

**Report of Review of Copyright Collecting Societies'  
Compliance with their Code of Conduct  
for the Year 1 July 2018 to  
30 June 2019**

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

**20 November 2019**

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# Report of Review of Copyright Collecting Societies' Compliance with their Code of Conduct for the Year 1 July 2018 to 30 June 2019

## INTRODUCTION AND SUMMARY CONCLUSIONS

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1. This report of the Code Reviewer, the Hon K E Lindgren, AM, QC, is the sixteenth annual report of a Code Reviewer assessing the compliance with their voluntary Code of Conduct (Code) of the following seven collecting societies: Australasian Performing Right Association Limited ("**APRA**"), Australasian Mechanical Copyright Owners Society Limited ("**AMCOS**"), Phonographic Performance Company of Australia Limited ("**PPCA**"), Copyright Agency Limited ("**Copyright Agency**" and later "CA"), Audio-Visual Copyright Society Limited ("**Screenrights**"), Australian Writers' Guild Authorship Collecting Society Limited ("**AWGACS**") and Australian Screen Directors Authorship Collecting Society Limited ("**ASDACS**"). This "Compliance Report" assesses that compliance during the period 1 July 2018 to 30 June 2019 (the Review Period).
2. AMCOS is administered by APRA. Therefore, the practice is adopted of referring to APRA and AMCOS collectively as "APRA AMCOS" except where it is necessary or convenient to distinguish between them.
3. For the purposes of the review, each society reported to the Code Reviewer in respect of its activities covered by the Code during the Review Period. In some cases, their reports were accompanied by documents (in the cases of APRA AMCOS and PPCA, voluminous 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 widely advertised: see Appendix "A" to this Report for the notice of the review and for details of the publication of the notice.
5. Certain organisations and individuals were individually notified by the Code Review Secretariat. The Secretariat has prepared and holds an alphabetical list of them. It is available for inspection on request, but it is so voluminous that, in the interests of convenience, it is not attached to this Report.
6. It should be noted that the societies are reporting on their compliance with the version of the Code that applied during the Review Period. 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 and the Arts.
7. From July 2020, the societies will report on their compliance with the amended Code. The first period that will be the subject of reporting under the amended Code will be the period 1 July 2019-30 June 2020
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. In my Compliance Report for the year 1 July 2017-30 June 2018, I referred to the progress of the BCAR Review down to that time and will not repeat what I said then. The collecting societies have supplied to me (1) a table which lists the recommendations that were made for amendment of the Code and the amendments that they have made to it in consequence; and (2) a copy of the Code with the amendments highlighted by tracking. But having regard to the fact that it is the pre-

amendment version of the Code that applied in the Review Period, I will say no more of the amendments, which, as noted above, will apply in the 2019-2020 period of review.

10. The collecting societies' reports to me indicate general compliance with the Code. At my suggestion made some time ago, their reports on compliance are structured by reference to the obligations imposed on them by clauses 2, 3 and 4 of the Code. Clause 2 is headed "OBLIGATIONS OF COLLECTING SOCIETIES", Clause 3 "COMPLAINTS AND DISPUTES" and Clause 4 "PUBLICITY AND REPORTING". The structure of their reports directs the attention of the societies to all of the obligations imposed on them by the Code.
11. The Code applies to all seven collecting societies (since their merger on 1 December 2017, Copyright Agency and Viscopy count as one), but Clause 2.9 applies only to declared collecting societies, that is to say, to Copyright Agency and Screenrights. Clause 2.9 appears as Appendix B to this Report.
12. 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. 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.

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

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14. 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**

15. APRA AMCOS’s report on its compliance with the Code was furnished to me on 1 August 2019.
16. APRA AMCOS’s website is at <http://apraamcos.com.au>.
17. As noted at [2] above, APRA administers AMCOS, and has done so under an arrangement between the two societies since 1 July 1997.
18. APRA AMCOS have previously provided details of the history and constitution of each of them, as well as a history and copy of each licence scheme offered by them. The current report provides information covering the Review Period (but not the period after it) and, where applicable, indicates where there have been no developments since the previous Report on Compliance.

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

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

21. The AMCOS Board is elected by the members of AMCOS.
22. Being directly elected by the membership, the Boards of both societies are representative and accountable. A list of the current Directors on the APRA and AMCOS Boards is available on the corporate website referred to at [16] above.
23. 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 organisations’ performance, achievements and initiatives) for the 2017/18 financial year, by way of a link to the website;
  - APRA Statutory Accounts for the 2017/18 financial year;
  - AMCOS Statutory Accounts for the 2017/18 financial year;
  - A list of APRA AMCOS Senior Management as at 30 June 2019;
  - APRA AMCOS Privacy Policy; and
  - The Constitutions of both APRA and AMCOS.
24. As at 30 June 2019, APRA AMCOS had 383 employees (including casual compliance staff) in Australia and an additional 39 employees in the APRA AMCOS office in New Zealand.
25. Neither APRA nor AMCOS is a declared collecting society under the 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 say that they satisfy many of those requirements.
26. APRA AMCOS have a Privacy Policy which complies with the Australian Privacy Principles and which is behind **vol 1 tab 4** of the Accompanying Underlying Documents.

## Members (Code, Clause 2.2)

27. As at 30 June 2019, APRA had 103,637 Australian and New Zealand members, comprising composers, authors and publishers. Of these, 98,905 were local writer members, and 575 were local publisher members. In addition, APRA had 2,291 overseas resident writer members and 8 overseas resident publisher members. Most Australian and New Zealand composers and publishers of music are members
28. As at 30 June 2019, AMCOS had 20,544 Australian and New Zealand members, of whom 19,339 were writers and 514 were publishers. In addition, AMCOS had 432 overseas resident writer members and 6 overseas resident publisher members.
29. As at 30 June 2019, APRA AMCOS had 1,581 Aboriginal and Torres Strait Islander (ATSI) members, which represented an increase of 9.6% during the Review Period. Although indigenous membership is still relatively low, APRA AMCOS state that they are committed to increasing awareness through their national indigenous membership strategy, overseen by an Aboriginal and Torres Strait Islander (ATSI) National Representative.
30. APRA AMCOS state that their relationship with their members remains 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.
31. Members, overseas affiliates, Board Directors and the media are able to log in to a secure section of the APRA AMCOS website (<http://apraamcos.com.au/>) which provides a number of online services. In addition, APRA AMCOS produce a large amount of written material for members, all of which has been provided in previous reports to the Code Reviewer.
32. 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.

33. During the Review Period, the Writer Services Department engaged in email correspondence with writer members on 51,512 separate occasions. The Publisher Services Department sent 19,329 emails to publisher members. In addition, over 2,749,890 emails were sent to members as part of email broadcasts to the members, which contained information including event notices, payment advices and APRA AMCOS publications.
34. Writer Services staff log member phone calls eight weeks per year; one week for APRA distribution related calls after each APRA distribution and one week for AMCOS distribution related calls after each AMCOS distribution. During the Review Period, Writer Services staff logged 583 phone queries following distributions. Further statistics relating to the number of contacts with members, accompanied by explanatory notes, have been included behind **vol 1 tab 5** of the Accompanying Underlying Documents.
35. During the Review Period, positive feedback was received in relation to the service provided by the Membership Department generally and also the 'Live Chat' service provided on APRA AMCOS's website. Records of the positive feedback is contained behind **vol 1 tabs 6 and 7** of the Accompanying Underlying Documents. They are impressive. It is clear that there are members who are most appreciative of the service that APRA AMCOS provides to them.

### **International relations**

36. APRA AMCOS's International Department is responsible for the reciprocal representation agreements with other societies administering performing and mechanical rights around the world.
37. The International Department undertakes the following activities:
  - royalty distributions for performing rights to members;

- administration of the non-exclusive mandates granted to APRA AMCOS in respect of certain publishers' repertoires for multi-territory digital services on a Pan Asian basis;
- monitoring the use of APRA repertoire overseas;
- making claims for missing payments and researching members' notifications and enquiries relating to overseas use and payments; and
- acting as the conduit for communications between APRA AMCOS and their respective affiliated societies, the umbrella representative bodies CISAC and BIEM, as well as dealing with WIPO.

