



**Report to Code Compliance Reviewer
on compliance with
Collecting Societies Code of Conduct
for year ending June 2019**

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Collecting Societies Code of Conduct

Report to the Code Compliance Reviewer in respect of compliance during the year ending June 2019

Background

This annual report is in respect of PPCA's compliance with the Code of Conduct for Copyright Collecting Societies during the financial year ending June 2019.

Since the relevant period ended a revised version of the Code was adopted¹ by participating societies, in response to recommendations arising from a review of the Code by the Bureau of Communications and Arts Research (BCAR) in the Department of Communications and the Arts. The following information relates to the applicable Code for the 2018/19 period under review. Our next compliance report, due for submission following the conclusion of the 2019/20 financial year, will address PPCA's obligations under the revised (ie 1 July 2019) Code.

Consistent with the BCAR report recommendation adopted in the revised Code a dedicated website² has now been established, providing links to documents and information relevant to the Code. This report, together with the reports of the Code Compliance Reviewer, will be made available on that website.

Section 1

Legal Framework (Code, Clause 2.1)

During the period PPCA met its obligations as set out in clause 2.1 of the Code.

Neither PPCA's Constitution nor its Privacy Policy changed during the period under review. Both of those documents, in addition to our Distribution Policy, Complaints Handling and Dispute Resolution Policy, Code of Conduct for Copyright Collecting Societies and all reports issued by the Code Reviewer are made available on our website.

Section 2

Members (Code, Clause 2.2)

The Phonographic Performance Company of Australia Pty Limited (PPCA) is a limited company, with equal shares held by the remaining three of the six founding members. These members are ineligible for any dividend and only receive remuneration on the same basis as all other Licensors, in line with PPCA's Distribution Policy.

¹ The amended Code was adopted on 1 July 2019

² <https://www.copyrightcodeofconduct.org.au/>

As a result, where other collecting societies refer to “Members”, PPCA generally interacts with Licensors (i.e. copyright owners or exclusive licensees in sound recordings). PPCA’s relationship with those Licensors (including its shareholder Members) is governed by the standard terms of the Input Agreement entered into with them, rather than PPCA’s Constitution. The Input Agreement allows PPCA to sub-license on a non-exclusive basis, and create the blanket public performance and other licence schemes utilised by users of sound recordings (particularly small business).

In the same way PPCA has “Registered Artists” rather than Artist Members. The payment available to Australian featured artists under the Distribution Policy is of an ex gratia nature, and does not arise from any copyright held by the artists themselves.

As at 30 June 2019, PPCA had 2,654 licensors representing major record companies, smaller record companies and independent copyright owners. The number of registered artists stood at 4,296.

Neither the Distribution Policy nor the Input Agreement were subject to amendment during the period under review, although the Distribution Policy document was refreshed in order to make it more accessible to readers.

PPCA generally receives queries relating to registering as a Licensor by phone or email. In such circumstances PPCA usually refers the applicant to the relevant section of the website and the related on-line registration form (<http://www.pcca.com.au/labels/register-as-a-licensor/>). An acknowledgement letter is sent to Licensors upon receipt of their track registrations.

Similarly, queries from Artists on registering with PPCA are now also generally received via email, in which case applicants are directed to the relevant area of the website (<http://www.pcca.com.au/artists-home-/register-as-an-artist/>) and the on-line registration forms.

The PPCA website includes FAQ sections for both Licensors and Artists to help explain the services PPCA provides.

In addition to the publication of its newsletters and social media channel updates, during the period under review PPCA also emailed its Registered Artists and Licensors a number of times to provide information on matters of interest to those stakeholders.

Section 3

Licensees (Code, Clause 2.3)

As at 30 June 2019, PPCA had over 61,706 businesses licensed for the public performance of protected sound recordings and music videos. By volume, this is the largest sector of PPCA’s licensing activities and is managed by the largest team of staff (the Public Performance Licensing Department). PPCA also has communication licences in place with those offering other services (including broadcasters and linear and customer influenced streaming services).

