agreement with AVA. As a result of the consultation the RMFD licence terms have been changed. The revised scheme came into operation on 1 April 2021, but due to COVID-19, its roll out has been hindered by closures.

#### **(4) Clause 2.3(g) of the Code**

569. AVA complains that APRA AMCOS and PPCA have not complied with cl 2.3(g) of the Code which requires each collecting society, in response to a reasonable request to make available to a licensee or potential licensee the information described in that paragraph. Paragraph (g) concludes by stating

"The Code Compliance Reviewer is able to consider whether a request or a collecting society's response to it has been reasonable".

570. AVA says that in all of its conversations and consultations with APRA AMCOS and PPCA, it has never been informed of the methodology for calculating the licence fees applicable to its members, and has never

received information relating to the matters taken into consideration in determining the licence fee. AVA says:

“We have been directed to judgments or guides, but never received the methodology to their algorithms”.

AVA is caused to “wonder if this conduct is complying” with the Code.

571. APRA AMCOS respond by making the initial point that they are not aware of any “formal request by a licensee or potential licensee for such methodologies”. It is true that the requirement imposed by para (g) of cl 2.3 is triggered only when a “reasonable request” is made by a licensee or potential licensee.

572. Paragraph (g) of cl 2.3 concludes by stating: “The Code Compliance Reviewer is able to consider whether a request or a Collecting Society’s response to it has been reasonable.” In the absence of a particular request by a licensee or a potential licensee, I am not in a position to consider whether a request has been reasonable or unreasonable, or whether a response to it has been reasonable or unreasonable. AVA may care to consider having one of its licensee members make a formal request in reasonable terms. It should be added that the qualification “reasonable” suggests that some requests might be unreasonable. It may be that what was contemplated was that a request in respect of a particular category of licence of relevance to the particular licensee or potential licensee might be reasonable, but that a blanket request covering all categories would not be.

573. APRA AMCOS note that further information regarding licence fee methodologies will be forthcoming under the ACCC’s additional Authorisation Condition. This prompted me to seek information from APRA AMCOS about this “additional” condition. The story that emerged is quite complex. It has its genesis in ACCC Condition C1.2 which was newly

introduced by the Determination which was made on 13 July 2020 to take effect from 4 August 2020. The condition required APRA, within 12 months of the making of the Determination, to revise the plain English guide for each category of licence referred to in Condition C1.1. The revised Guides were required to include the explanations referred to in Condition C1.1.

574. Due to the size and complexity of the task, on 18 June 2021 APRA sought an extension of time. On 1 July 2021 the ACCC extended the time for compliance to 14 October 2021.
575. APRA supplied certain Fee Methodology explanations, but on 10 November 2021 the ACCC responded to the effect that those explanations were considered not to be sufficiently clear and detailed to provide licensees with a reasonable understanding of the methodologies. This was a notice under Condition C5.1 and its effect was to enliven an obligation on APRA under Condition C5.2 to appoint an independent person, to be approved by the ACCC, to prepare a report explaining the methodologies.
576. APRA reports to me that the report of the independent person will probably lead to **some** further “fee methodology” information becoming available to the public, but cautions that “APRA does not customarily use methodologies or algorithms to set its rates”.
577. I can do no more than suggest that AVA monitors developments with regard to the foreshadowed report, and that, if and when requested by AVA, APRA inform it of those developments.

## **E. CONCLUSION**

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

Dated: 13 December 2021

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, QC**  
**Code Compliance Reviewer**

## APPENDIX A - CALL FOR SUBMISSIONS 2021

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Notice of the Review, with an invitation to make submissions by mail to the Code Reviewer at a specified address or by email by 31 July 2021, 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 3 July 2021 and it was also placed on the websites of the societies. It was in the following terms:

### The Code Reviewer

Suite 704, 4 Young Street, NEUTRAL BAY NSW 2089

EMAIL: [codereviewer@gmail.com](mailto:codereviewer@gmail.com)

#### COPYRIGHT COLLECTING SOCIETIES CODE OF CONDUCT CALL FOR SUBMISSIONS 2021

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 **1 July 2019**.

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

Compliance by participating collecting societies with the Code’s standards of conduct is the subject of an independent annual review. The Code Reviewer for this purpose is former Federal Court judge and former President of the Copyright Tribunal of Australia, The Hon Kevin Lindgren AM, QC. His current task is to review the Societies’ compliance with the Code during the period **1 July 2020 to 30 June 2021**.

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** at the address above or by email ([codereviewer@gmail.com](mailto: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 2021**.