38. In the most recently audited financial statements (for the 2017-18 financial year), APRA collected more than AUD\$43.7m for the use of Australian and New Zealand repertoire overseas. AMCOS collected over AUD\$1.1m. These amounts do not include revenues collected from APRA AMCOS's licensing of certain publishers' repertoires to multi-territory digital services as that revenue is included in the APRA AMCOS digital revenue results.
39. During the Review Period, APRA distributed over \$36.5m in performing right distributions from affiliate societies to APRA members across 12 monthly distributions. This amount was comprised of 221 individual distribution records from 41 different societies. AMCOS distributed over \$1.05m in mechanical distributions from affiliate societies to AMCOS members across 4 quarterly distributions. This amount consisted of 82 individual distribution records from 25 different societies
40. In addition, during the Review Period, the International Department was involved in a number of regional and international activities, details of which are included in the "Education and Awareness" section below.

### **Opt Out and License Back**

41. 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.

42. During the Review Period, APRA received and approved of 14 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. They have been provided to me at **vol 1 tab 8** of the Accompanying Underlying Documents.
  
43. 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 now 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, members can, upon giving AMCOS sufficient notice, notify it that they wish to negotiate directly with particular international digital music services.

#### **Member Benefits Program**

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

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

45. APRA AMCOS has large licensing departments dedicated to liaising with licensees and potential licensees. The three main areas of licensing operations are: General Licensing, Business and Events Licensing, and Media Licensing. Collectively, the three licensing departments administer approximately 145,000 businesses and events in Australia and New Zealand.

46. The fees paid to APRA AMCOS by licensees vary according to the licence scheme applicable to the particular circumstances of use. The details of all major APRA AMCOS licence scheme tariffs have been provided previously, as well as details of the value of each licence scheme as a whole.

### **General Licensing and Business & Events Licensing**

47. The General Licensing and Business & Events Licensing Departments administer the vast majority of licences, representing 142,000 businesses.
48. From 1 July 2019 APRA AMCOS' General Licensing and Business & Events Licensing departments, trading as "*OneMusic Australia*", will license both APRA AMCOS rights and PPCA rights under a single licence. This development post-dates the Review Period.
49. As part of the Australian Competition and Consumer Commission (ACCC) conditions of authorisation for APRA AMCOS, licensees must have access to 'plain English' Licence Information Guides tailored to their industry type; be able to complete licence application forms on-line and submit the licence forms for processing by the APRA Licensing Department. Links to each Licence Information Guide can be found on the APRA AMCOS website, including links to the public performance licences (since 1 July 2019 administered through *OneMusic Australia*).
50. During the Review Period, the General Licensing, Business & Events Licensing and Finance (Credit Management) Departments engaged in more than 543,410 contacts with licensees, including by letter, email and telephone calls. A breakdown of the statistics has been included in the APRA AMCOS report at **vol 1 tab 9** of the Accompanying Underlying Documents.
51. During the Review Period emails of appreciation were received in relation to the services provided by the Licensing Departments, which have been included in the APRA AMCOS report at **vol 1 tab 10** of the Accompanying Underlying Documents.

There are many instances of expressions of appreciation by licensees and/or potential licensees.

### **Media Licensing**

52. The Media Licensing Department covers three key areas of licensing: *Broadcast Licensing; Digital Licensing; and Recorded Music Licensing.*
53. *Broadcast Licensing* includes commercial and community radio, the ABC and SBS and subscription and commercial television. In total, approximately 965 licensees were administered by the Department during the Review Period. The Department also administers production music (AMCOS controlled Production Music is music specifically written and recorded for inclusion in all forms of audio and audiovisual productions). There were 678 Australian production music clients licensed during the Review Period.
54. *Digital Licensing* includes video on demand services, digital subscription music services, music downloads, ringtones and general websites. In total, approximately 419 licensees of this category were administered during the Review Period.
55. *Recorded Music Licensing* includes CD sales, business to business applications, dance schools and videographers. In total, approximately 704 licensees of this kind were administered during the Review Period.
56. Clients of the Media Licensing Department are, for the most part, aware of their copyright and licensing obligations.

### **Information provided to Licensees**

57. APRA AMCOS's website contains a Licensee section with information in relation to the various licences and with contact details for the relevant Licensing Department, including links to public performance licence information since 1 July 2019 administered through *OneMusic Australia.*

58. 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**

59. APRA AMCOS report that they continue to work hard to maintain relationships with various bodies representing major licensee groups, including television and radio broadcasters, record companies, internet service providers, small businesses, hotels, restaurants, fitness centres and educational institutions, and that during the Review Period they have supported the activities of several of those bodies (including the Australian Hotels Associations, Clubs Australia and Restaurant & Catering Association) by way of sponsorships.
60. In addition, APRA AMCOS claim to 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**

61. APRA AMCOS have previously provided detailed information in relation to the history and development of all significant existing licence scheme tariffs.
62. As at the end of the Review Period (30 June 2019), APRA AMCOS were in the process of renewing or establishing licence arrangements with a number of major media licensing services: Free TV, Foxtel, Stan and 10 All Access.
63. In addition, the following tariffs were introduced, re-negotiated or phased in during the Review Period.

### *Free TV*

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

### *Foxtel*

65. The AMCOS licences with Foxtel and Fox Sports both came up for renewal during the Review Period. The parties have agreed to consolidate the Foxtel and Fox Sports agreements under a single licence.
66. Substantive commercial terms have been agreed but as at the end of the Review Period, the consolidated agreement remained to be finalised.
67. Foxtel terminated its licence with APRA as at 31 December 2018. The parties have agreed an interim licence arrangement as they continue to negotiate the terms of a new consolidated licence.

### *Stan*

68. Stan terminated its licence with APRA AMCOS as at 31 March 2019. APRA AMCOS and Stan have referred the matter to the Resolution Pathways, APRA AMCOS's external ADR process. The parties have agreed an interim licence arrangement until 30 September 2019 as they undertake the agreed ADR process.

### *10 All Access*

69. This subscription video on demand service was launched in December 2018. The Company and APRA AMCOS have been negotiating licence terms and have agreed on the substantive terms but as at the end of the Review Period the final form of the remained to be settled.

### *OneMusic Australia*

70. Under the *OneMusic Australia* regime, APRA AMCOS and PPCA will offer a single licence to virtually all music users who require both APRA AMCOS and PPCA licences for the public performance of music. Since my last Compliance report, the consultation process for 18 of the licence proposals has been completed, with consultation for 2 licence schemes and 4 tariffs ongoing.
71. *OneMusic Australia* launched on 1 July 2019 for new business licensing, with renewals of existing APRA and PPCA licences to begin from 1 September 2019. APRA AMCOS have provided further information on the industry consultations and the development of the scheme at **vol 1 tab 12** of the Accompanying Underlying Documents.

### *Dramatic Context*

72. The right to license music used in a Dramatic Context (DC) sits outside the assignment of rights given to APRA by its members and outside the licence schemes administered by APRA AMCOS. Rightsholders can reasonably expect to derive greater remuneration from a DC use of music. The issue whether, in a particular case, music is being used in a DC or under an APRA AMCOS scheme has been the cause of some controversy, indeed, complaint (see under "COMPLAINTS AND DISPUTES" below). A new definition and new licence arrangements came into effect from 1 January 2018 designed to improve service levels, to widen the scope of DC productions, and to provide for increased focus on larger productions.
73. APRA AMCOS agreed to review the new arrangements after a twelve month period. A survey of licensees and consultations during the Review Period has identified administrative changes that APRA AMCOS are proposing to make, including revised guides for members and licensees to continue the educational and information program. APRA AMCOS have provided further information on the DC review at **vol 1 tab 11** of the Accompanying Underlying Documents. Since the end of the Review Period APRA AMCOS have decided to meet with Live Performance Australia to

explain the changes to DC administration with a view to implementing the changes as soon as possible.

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

74. The aim of APRA AMCOS's Multi-Territory Licensing (formerly Pan Asia Licensing) is to co-operate with publishers 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 Asian territories for the largest possible repertoire of musical works.
75. Rightsholders give APRA AMCOS non-exclusive rights in certain repertoire of musical works. APRA AMCOS 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.
76. APRA AMCOS's Multi Territory Licensing currently represents Universal Music Publishing, Peermusic, Hillsong Music Publishing, Concord Music Publishing, Mushroom Music Publishing, Downtown Music, Origin Music Publishing, Songtrust, Native Tongue Music Publishing, Cooking Vinyl and STIM (APRA's Swedish sister society).

### ***OneMusic Australia***

77. In 2016 APRA AMCOS began work on *OneMusic Australia*, a joint licensing project between APRA and the Phonographic Performing Right Association (PPCA) which aims to provide a single licensing solution for music and recordings in Australia. As previously noted, *OneMusic Australia* launched on 1 July 2019 for new business licensing, with renewals of existing APRA and PPCA licences to begin from 1 September 2019. Further information can be found on the *OneMusic* website at <https://onemusic.com.au/>. The APRA AMCOS report provided me with further information on the OneMusic project behind **vol 1 tab 12** of the Accompanying Underlying Documents.