PPCA continues to license a range of services operating within the radio and television broadcast sectors and also services that stream music or audiovisual content online. These types of licences issued by PPCA include:

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

Joint licences with ARIA and APRA|AMCOS for eisteddfodau and ARIA, APRA|AMCOS, Copyright Agency and Viscopy, for early learning providers remained in place throughout the period.

During the period the PPCA website contained extensive information on its standard public performance licence schemes, including descriptions of tariff categories and costs of the relevant licences (tariff sheets), together with a range of relevant FAQs. Licence applications, incorporating Licence Terms, could be submitted (a) online, (b) via a downloadable application form, (c) using PPCA’s hard copy application form, or (d) by phone.

Information on PPCA’s standard public performance licences was removed from the PPCA website on 1 July 2019 upon the launch of the single joint public performance licences now available through OneMusic Australia.

PPCA’s website also contains information on the range of broadcasting and digital licences available (including the application process) and a range of FAQs covering matters both specific to PPCA and on copyright more generally.

PPCA’s public performance tariffs generally increase annually, on 1 July, by an amount equivalent to CPI. By 1 April each year, PPCA writes to relevant key industry associations it has been able to identify, advising of the proposed increase and inviting recipients to contact PPCA if they wish to consult in regard to the proposal. In 2019 the notification letters were issued on 11 March.

During the period under review PPCA was focussed on the development of the joint OneMusic Australia public performance licence offerings scheduled, for the majority of licence schemes, to become available from 1 July 2019. Consequently the entire period involved extensive consultation with peak industry bodies representing various industry sectors, as well as with individual licensees and prospective licensees who engaged with the consultation process. Further detail on the development of OneMusic Australia licensing schemes can be found in the APRA submission, given APRA’s role in OneMusic Australia administration.

Information on the training applicable to PPCA's licensing team can be found in Section 7, and details of interaction with licensee representative bodies can be found in Section 8.

Section 4

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

PPCA maintains and makes available on its website the PPCA Distribution Policy, which sets out how PPCA collects licence fees for the use of sound recordings and music videos, the type and range of expenses that impact the net surplus, and how that surplus is allocated and paid to the licensors who have authorised PPCA to issue licences on their behalf. The Policy also incorporates details of PPCA's 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.

In addition to being available on the website, the Distribution Policy is also provided to each new Licensor along with the input agreement. The correspondence describes the overall scheme as outlined in the Distribution Policy, and advises that it (and all other policies) can be viewed on the PPCA website, or supplied upon request. Any amendments to the policy are communicated in a variety of ways, including through articles in the regular artist and licensor newsletter and through direct communications.

PPCA currently undertakes a single annual distribution for the financial year ending 30 June, which is issued prior to 31 December each calendar year.

Section 5

Collecting Society Expenses (Code, Clause 2.5)

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.

The Annual Report for the year ended 30 June 2018 (published during the review period, and available on the PPCA website) showed that the expense to revenue ratio was 14%.

Section 6

Governance and Accountability (Code, Clause 2.6)

PPCA's financial records are audited annually. Reports from both the Board of Director's and the external auditors are published in the annual report, which is available on the PPCA website and which contains the information specified in Clause 6.2(e) of the Code. In addition, a Board appointed Finance Committee meets regularly to review interim financial accounts, and the outgoings and expenses contained therein. We provide, as part of our 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.

The PPCA Board, Committees and relevant Managers are also provided with a copy of PPCA's Competition and Consumer Compliance Guidelines, and 'refresher' presentations are held periodically.

In line with PPCA's Constitution (Clauses 6.2(b) and 6.2(c)), PPCA conducts regular elections to fill the positions for both Licensor and Artist Representative Directors.

At each meeting of the PPCA Board, Board members are reminded of their obligations and duties.

The PPCA Management Team meets on a weekly basis to discuss both operational and strategic matters.