## **Disaster Relief**

78. During the Review Period, APRA AMCOS report that they have continued their policy regarding Disaster affected licensees, which was introduced as a response to various natural disasters that occurred in 2010.
79. APRA AMCOS's actions, intended to alleviate financial pressure on affected businesses, including deferring licence fees renewals for up to three months, extension of payment periods, and corporate donations to relief appeals.
80. 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.

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

81. The most recently audited financial statements for the year ended 30 June 2018 show that APRA AMCOS's total combined net distributable revenue for that year was \$420.2m. Further information regarding APRA AMCOS's performance is contained in the 2017/18 APRA AMCOS Year in Review, which can be read at [http://apraamcos.com.au/media/YIR/2018/APRA\\_AMCOS\\_Year\\_in\\_Review\\_2018.pdf](http://apraamcos.com.au/media/YIR/2018/APRA_AMCOS_Year_in_Review_2018.pdf).
82. APRA and AMCOS distribute royalties quarterly, with the exception of the APRA Performance Returns distribution, which occurs annually.
83. APRA AMCOS has a large Membership department whose staff are trained to deal with members' (and others') enquiries, including in relation to distribution.
84. 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.

### **Distribution Rules and Practices**

85. APRA and AMCOS maintain, and make available on the website, comprehensive Distribution Rules and Practices. They can be read at <http://apraamcos.com.au/about-us/governance-and-policy/distribution-rules-and-practices/>
86. The APRA Distribution Rules were updated in the Review Period to:
- indicate the change in research threshold from \$15 to \$100; and
  - specify that performance credit points for streaming distributions are calculated on the basis of reported number of streams, rather than duration.
87. The APRA Distribution Practices were updated in the year ending June 2019 to:
- indicate the change in research threshold from \$15 to \$100 (referred to above)
  - document a new Video on Demand distribution practice
  - define the creation of a new distribution pool for background music to be distributed to a data set comprised of data copied from streaming services' usage reports
  - specify the inclusion of new distribution practice to recognise the use of foreign language repertoire in restaurants
  - indicate the use of DJ Monitor data collected directly from NZ nightclubs to distribute revenue in collected by APRA NZ
  - specify the change in streaming data threshold from "\$2 per work" to "100 streams per report per quarter are included in direct distributions (i.e. for licence fees from the service itself) and works with over 1,000 streams are included in analogous distributions (e.g. where the data set is used as a proxy for the distribution of background music uses)."
  - add the distribution policy for distributing revenue from Facebook.
88. The AMCOS Distribution Practices were updated in the Review Period to:

- show that money is now paid into a control account where works' ownership is not known or is not payable at the time of distribution
- document the policy for distributing revenue from retail stores collected under the Music on Devices tariff
- add the distribution policy for distributing revenue from Facebook.

### **Investment in Systems Development**

89. As detailed in previous reports, in 2014 APRA AMCOS commenced a core system replacement project to ensure a best-in-industry service offering in the years ahead. The project, *Copyright Licensing Enterprise Facility (CLEF)*, is expected to transform the way APRA AMCOS deliver their services and manage business practices, data and systems. The first release of the system, representing approximately 40% of system functionality, went live on 1 July 2019 as part of the *OneMusic Australia* launch. It is expected that the second release of the CLEF system will go live in 2020.
90. In the meantime, APRA AMCOS Writer Members continue to enjoy the new writer member portal that was implemented in 2015 and the further enhancements which are continuing, including the ability to register jingles; the ability to register remixes; improved notification for publishers and co-writers for newly registered works; the ability to create a set list; one process for Performance Reports (incorporating three previous processes: LPRs, OSLPRs and Set Lists); and improved access to royalty and financial data.
91. APRA AMCOS publisher members continue to transact with APRA AMCOS via a direct connection to the current system. A new interface will be required with the move to CLEF. APRA AMCOS have engaged Accenture to create a new web-based interface, the publisher portal, which is in development. It has been structured to follow the implementation schedule of the second release of the CLEF project.

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

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

93. Commission on revenue pays AMCOS's expenses. The commission rate depends on the source of the revenue.
94. According to the most recent audited financial statements, for the year ended 30 June 2018, APRA AMCOS achieved a group expense to revenue ratio of 13.6%. Further information can be found at [http://apraamcos.com.au/media/YIR/2018/APRA\\_AMCOS\\_Year\\_in\\_Review\\_2018.pdf](http://apraamcos.com.au/media/YIR/2018/APRA_AMCOS_Year_in_Review_2018.pdf).

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

95. The Annual Report of each of APRA and AMCOS contains the matters set out in clause 2.6(e) of the Code.
96. The relationship between APRA and AMCOS and their respective Boards of Directors is governed by each company's Constitution and Charter of Corporate Governance. The Boards have both established Audit and Governance Sub-Committees, which continue to meet at least six times a year and which concentrate exclusively on issues relating to Corporate Governance.
97. The APRA AMCOS management also has an internal Corporate Governance Committee, comprising the Chief Executive and Executive Leadership Team. The Committee meets regularly to discuss matters relating to the day to day operation and management of the two societies. This Committee deals with policy setting and other matters relating to Human Resources and Industrial Relations, risk management, infrastructure, general administration, and regulatory compliance.
98. APRA AMCOS also have an internal "Staff Code of Conduct" and a "Service Provider Code of Conduct", both of which complement the Code: the Staff Code sets out the standards according to which staff are expected to treat one another; the Service Provider Code sets out APRA AMCOS's commitment to shared professional standards. A copy of each has been provided to me at **vol 1 tab 13** of the Accompanying Underlying Documents.

99. 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 which is at **vol 1 tab 2** of the Accompanying Underlying Documents

### **ACCC Authorisation**

100. As reported previously, APRA's membership, licensing, distribution and international arrangements are all the subject of an "authorisation" by the ACCC. APRA's current conditional authorisation was granted for a period of five years, expiring on 28 June 2019. In granting this and past authorisations, the ACCC confirmed that the conduct and arrangements for which APRA sought re-authorisation were likely to result in a public benefit which would outweigh the likely public detriment.
101. APRA claims that it has complied with all the ACCC's conditions of authorisation.
102. APRA lodged its application for a new authorisation on 24 December 2018. APRA is seeking re-authorisation for a period of 5 years subject to the same conditions that apply under its existing authorisation.
103. On 5 June 2019, the ACCC issued a draft determination proposing to re-authorise APRA's arrangements for a period of 5 years, subject to the same conditions imposed in 2014 and some additional conditions relating primarily to issues of transparency.
104. Given that the re-authorisation assessment process is ongoing, on 27 June 2019 the ACCC granted APRA interim authorisation on the same terms as the existing authorisation until such time as the new authorisation is determined.
105. APRA considers that its authorisations by the ACCC and the conditions attached to those authorisations form an important part of its governance and accountability framework.

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

106. APRA AMCOS report that their staff at management level continue to be comprehensively trained regarding the Code.
107. The Executive Leadership Team meets on a weekly basis and discusses matters relating to policy and strategy development and assessment. At these meetings issues relating to service and staff performance and training are regularly addressed.
108. 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.
109. Senior Manager, Manager and Team Leader forums are held annually 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.
110. The General Licensing, Business & Events Licensing, and Member Services Departments continue to hold their own staff training conferences annually.
111. In addition, all departments in APRA AMCOS conduct regular departmental staff meetings that provide opportunities to discuss topics relevant to the Code, including: client service, conflict management, time management, and the procedures for identifying and dealing with complaints. Materials relating to staff conferences and training have been supplied to me at **vol 1 tab 14** of the Accompanying Underlying Documents. The materials are voluminous and detailed.

112. APRA AMCOS also hold company-wide staff briefings throughout the year. The briefings focus on the respective needs and expectations of general staff, middle and senior management and also the expectations of the organisation. The focus of the training sessions has in the past covered the Code, ACCC authorisation and the CLEF Project, as well as performance within and between departments and with external stakeholders
113. APRA AMCOS have provided at **vol 1 tab 16** of the Accompanying Underlying Documents details of the induction and training sessions that they provide for staff. The Code and internal Staff Code of Conduct are central components of the induction program that all new staff attend when they join the company. As well as the induction sessions conducted by Human Resources personnel, roles with a high level of client and/or member contact also receive additional training from within the relevant departments in relation to handling complaints and the complaints procedure.
114. APRA AMCOS has developed a “brand blueprint” (provided at **vol 1 tab 17** of the Accompanying Underlying Documents), which further outlines their purpose, values and “personality”.
115. APRA AMCOS reports that its 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 (provided at **vol 1 tab 18** of the Accompanying Underlying Documents) and to ensure that the highest level of customer service is offered via this channel.
116. APRA AMCOS assert that they are committed to taking a proactive approach to staff development and wellbeing, with such internal programs including:
- Higher Education Assistance Program
  - Leadership Development Program
  - Mentoring & High Potentials Program
  - Buddy Program

- In-house Training Programs
  - BeSpoke Coaching (leadership presence and presentation skills)
  - Employee Assistance Program
  - Purchased Leave Scheme
  - Employee Wellbeing Program comprising seminars on resilience, stress management, work-life balance and dealing with change
117. Under the *Workplace Gender Equality Act 2012*, APRA AMCOS continue to submit their annual report to the Workplace Gender Equality Agency (WGEA), outlining their performance against a set of standardised gender equality indicators. A copy of that report is available on the APRA AMCOS website and, as required by the Act, staff and members were notified of the report in June 2019.
118. 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.

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

119. APRA AMCOS state that they devote “considerable resources” to the education of members, licensees, industry associations and members of the public, regarding the matters set out at Cl 2.8 (a) of the Code. APRA AMCOS have provided a list of the numerous organisations and associations with which they have an ongoing relationship at **vol 1 tab 19** of the Accompanying Underlying Documents.
120. APRA claims that, as Australia’s oldest and largest collecting society (incorporated in 1926), it is in a position to have developed extensive materials and expertise in relation to education and awareness matters. APRA AMCOS participate and contribute to the following education and awareness initiatives:
- Various Grant Programs, Sponsorships, Competitions and Promotions
  - Indigenous Member Strategy
  - Aboriginal and Torres Strait Islander (ATSI) Music Office

- Ambassador Program
- Events
- Member Advisory Group Development
- SongHubs and SongMakers programs
- Sounds Australia & Live Music Office; and
- Various industry related organisations and programs
- Seminars and public forums and working groups

Detailed information regarding these programs has been included at **vol 1 tab 20** of the Accompanying Underlying Documents.

121. 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”.
122. I will not set out the detail here. Of note, however, are the following statistics:
- Member Education – 356 events conducted and attended by 8,774 members ( a summary of the events is included at **vol 1 tab 21** of the Accompanying Underlying Documents);
  - Publisher Members – Portal Reference Groups and Publisher Pulse seminars;
  - Licensee Education – attendance at a number of industry association functions and events ( a summary of the events and seminars is included at **vol 1 tab 22** of the Accompanying Underlying Documents) and production of a large volume of written material for licensees;
  - International Relations – hosted significant International society representatives visits and attended WIPO meetings in Taipei in October 2018; Asia Pacific regional meetings in Jakarta in November 2018; and CISAC meetings in Tokyo in May 2019.
  - Government Relations - further developed 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.
123. As previously reported, the APRA AMCOS website provides broad information about the services provided to members and licensees. The website is at the heart of the organisation’s digital communications strategy and also provides information of interest to the wider public. The site contains a vast amount of information about copyright in general, and the activities of the two societies in particular. Among other things, members of the public can search the website to check composer details of particular works within the APRA repertoire.
124. Traffic to the APRA AMCOS website grew during the Review Period, with an increase in usage of 385,625 as against 366,948 in the previous year. Sessions also increased to 762,808 from 739,464 in the previous year; and page views increased to 3,398,819 from 3,334,422 in the previous year. Users spent slightly less time on the site, on average 5.21 minutes this period, compared to 5.33 minutes last year; and viewed 4.46 pages per session compared to 4.51 pages per session last year.
125. The *OneMusic Australia* website (<https://www.onemusic.com.au/>) was launched on 1 July 2019. The website contains general information about *OneMusic*, an FAQ section, plain English guides to each of the licence schemes, downloadable PDFs of *OneMusic* licence agreements, and the opportunity for licensees to get a quote for many of the licence schemes online. The website also links to the *OneMusic* eCommerce portal, which enables all licensees to pay their licence fees online and some licensees (according to their industry) to obtain their licence through the portal at a time convenient to them.
126. 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.

127. During the Review Period APRA AMCOS gained an additional 2,061 page “likes” (followers) on Facebook, bringing the total Facebook page “likes” to 31,971. Twitter followers totalled 21,331, a slight increase on the previous review period. Instagram saw an increase in followers to 12,340 followers, up from 8,230 at 30 June 2018. YouTube views reached 224,000 views, down from 317,700 on the previous review period.

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

128. 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)**

129. 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.
130. As reported elsewhere in this Report, the collecting societies have amended the Code and launched a new standalone website for the Code (<https://www.copyrightcodeofconduct.org.au/>).
131. 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

132. 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. A copy of that invitation has been provided to me at **vol 2 tab 5** of the Accompanying Underlying Documents.
133. Of course, APRA AMCOS's annual report to the Code Reviewer is itself directed to its compliance with the Code.

## Copyright Agency Limited ("Copyright Agency")

134. Copyright Agency merged with Viscopy on 1 December 2017. It had managed Viscopy's services under a services agreement since 2 July 2012. Viscopy members are now Copyright Agency members, and Copyright Agency is now the licensor for the artwork licences that it previously managed for Viscopy.
135. Copyright Agency's report on its compliance with the Code was furnished to me on 31 July 2019.
136. Copyright Agency's website is at <https://www.copyright.com.au>.

### General

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

- in accordance with the authority of its members, and with the oversight of the Copyright Tribunal, formulation and management of 'voluntary' licensing arrangements, principally for the business sector."

139. Copyright Agency reports annually to the relevant Minister (currently the Minister for Communications, Cyber Security and the Arts) in accordance with statutory obligations in the Act and in the *Resale Royalty for Visual Arts Act 2009*. Its annual reports are tabled in Parliament and are available on the Copyright Agency website. Those annual reports are in two parts. The first part is in the nature of a narrative which provides information on various aspects of Copyright Agency's business. The second part consists of the directors' report and the financial statements and external auditors' report.
140. In 1990, Copyright Agency was declared by the then Attorney-General, under section 135ZZB of the Copyright Act, to be the collecting society for the purposes of Part VB of the Act for the following class of relevant copyright owners: each owner of copyright in a work, other than a work included in a sound recording or cinematograph film. Section 135ZZB's successor provision is section 113V.
141. In 1999, Copyright Agency was declared by the Copyright Tribunal, under section 153F of the Act, to be the collecting society for the purposes of Division 2 of Part VII of the Act, in relation to Government Copies of works and published editions of works, other than works that are included in a sound recording, cinematograph film or a television or sound broadcast.
142. The declarations are published on Copyright Agency's website, accessible from links at <https://www.copyright.com.au/about-us/governance/>.
143. As a declared collecting society, Copyright Agency also operates in accordance with the Australian Government Department guidelines for such societies.

144. Since commencement of the *Resale Royalty Right for Visual Arts Act 2009* (Cth) in 2010, Copyright Agency has been appointed by the Minister for Communications, Cyber Security and the Arts, under section 35 of the Act, as the collecting society for the purposes of the Act. The appointment has been renewed on several occasions.

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

145. 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.

146. On its website, Copyright Agency publishes the following documents related to governance:

- Constitution;
- Corporate Governance Statement;
- Customer Services Charter;
- Privacy Policy;
- Dispute Management Procedures;
- Complaints Management Procedures;
- the Code;
- the Australian Government Guidelines for Declared Collecting Societies;
- the Attorney-General's Declaration of Copyright Agency for Part IVA of the Act; and
- the Copyright Tribunal's declaration of Copyright Agency for Div 2 of Part VII of the Act.

147. 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)**

148. Membership of Copyright Agency is free and is open to owners of copyright in works and their licensees and agents, as well as to holders of a resale royalty right. 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.
149. 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.
150. In its report to the Code Reviewer, Copyright Agency gives details of its communications with its members and potential members, including:
- information on the Copyright Agency website about membership arrangements, distributions of licence fees and payments and a copy of its Constitution;
  - broadcast and one-on-one communications about changes to membership, distribution or payment arrangements;
  - responding to enquiries in accordance with the Service Charter; and
  - providing secure online member accounts which enable members to review their membership, distribution and payment details.
151. In addition, Copyright Agency reports information about new members in its annual reports.