Section 7

Staff Training (Code, Clause 2.7)

On commencement of their employment, staff are provided with a number of key documents, including the Code of Conduct, the PPCA Privacy Policy and the PPCA Complaints Handling and Dispute Resolution Policy.

The Licensing Department meets at least once a month, with individual licensing teams meeting on a more regular basis. At these meetings staff are reminded of PPCA's obligations under the Code and other policies. A document containing standard responses to frequently asked questions is provided as a resource to the Licensing Department.

During the period Licensing Staff attended training sessions on accounts receivable (banking), and workshops in managing change (in anticipation of the transition to OneMusic Australia).

In preparation for the launch of OneMusic Australia, PPCA's in-house legal counsel presented an introduction to PPCA and ARIA to APRA|AMCOS staff during March and June 2019.

Both the Licensing and Distribution Departments meet regularly for staff training and process review purposes. Department managers are provided with copies of any complaints (relevant to their department) received so that they can be discussed and reviewed at team meetings.

Staff training sessions for the Licensing, Credit, Enforcement and Distribution departments on the Code of Conduct are held regularly. PPCA maintains an intranet which serves as a repository for all key policy documents, including the Code of Conduct. Staff are encouraged to review the intranet regularly, and are briefed on any changes to PPCA policies.

Section 8

Education and Awareness (Code, Clause 2.8)

In addition to communications outlined elsewhere in this report, PPCA regularly meets with licensees and key licensee representative bodies. PPCA representatives also participated in a range of interactions with licensees and their representative bodies in order to consult on proposed joint licensing schemes to be offered by OneMusic Australia. Details of this joint consultation process is provided in the 2018/19

compliance submission of APRA.

PPCA distributes a variety of explanatory materials (either by mail, distribution at specific industry events, placement in trade publications or publication on the website), and publishes a quarterly newsletter “In the Loop”, which is forwarded to each licence holder with their periodic renewal. PPCA is also a member of a number of licensee representative bodies.

During the review period PPCA wrote to approximately 5,476 businesses advising them of the licensing obligation relating to the use of protected sound recordings, and the convenience of the PPCA licence offering. The accompanying information pack also advises the recipient of the operation of the Code of Conduct.

PPCA meets with artists and licensors to educate them on the role and function of PPCA, presents at seminars and panel discussions, and distributes explanatory materials. PPCA issues a newsletter, “On the Record” to artists and licensors on a regular basis.

PPCA uses Facebook and Twitter to speak directly with registered/ potential artists and licensors, keeping them informed on PPCA news, issues and initiatives, as well as providing the latest music industry information to help aspiring artists, managers and music industry professionals. PPCA posts 3-4 times per week on both Facebook and Twitter. PPCA currently has 2,502 likes on Facebook and 1,911 followers on Twitter.

Awareness of PPCA is also enhanced through its sponsorship and support of the Australia Music Prize (the AMP), Sounds Australia, the PPCA Performers’ Trust Foundation, Music Matters, the Arts Law Centre of Australia, the Australian Copyright Council, the ATSI office, the Australian Independent Record Labels Association (AIR), Support Act Limited, and the Australian Songwriters Association Awards. Awareness is further enhanced through the grants program conducted in partnership with the Australia Council each year, through which the creation of new Australia recordings is facilitated.

PPCA’s website remains a useful source of information for both music users and copyright owners and is updated regularly.

Section 9

Complaints and Disputes (Code, Clause 2.9)

PPCA is committed to equitably handling and resolving complaints, and all employees are provided with information on our established policy, and encouraged to ask questions and review related processes regularly. The policy document is available on our public website, our internal intranet site, and is also provided to new employees as a hard copy document as part of their induction package.

Minor amendments were made to the PPCA Complaints Policy when it was reviewed in November 2018, to update references to the Australian Disputes Centre.

A Complaints Officer has been appointed, to oversee the complaints process on behalf of PPCA, and that officer has access to all other PPCA employees in order to properly address any issues raised.

Our policy sets out guidelines to ensure any complaint is handled in a fair and reasonable manner and, following the 2007 ACCC Authorisation determination, was amended to incorporate mediation, neutral evaluation and conciliation options.

The Policy is readily accessible via the PPCA website, and hard copies are provided upon request. The website is publicised via all promotional materials, advertisements, industry listings, flyers and the web address is included in all correspondence issued by the organisation. Staff members presenting on PPCA to both licensee and licensor groups routinely reference the Code in their presentations, advising attendees of its existence and operation.

All staff are provided with an initial hard copy of the document (which is annexed to, and forms part of, their employment contract), and made aware that further copies can be accessed from:

- (i) the website,
- (ii) the intranet site,
- (iii) their supervisor, or
- (iv) the Complaints Officer.

The Policy is written in plain language, and clearly sets out the means by which complaints may be lodged and how they will be handled. Staff are trained to be able to point consumers to the policy, explain the process for lodgement of complaints, and direct inquiries to the Complaints Officer when necessary.

The Policy specifically advises that assistance is available should anyone need help in describing or lodging a complaint, and encourages interested parties to contact the Complaints Officer.

The Policy sets out the timeframe and manner of response, and it is PPCAs policy to deal with all existing and potential licensees and licensors in a courteous and reasonable manner.

PPCA makes no charge for the handling of complaints under this policy, however if the matter is subsequently referred for independent resolution, the costs will be shared equally between the two parties. PPCA has sought to minimise the costs of any such procedures.

The Policy acknowledges that, having reviewed a complaint, action may need to be taken to rectify any mistakes we might have made or review our processes.

All complaints are recorded in a complaints register database, and reviewed for identification of recurring issues. Individual complaints and the process for handling them are reviewed annually.

Of the 8 complaints received during the review period -

5 related to public performance licences;

2 were lodged by copyright owners; and

1 related to potential infringing material on iTunes

A summary of those complaints is appended to this report.

Other Legal Matters

Despite best efforts, for 25 matters (covering both copyright infringement and debt recovery), PPCA found it necessary to escalate the matter by commencing proceedings for copyright infringement, debt recovery or breach of contract.

During the period there were two matters before the Copyright Tribunal. One was an ongoing matter covering the licence scheme proposed for Subscription Television Broadcasters. During the period the Tribunal delivered its final orders for the implementation of the scheme, but following an Administrative Review by the Full Federal Court the matter has been returned to the Tribunal for further consideration. It is anticipated that the Tribunal will finalise that scheme during the first quarter of the 2019/20 year.

The second Tribunal matter involved an application by a PPCA licensee requesting that the 'music for dance' licence fee (also known as the Nightclub Tariff) be reviewed. The application also covered the relevant licence scheme offered by APRA. The Tribunal ordered that mediation be undertaken and, following a mediation facilitated by a Federal Court Registrar, the matter was concluded and the application withdrawn.

Section 10

Publicity and Reporting (Code, Clause 4)

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

PPCA also notes the Code Reviewers report on PPCA compliance with the obligations of the Code in its Annual Report. Since the introduction of the standalone Code website in July 2019, PPCA's site also provides links directly to that Code specific site.

Appendix 1 - Complaints Table Summary

No.	Category of complaint	Complaint	Remedy/Resolution
1	Potential licensee	A third-party competitor to the Complainant’s new business had advertisements stating that their service included PPCA fees, but the cost of the service appeared too low for this to be the case.	<p>PPCA Complaints Officer responded that PPCA was unable to comment on the third-party’s pricing structure but did explain the third-party may have benefited from a statutory exception under Australian copyright law.</p> <p>PPCA contacted the third-party and asked them to clarify their advertising to prevent future confusion.</p>
2	Potential licensee	The Complainant considered the terms of the digital licence agreement they were considering to be untenable. In particular, they disagreed on the requirement to pay an upfront, recoupable guarantee, and wanted to amend the licence agreement with a different payment schedule.	<p>PPCA Complaints Officer responded that the guarantee was a standard term in this type of PPCA licence and explained in detail how the guarantee worked.</p> <p>The Complainant responded refusing to pay the guarantee or estimated licence fees, and requested a customised agreement. If a licence couldn’t be arranged, the Complainant advised they would commence business operations setting aside a monthly amount for licence fees as a sign of good faith.</p> <p>PPCA Complaints Officer responded stating that if the Complainant was unsatisfied with PPCA licence terms they could seek alternative licences directly from the copyright owners (record labels). Recommended that the Complainant seek out independent legal advice as their advised actions could put them at risk of copyright infringement action.</p>