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

152. Under this heading, Copyright Agency reiterates what it has said in relation to members as recounted at [148]-[151] above, substituting "licensees" for "members" and "licence agreements" for "membership agreements".

153. For the statutory licences for education and government, Copyright Agency mostly deals with bodies or departments representing a class of licensees (such as Universities Australia, Copyright Advisory Group (CAG) to the COAG Education Council for most schools and TAFEs, the Department for Communications and the Arts for the Commonwealth) rather than individual licensees. It is also a party to more than 1,000 individual licence agreements with other education providers, such as registered training organisations.
154. Most aspects of the statutory licences are governed by the legislation and the regulations under it. The major areas for negotiation are the amount of the licence fees, the manner of collecting information about usage of content under the licence, and the processing of that information in order to estimate the “volume” of usage. Licensees participating in surveys of usage receive special training in order to complete the surveys.
155. Copyright Agency publishes information about its “voluntary” licences (“blanket” and pay-per-use) on its corporate website and on the RightsPortal website (*rightsportal.com.au*).
156. In addition, Copyright Agency provides information about its licences through such channels as seminars, trade shows and trade publications, and in response to specific enquiries.
157. Copyright Agency states that it continues to review regularly the terms of its voluntary licence agreements to ensure that they are expressed in plain language, correspond with its mandate, and reflect feedback from licensees.
158. New industry licence schemes are usually designed by Copyright Agency with the input of the relevant industry association.
159. Information on Copyright Agency’s website about licensing includes:
  - plain English guides for different types of businesses;

- pay-per-use plain English guides;
- information for media monitoring organisation customers.

*Information about data from surveys in schools and universities*

160. Copyright Agency has arrangements in place with CAG and Universities Australia under which Copyright Agency is provided with 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, which is taken into account (together with other matters) in licence fee negotiations; and
  - data to assist Copyright Agency in the distribution of licence fees.
161. Copyright Agency also provides information about surveys to members and others in an information sheet available from its website (at <https://static-copyright-com-au.s3.amazonaws.com/uploads/2019/01/R02273-CA-surveys-in-schools-and-unis-Jan-2019.pdf>) and information available on its online Help Centre (<https://help.copyright.com.au/>). It also provides information in its annual reports about the number of survey records processed, and the outcomes from surveys in schools:

*Tribunal proceedings with licensees*

162. Copyright Agency is currently engaged in the following proceedings in the Copyright Tribunal of Australia:
- with the State of New South Wales, regarding arrangements under section 183A of the Act relating to reporting to Copyright Agency in respect of government copies;
  - with three media monitoring companies – Meltwater, Isentia and Stream – regarding equitable remuneration and licensing

- arrangements for media monitoring; and
- with Universities Australia, regarding the application of the education statutory licence to universities.

Information regarding these proceedings is provided on Copyright Agency's website.

#### *New agreements with peak bodies for the education sector*

163. Copyright Agency has recently reached agreement with peak bodies regarding licensing arrangements for the education sector:
- with CAG for the school sector: from January 2019 to December 2022; and
  - with CAG TAFE for the TAFE sector (excluding Victorian TAFEs, which are covered by a separate agreement): from January 2019 to December 2021.
164. Copyright Agency advises that it is currently finalising a new agreement with the Victorian TAFE sector.

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

165. On its website, Copyright Agency publishes its "Distribution Policy", its Distribution Schedule (including past distributions); information sheets about distributions, and information regarding deductions before distribution.
166. Copyright Agency distributes payments in accordance with its Constitution, Distribution Policy and schemes of allocation approved by its Board or by management under delegation from the Board.
167. 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'.

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

168. 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 cost relevant to the particular licence scheme.
169. Copyright Agency's Board of Directors approves the society's annual operating budget and reviews the budget at each Board meeting.
170. 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.
171. 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.

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

172. Under Copyright Agency's Constitution, its Board comprises directors elected by author, artist and publisher members respectively, and directors appointed by the Australian Society of Authors and Australian Publishers Association. The current directors and the capacity in which they were elected or appointed appear on Copyright Agency's website.

173. The society's financial statements are audited annually. Information about revenue, expenses and distribution of licence fees is included in each Annual Report, together with the auditor's report, and is made available to the public on Copyright Agency's website, as well as to members and to the Minister for Communications, Cyber Security and the Arts. In addition, the Annual Report is tabled in Parliament.
174. On request, Copyright Agency provides information to members about entitlements to payment, in accordance with privacy and confidentiality obligations.

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

175. 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.
176. In addition, Copyright Agency's policies and procedures regarding management of complaints and disputes are available from Copyright Agency's corporate website.

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

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

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

178. 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.

179. Information on the website relating to membership includes:

- membership terms and conditions; and
- information about distributions, including distribution policy, information about each distribution (such as the data used), and forthcoming distributions.

180. 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; and
- works excluded from voluntary licences.

181. 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.

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

182. As noted earlier, for convenience a copy of clause 2.9 of the Code is Appendix B to this Report.
183. Copyright Agency's annual reports provide the information set out in clause 2.9(a).
184. 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)**

185. 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)**

186. The Code is available on the new Code of Conduct website, as is information about the annual review of compliance with the Code, the Code Reviewer's reports, and the Triennial Review of the Code. The Copyright Agency's website has a webpage devoted to the Code and contains a link to the Code of Conduct website.
187. 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.

188. Copyright Agency includes reference to its compliance with the Code in its annual reports.
189. Of course, Copyright Agency's annual report to the Code Reviewer is itself directed to its compliance with the Code.

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

### General

190. Screenrights' report on its compliance with the Code was furnished to me on 31 July 2019.
191. Screenrights' website is at <https://www.screenrights.org>.
192. The Audio-Visual Copyright Society Limited, trading as "Screenrights", was established in 1990 to be the declared collecting society for purposes of the statutory licence for the copying and communication of broadcasts by educational and other institutions under Pt VA (now see Pt IVA Division 4) of the 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.
193. 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 Act.
194. 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 Act (Copyright Agency is also declared for that purpose).

195. As at 30 June 2019, Screenrights had 4,438 members and 1,447 licensees. 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   | 4,438  |
| Licensees  | 1,447  |
| <i>Schools -- Government, Catholic Systemic, Independent -- Peak Bodies</i>                        | 26     |
| <i>Higher education including universities</i>   | 75     |
| <i>Private Vocational Education/Training Organisation (inc ELICOS)</i>                             | 24     |
| <i>Government Agency</i>   | 409    |
| <i>TAFE (including individual institutions and Departments representing multiple institutions)</i> | 1      |
| <i>Resource Centre</i>   | 7      |
| <i>Retransmitter</i>   | 5      |
| <i>NZ -- Tertiary</i>  | 28     |
| <i>NZ – Schools</i>  | 870    |
| <i>NZ – Resource Centre</i>  | 2      |

### Legal Framework (Code, Clause 2.1)

196. Screenrights claims to have complied with the legal framework governing its operations and, subject to what is said at [199] below, has made no changes to its Constitution or other documents relevant to the legal framework during the Review Period.
197. As noted in previous reports, Screenrights' Board is elected by the members in accordance with the Constitution, a list of whom is available on the corporate website.

198. During the Review Period, James Dickinson was appointed as Chief Executive, having acted in that position since the departure of Simon Lake, in July 2018.
199. At the 2018 Annual General Meeting, the membership approved the proposed amendments to the Constitution to enable the establishment of a “Competing Claims Fund” to ensure that all competing claims now have a minimum resolution period of a year in which to access resolution mechanisms.
200. Also during the Review Period, Screenrights’ Corporate Governance Statement was amended to update relevant information, but no substantive amendments were made.
201. Copies of the updated Constitution and Corporate Governance Statement together with all other key governance documents are published on Screenrights’ corporate website.

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

202. Membership of Screenrights remains open to all eligible rightsholders. Membership increased in the Review Period from 4,228 to 4,438 members.
203. 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.
204. In addition, members can update their membership information via *MyScreenrights* or via member forms.