Appendix 1 - Complaints Table Summary

			<p>PPCA Complaints Officer spoke to the Complainant by telephone, taking them through the relevant PPCA licence terms. In the call the Complainant agreed they had not considered the terms in detail and now understood and accepted how the guarantee worked.</p>
3	Licensors	<p>The Complainant had found their personal contact details publicly available on the PPCA website.</p>	<p>PPCA Complaints Officer responded that it is PPCA procedure to check with Licensors before their details are published and, on checking, was able to confirm that had occurred.</p> <p>PPCA's published Licensor list was immediately amended to remove the Complainant's contact details.</p>
4	Licensee	<p>The Complainant had been contacted by PPCA about unpaid licence fees which they believed had already paid. The Complainant provided banking statements as proof.</p>	<p>PPCA Complaints Officer responded, advising that an EFT payment had been received in PPCA's account but without any identifying details. As the amount was for a common fee, it wasn't possible for PPCA at the time to link the payment to a particular Licensee.</p> <p>The payment was immediately credited to the Complainant's account.</p>

Appendix 1 - Complaints Table Summary

5	Potential licensee	The Complainant had received a letter from PPCA about the need for a public performance licence but had never contacted PPCA before. The Complainant wanted to know how PPCA had received their contact details.	PPCA Complaints Officer responded that PPCA records showed a business operating at that location for some time, but that a regular review showed the business recently changed trading names. As a result, PPCA initiated correspondence. Contact details for the Complainant's business were also available the business' website and Facebook page.
6	Recording artist/songwriter	The Complainant had found one of their works had been put into a compilation on a digital music platform and they had not been credited correctly.	PPCA Complaints Officer responded that PPCA does not licence digital music platforms such as the one on which the Complainant found their work. Advised the Complainant to contact APRA AMCOS in regard to songwriter royalties. If the Complainant was the owner of the rights in the master recording, PPCA recommended that they contact the digital platform directly about the potentially infringing compilation. Also recommended that the Complainant consider seeking legal advice.
7	Licensee	The Complainant disagreed on the existence of a debt to PPCA brought to their attention by a debt recovery service. The Complainant stated their business had ceased trading since the PPCA licence was due for renewal.	<p>PPCA Complaints Officer responded that PPCA licences renew annually automatically unless the Licensee formally terminates the licence. A renewal notice had been sent to the Complainant, asking if there had been any changes to their music use. PPCA had also written to the Complainant about the debt in the previous month but did not receive a response. As a result, the debt was passed to a collection agency.</p> <p>PPCA terminated the Complainant's licence and cancelled the relevant invoice.</p>

Appendix 1 - Complaints Table Summary

			<p>The Complainant then responded and asked that the licence not be terminated and that they would pay the outstanding amount. The Complainant confirmed they wished for the licence to continue and paid the outstanding amount.</p>
8	Potential licensor	<p>The Complainant enquiring about joining PPCA as a licensor. After an initial enquiry and response, the Complainant had not received any further response from PPCA.</p>	<p>PPCA Complaints Officer responded that PPCA records showed PPCA had received the Complainant's email but a response had not been sent by the evening of the following day. PPCA apologised for the inconvenience caused, which was the result of a staff member's absence from the office. In the interim another PPCA staff member had responded to the Complainant's email and followed up with a phone call.</p>