205. In the interests of improving the information provided to and exchanged with members and the efficiency with which Screenrights deals with its members, the following changes have been made to two of its member forms during the Review Period:
- Confirmation by Principal - Agency - In October 2018 Screenrights introduced the "Confirmation by Principal Form" (a copy was provided as **Appendix A** to Screenrights' Compliance report). This form is used with individuals and companies to confirm whether they are or are not represented by an agent for the purpose of claiming Screenrights royalties. This form is an addition to the existing "Confirmation by Principal – Title" form.
  - Musical Works and Sound Recordings forms - In November 2018 Screenrights undertook a review and update of its Musical Works and Sound Recordings forms, resulting in a reduction from 26 warranty forms to one form. This is the "TV and Music Video Warranty Form", a copy of which was provided as **Appendix B** to Screenrights' Compliance report.
206. Screenrights also sought member feedback in June 2019 on the efficiency and usability of its *MyScreenrights* online portal, and based on the responses received, made various changes. These changes were intended to:
- improve member navigation between the 'Registrations' and 'Competing Claims' pages;
  - increase visibility of important notifications by implementing a notifications log (where members can "archive" past notifications); and
  - allow an existing member to create a new membership for an associate from within the member's 'My Account' section.
207. Finally, Screenrights says that it adopts a continuous improvement approach to information management and information systems in the interests of

transparency and efficiency. It advises that it undertakes numerous initiatives each year to improve the quality of information captured and the ease with which information can be provided to Screenrights by its members. Similarly, it also undertakes initiatives to streamline information processing within its in-house systems to deliver efficiencies to royalty distribution.

208. Some of the key initiatives in the Review Period were:

- Improvements to *MyScreenrights* online membership portal:
  - Quarterly updates: Members now receive a quarterly email summarising their account.
  - *My messages*: Members can now see a history of communications from the portal about their membership.
  - Attach new membership application: Members can now initiate a new membership application for a related company from within their existing membership.
  - Navigation improvements: Navigation pathways between registrations and related competing claims have been made clearer to help members find information more easily.
  - Speed improvements: A review of page load times for members with large repertoires identified speed issues for loading large series which were mitigated to improve the performance of the portal.
  - Competing claims person: Members can now specify the person in their organisation responsible for managing competing claims.
  
- Improvements to in-house systems:
  - Research leads management: New functionality was introduced to enable the distribution team to manage more efficiently the creation of research leads.
  - Querying member about a research lead: Refinements to the customer relationship management (CRM) system were made to

improve the communication with members and prospective members about titles where Screenrights has identified that they may have a claim.

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

209. 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 Membership Agreement. In the Review Period, licensing was handled primarily by the Chief Executive, James Dickinson (formerly the Licensing Executive), while recruiting a new Licensing Executive was undertaken.
210. 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.
211. For the educational statutory licence, Screenrights generally negotiates with bodies that represent a group of licensees such as Universities Australia and the Copyright Advisory Group (CAG) to the COAG Education Council for schools and TAFEs.
212. In the Review Period, Screenrights concluded, by agreement, a new licence with Universities Australia for the universities sector. The agreement was reached after extensive negotiations including independent, joint research and consultation with the individual institutions.
213. In New Zealand, the tertiary licences are negotiated with Universities New Zealand and groups of polytechnics and other colleges. A new licensing scheme for universities and a similar scheme for other tertiary institutions was offered in December 2018 following negotiations with the representative bodies.

214. As a measure of the appropriateness of the discussions, all previously licensed institutions in Australia and New Zealand entered into new agreements following the conclusion of these negotiations.
215. For the government statutory licence, Screenrights deals with the Department for Communications and the Arts for the Commonwealth and with a collective representative group for the States and Territories. New agreements were reached with the States and Territories and were in the process of execution as at the end of the Review Period.
216. In relation to retransmission statutory licences, Screenrights largely deals with Foxtel, and within the Review Period concluded a new licence following agreement on a licence fee.
217. Screenrights' corporate website contains a Screenrights Licences section which 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.
218. 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.

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

219. In the Review Period, Screenrights distributed payments in accordance with its Distribution Policy and Articles of Association.
220. The Distribution Policy was updated in November 2018 to provide for a Competing Claims Fund as discussed above in the section "Legal Framework". A copy of the updated Distribution Policy can be accessed from Screenrights' corporate

website.

221. Screenrights informs members of changes to the Distribution Policy via its corporate website and member newsletters.

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

222. Screenrights' expenses for the Review Period were approximately 16.2% of gross revenue (see Clause 2.5 (a) of the Code).
223. Screenrights' Board continues to approve the annual operating budget, and an updated financial report which compares actuals to budget is reviewed at each Board meeting.
224. Screenrights' operating costs associated with its licencing 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.
225. Screenrights' Constitution also allows Screenrights to provide for a distribution to a fund for such special purposes (including cultural and charitable purposes) that the Directors consider are in the interest of the Society, provided that the funds expended for special purposes do not exceed 1% of the Statutory Collection (Article 16.2(b)) and Voluntary Collection (Article 16.4(b)). On this basis, a Cultural Fund was launched in 2018. The Board approves the amount allocated each year. Applications for grants from the Cultural Fund are also approved by the Board, after recommendation by a panel of professionals with relevant expertise. The purpose of the Cultural Fund is to support people who have exciting and innovative new projects.
226. Detailed information on Screenrights' expenses including the expenditure to collections ratio for the financial year 2018/2019 will be found in *Screenrights'*

*Annual Report and Screenrights 2018-2019 Year in Review*, where a comparison with the years 2016/2017 and 2017/2018 is depicted.

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

227. 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.
228. The Audit and Risk Committee of the Board met three times during the Review Period. Its principal functions are to ensure that accounting records are maintained in accordance with statutory requirements, to ensure that financial controls are sufficient, to review the operational and strategic risk assessments, and to review the financial statements and consult with the external auditors.
229. 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.
230. As previously advised, Screenrights' Annual Report for 2018/2019 was available in late September 2019, including the audited accounts as at 30 June 2019. Each Annual Report of Screenrights contains the matters set out in clause 2.6(e) of the Code including revenue, expenses and distribution of payments to Members.
231. Annual Reports are published on the corporate website and presented to the members in preparation for the Annual General Meeting. A copy is provided to the Minister for Communications, Cyber Safety and the Arts and is tabled in Parliament.

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

232. Screenrights reports that it has taken reasonable steps, including through annual staff training, to ensure that employees and agents are aware of, and comply with, the Code. A copy of this year's training materials was provided to the Code Reviewer as **Appendix C** to the Compliance report. They are voluminous.
233. In addition, Screenrights reports that it has arranged training sessions to familiarise staff with its ADR procedures and complaints handling procedures for disputes between Screenrights and licensees and between Screenrights and members. A refresher training on Privacy Law, which followed up on a staff-wide 'privacy law pop quiz', was delivered at the same time as Code training. The importance of compliance with the Code is also emphasised to staff in induction training. The relevant information is available on Screenrights' staff intranet and website.
234. In addition, relevant matters are raised in regular staff meetings and other staff training meetings, such as training in relation to Workplace Behaviour.

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

235. During the Review Period, Screenrights continued to promote and provide information about its services on its website, which is reviewed and updated regularly.
236. In addition, Screenrights continued to promote its role and functions as a collecting society by sponsoring and participating, either through speaking engagements, industry market stalls and providing attendees with hardcopy marketing material about Screenrights at the following events in the Review Period:
- Screen Makers Conference, July 2018
  - 37°South Market at Melbourne International Film Festival, August 2018
  - Screen Forever (run by Screen Producers Australia), November 2018
  - Screen Production and Development Association Conference, November 2018

- World Congress of Science and Factual Producers, November 2018
- Australian International Documentary Conference, March 2019
- The Business of Producing Seminar, March 2019
- Australian Directors' Guild Awards, May 2019
- Doc Edge Forum, June 2019

237. Screenrights also promotes the Cultural Fund on the corporate website<sup>9</sup> and through direct email mailouts.

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

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

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

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

240. In addition, in the Review Period, Screenrights had over 1.8 million individual claims and opened competing claims involving 359 series and 1,268 one-off programs. These competing claims were published on Screenrights' member portal *MyScreenrights*. Throughout the year competing claims were closed for 448 series and 1,112 one-off programs.

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

241. 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.

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

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

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

245. PPCA's report on its compliance with the Code was furnished to me on 5 August 2019.
246. PPCA's website is at <http://www.pcca.com.au>.

### Legal Framework (Code, Clause 2.1)

247. PPCA claims that during the Review Period, it met its obligations as set out in clause 2.1 of the Code. Statements in the text of the report were supported by the Accompanying Underlying Documents (arranged behind numbered tabs) to which I will refer below.
248. PPCA reports that neither its Constitution (**tab 1**) nor its Privacy Policy (**tab 2**) was changed during the Review Period. These documents, together with its Distribution Policy, Complaints Handling and Dispute Resolution Policy, Code of Conduct for Copyright Collecting Societies and all reports issued by the Code Reviewer are available on the PPCA website.

## Members (Code, Clause 2.2)

249. PPCA is a limited liability company. Its three shareholder-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 (**tab 3**).
250. As a result, whereas other collecting societies represent the interests of "members", PPCA represents the interests of "licensors" (ie the owners or exclusive licensees in respect of the communication right and/or the public performance right in sound recordings and/or music videos).
251. PPCA's relationship with licensors (including its three shareholder members) is governed by the terms of its standard "Input Agreement" (**tab 4**), rather than by PPCA's constitution. The Input Agreement allows PPCA to sub-license on a non-exclusive basis, and to create blanket public performance and other licensing schemes for the users of sound recordings (particularly, small businesses).
252. Similarly, PPCA has "registered artists" rather than "artist members". The payment made available to Australian featured artists under the PPCA Distribution Policy is on an ex gratia basis and does not arise from any copyright held by the artists themselves.
253. As at the end of the Review Period on 30 June 2019, PPCA had approximately 2,654 licensors representing major record companies and independent copyright owners. The number of registered artists was 4,296 and the number of public performance licensees was 61,700.
254. Neither the Distribution Policy nor the Input Agreement were amended during the Review Period, although the Distribution Policy document was refreshed in order to make it more accessible to readers.

255. PPCA reports that it continues to receive queries relating to registering as a licensor by telephone or email. PPCA generally refers the applicant to the relevant section of the website and the related on-line registration form (**tab 5**). (<http://www.pcca.com.au/labels/register-as-a-licensor/>). An acknowledgment is sent to licensors upon receipt of their track registrations (**tab 6**).
256. Enquiries from artists about registering with PPCA are mostly received by email, in which case again they are directed to the relevant area of the website and the on-line registration forms (**tab 7**) (<http://www.pcca.com.au/artists-home-/register-as-an-artist/>).
257. The PPCA website includes "FAQ" sections for both licensors (**tab 7**) and artists (**tab 8**), to assist in the explanation of the services provided by PPCA.

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

258. 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 continues to be the largest sector of PPCA's licensing activity and is managed by the largest team of staff (the Public Performance Licensing Department).
259. PPCA also has in place communication licences for those offering other services (including broadcasters and linear and customer-influenced streaming services).
260. 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 radiobroadcasters;
  - 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 the 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.

261. There are joint licences with ARIA and APRA AMCOS for eisteddfodau (**tab 11**), and with ARIA, APRA AMCOS, Copyright Agency and Viscopy, for early learning providers (**tab 12**).
262. The PPCA website contains extensive information on its standard public performance licence schemes, including descriptions of tariff categories (**tab 13**) and the fees payable for the relevant licences (**tab 14**) (tariff sheets).
263. Licence applications, incorporating licence terms (**tab 15**), may be submitted (a) online (**tab 16**), (b) via a downloadable application form (**tab 16**), (c) using PPCA's hard copy application form (**tab 16**), or (d) by phone.
264. 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*.
265. PPCA's website also contains information on the range of broadcasting licences (**tab 17**) and digital licences (**tab 18**) available (including the application process) and a range of FAQs covering matters both specific to PPCA and on copyright generally (**tab 19**).

266. PPCA's public performance tariffs generally increase annually, on 1 July, by an amount equivalent to increases in the CPI. By 1 April each year, PPCA writes to relevant key industry associations that 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 2019.
267. During the Review Period, PPCA focussed on the development of the joint *OneMusic Australia* public performance licence offerings scheduled, for most licence schemes, to become available from 1 July 2019 (see [70]-[71] and [77] under APRA AMCOS above). Consequently the entire Review 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.
268. Further detail on the development of *OneMusic Australia* licensing schemes was provided in the APRA AMCOS submission, given APRA AMCOS's role in *OneMusic Australia* administration (see [70] - [71] and [77] above).

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

269. 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 allocated and paid to the licensors who have authorised PPCA to issue licences on their behalf.
270. 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.
271. In addition to being available on the website, the Distribution Policy is also provided to each new licensor together with the Input Agreement. An information sheet on the

Direct Artist Distribution Scheme is provided to each registering artist as part of the artist registration pack. The correspondence describes the overall scheme as outlined in the Distribution Policy and advises that the Policy (and all other policies) can be viewed on the PPCA website, or supplied on request.

- 272. Any amendments to the Distribution Policy are communicated in a variety of ways, including through articles in the regular artist and licensor newsletter and through direct communications
- 273. PPCA undertakes a single annual distribution for the financial year ended 30 June, which is made prior to 31 December in each calendar year.

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

- 274. 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.
- 275. PPCA's Annual Report for the year ended 30 June 2018 (**tab 21**) (published during the Review Period) showed that the expense to revenue ratio was 14%.

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

- 276. PPCA's financial records are audited annually (**tab 22**).
- 277. 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.
- 278. A Finance Committee appointed by the Board continues to meet regularly to review interim financial accounts, and the outgoings and expenses referred to in them.

279. 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
280. The PPCA Board, committees and relevant managers are also provided with PPCA's "Competition and Consumer Compliance Guidelines" (**tab 23**) and "refresher" presentations are held periodically.
281. In accordance with PPCA's Constitution (Clauses 6.2(b) and 6.2(c)), PPCA conducts regular elections to fill the positions for both Licensor and Artist Representative directors. In addition, at each meeting of the PPCA Board, directors are reminded of their obligations and duties (**tab 24**).
282. The PPCA Management Team meets each week to discuss operational and strategic matters.

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

283. 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 (**tab 25**), continued to be followed during the Review Period.
284. The Licensing Department meets at least once each month, with individual licensing teams meeting more often. At these meetings, staff are reminded of PPCA's obligations under the Code and of the various PPCA policies.
285. A document containing standard responses to frequently asked questions is provided as a resource to the Licensing Department (**tab 26**).
286. During the Review Period, Licensing Department staff attended training sessions on accounts receivable (banking), and workshops in managing change (in anticipation of the transition to *OneMusic Australia*).

287. Also in preparation for the advent of *OneMusic Australia*, PPCA's in-house legal counsel presented an "Introduction to ARIA and PPCA for *OneMusic Australia*" (**tab 27**) to APRA AMCOS staff during March and June 2019
288. Both the Licensing and Distribution Departments also meet regularly for staff training and process review purposes.
289. Departmental managers continue to be provided with copies of any complaints received so that they can be discussed and reviewed at team meetings.
290. Staff training sessions on the Code for the Licensing, Credit, Enforcement and Distribution Departments are held regularly.
291. PPCA maintains an intranet which serves as a repository for all key policy documents, including the Code. Staff are encouraged to review the intranet regularly.

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

292. In addition to the types and styles of communications previously outlined, PPCA reports that it meets regularly with licensees and key licensee representative bodies (**tab 29**).
293. Further, 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 are provided in the 2018-19 Compliance Report provided by APRA AMCOS (see [70] - [71] and [77] above).
294. PPCA distributed explanatory materials (**tab 30**) (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* (**tab 31**), which is forwarded to each licensee with the periodic licence renewal documentation. The

issue for Winter/18 provided behind **tab 31** contains much information about the advent of *OneMusic Australia*.

295. PPCA is a corporate member of several licensee representative bodies (**tab 32**).
296. 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 offered by the PPCA licence. The accompanying information pack (**tab 33**) supplied to them includes notification of the operation of the Code.
297. PPCA states that it continued to meet with artists and licensors to educate them on the role and function of PPCA, presented at seminars and panel discussions, and distributed explanatory materials.
298. PPCA regularly issues a newsletter, *On the Record*, to artists and licensors.
299. PPCA uses Facebook and Twitter to communicate directly with registered and potential artists and licensors (**tab 34**), keeping them informed of PPCA news, issues and initiatives, as well as providing the latest music industry information to help aspiring artists, managers and music industry professionals. PPCA continues to post 3-4 times per week on both Facebook and Twitter. PPCA currently has 2,502 “likes” on Facebook and 1,911 “followers” on Twitter.
300. Awareness of PPCA is enhanced through its sponsorship and support of the following prizes and cultural organisations:
  - 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 Australia Songwriters Association Awards.

301. Awareness is further highlighted through the grants program conducted in partnership with the Australia Council each year, through which the creation of new Australia recordings is facilitated.
302. PPCA's website is a source of information for music users and copyright owners, and is updated regularly.

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

303. 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)**

304. 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.
305. PPCA also notes the Code Reviewer's report on PPCA's compliance with the Code in its Annual Report.
306. Since the introduction of the standalone Code website in July 2019, PPCA's site also provides links directly to that Code specific site

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

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

### General

308. AWGACS's report on its compliance with the Code was furnished to me on 31 July 2019.

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

310. AWGACS states that there have been no substantive changes to its practices since the last reporting period in 2018, and confirms that the issues with domestic collection and distribution with Screenrights previously raised with the Code Reviewer, have now been resolved.

311. AWGACS is not a declared society under the Act.

312. AWGACS is a member of CISAC (the International Confederation of Societies of Authors and Composers). Therefore, AWGACS submits to the international best practice Professional Rules for dramatic, literary and audio-visual guidelines. AWGACS is considered a "developing society" in CISAC terminology, because of the 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.

313. 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)**

314. 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)**

315. The number of members of AWGACS at 31 July 2019 was 1,873 members, an increase of 177 since the last report.

316. There was no change to the membership criteria or to the constitutional obligations of members during the Review Period.

317. Membership remains available to all scriptwriters.

318. 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)**

319. 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)**

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

321. 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.

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

323. In the financial year ended 30 June 2018, AWGACS collected \$1,669,909.81 for distribution and distributed \$1,373,681.96 from prior year collections.

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

324. AWGACS states that it deducts from each calendar year's royalty collections its "standard operating costs for that year".

325. 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.

326. 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)**

327. 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 is, ex-officio, the AWGACS/AWG Group CEO.

328. 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;
- The total amount and general nature of expenses;
- The allocation and distribution of payments to members.

329. As previously stated, AWGACS voluntarily submits to the extensive governance and accountability reporting measures and reviews of CISAC.

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

330. AWGACS reports that its employees remain aware of the Code and of its requirements and particularly of the society's Complaints Handling Procedure.

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

331. 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.
332. Internationally, its membership of CISAC is directed to accomplish the same purposes.
333. AWGACS seeks to increase awareness among its members and the scriptwriting community via sponsorship of the Annual AWGIE Awards.
334. 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.
335. Similarly, all of AWGACS's foundation documents are available to international collecting societies via the CISAC online portal, and domestically via the AWGACS website.
336. AWGACS also provides an advice service to members and to the industry on copyright and related issues.
337. AWGACS continues to respond individually to all telephone and email enquiries from members, potential members and the general public about the society's purposes and practices.

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

338. 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)**

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

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

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

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

### **General**

342. ASDACS's report on its compliance with the Code was furnished to me on 22 July 2019.

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

344. 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 screen directors, which arises from the screening of their work both internationally and domestically.

345. As has been previously noted, ASDACS is not a declared collecting society under the Act.
346. ASDACS reports that it continues to be administered by the ADG through a services contract but continues to be governed by a separate board and its own constitution.
347. ASDACS has two full-time staff members and two part-time staff members.

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

348. ASDACS reports that there were no changes during the Review Period.
349. ASDACS' Privacy Policy, 2018 Annual Accounts, Articles of Association and Memorandum and annual AGM Chairs report are made available on the ASDACS website

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

350. Membership eligibility remains open to audio-visual directors.
351. By the end of the Review Period on 30 June 2019, membership had grown from 1,106 as at 30 June 2018 to 1,180 – an increase of 6%. Of these members, 887 were Australian, 151 New Zealander and 68 were international residents for tax purposes.
352. 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. All staff are trained to respond readily to members' queries and complaints.
353. ASDACS reports that there was no change to its membership rules or procedures during the Review Period.

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

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

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

355. ASDACS does not collect licence revenue, but instead collects royalties generated from secondary rights. Secondary royalty income for the 2018 calendar year period totalled \$1,750,408. This includes a small amount of domestic retransmission royalty revenue totalling \$21,875 received from Screenrights.
356. A total of \$24,766 bank interest earned on ASDACS's income over 2018 is for distribution to members in accordance with the society's Constitution.
357. ASDACS distributes domestic and international income collected the prior calendar year to members on an annual basis. A plain English distribution rules and practices guideline is available on the ASDACS website. The distribution rules and practices were most recently 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 before any substantive changes are made to its distribution rules and practices and affirms that a detailed report on undistributed funds is made available to its members

## Collecting Society Expenses (Code, Clause 2.5)

358. 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 Australian Directors' Guild (ADG), the Directors and Editors Guild of New Zealand (DEGNZ), beneficiaries and retirees.
  - **Cultural Purposes Fund:** cultural fund fee of 4 per cent; In 2018, this amounted to \$70,016 collected; \$40,000 of which was granted to the ADG (see ADG cultural fund report attached), \$10,000 was granted to the

Motion Picture Industry Benevolent Society for charitable purposes and \$500 was donated to the Women in Film and Television (NSW) for an event creche.

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

- 359. At its Annual General Meeting, seven members were appointed to the ASDACS Board.
- 360. As mentioned previously, the 2018 audited ASDACS Annual Accounts are available on the ASDACS website and include detail on collections, administration expenses, distributed funds and undistributed funds
- 361. ASDACS is also a member of CISAC (the International Confederation of Societies of Authors and Composers) and abides by CISAC professional rules and standards, including the submission of an annual finance declaration and completion of a professional rules questionnaire

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

- 362. During the Review Period, ASDACS's full-time staff members ensured that all staff were aware of the Code and gave further training on ASDACS's complaints handling procedure, as outlined in the ASDACS complaints policy.

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

- 363. 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.
- 364. 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.

365. ASDACS also took part in the ADG Business of Directing workshop, raising awareness of directors' royalties, rights and remuneration.
366. 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.
367. ASDACS also joined an Asia-Pacific Audio-visual Alliance for Writers and Directors in May 2019, aimed at promoting and furthering the rights of authors more specifically within the Asia Pacific region.
368. 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.
369. ASDACS 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)**

370. 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)**

371. ASDACS publicises the Code and its adherence to it on its website and in all relevant information documents provided to members and potential members.
372. 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 2019 Call for Submissions.
373. Members can download those documents or obtain hard copies upon request to the ASDACS office.
374. ASDACS also makes its documents available on the new Code of Conduct for Copyright Collecting Societies website that was introduced on 1 July 2019.
375. Of course, ASDACS’s annual report to the Code Reviewer is itself directed to the issue of its compliance with the Code.

## COMPLAINTS AND DISPUTES

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### General

376. In accordance with a recommendation made at [28]-[38] of my Report of my Review of the Operation of the Code of Conduct dated 30 April 2014, the collecting societies have attached to the Code an explanatory document distinguishing between “complaints” and “disputes”. A copy of that document is, for convenience, attached as **Appendix C** to this present report.

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

### General

377. For the purposes of this review, APRA AMCOS have applied the distinction between “complaints” and “disputes” which is contained in **Appendix C** to this Report.

378. The APRA AMCOS Complaints Policy and Procedure was made available in the APRA AMCOS report to the Code Reviewer at **vol 2 tab 1** of the Accompanying Underlying Documents.
379. APRA AMCOS say that they have included behind **vol 2 tab 2** all documents and correspondence that have been dealt with as complaints during the Review Period. I have treated the names of the complainants and other factors that might identify them as confidential. APRA AMCOS have offered to address complaints in further detail during meetings with me if required.
380. A number of entities have made submissions regarding APRA to the ACCC as part of its re-authorisation process during the Review Period. APRA has responded to these submissions in that forum and has not included them here again.
381. APRA AMCOS report that they received no new member Code complaints during the Review Period. There was, however, one (1) member complaint carried over from the previous review period.
382. APRA AMCOS received eight (8) new licensee complaints during the Review Period. No licensee complaints were carried over from the 2017-2018 review period.
383. APRA AMCOS explain that for the purpose of the review, and internally, they have adopted a broad approach to the definition of "complaint". But where they are unsuccessful in their attempts to license a user of music and the matter is referred to APRA AMCOS's external solicitors, the matter is not characterised as a complaint unless a complaint regarding the actual conduct of an APRA AMCOS employee or of APRA AMCOS's external solicitors is received.
384. As at 30 June 2019, there were 43 ongoing general infringement matters under the management of APRA AMCOS's licensing departments, with 20 of these matters under the management of APRA AMCOS's external solicitors. APRA AMCOS have

stated that more information regarding the activities of external solicitors (including litigation commenced during the Review Period) is available on request by me.

385. Where a licensee fails (including refuses) to pay invoices issued by APRA AMCOS, the matter is pursued by its Finance department and then referred to their external mercantile agent to manage, and, if necessary, to pursue through debt recovery proceedings. As at 30 June 2019, 817 clients were under the management of APRA AMCOS's Australian external mercantile agent and 235 were under the management of APRA AMCOS's New Zealand external mercantile agent. These matters are not characterised as complaints unless a complaint has been made regarding the conduct of the Finance department or the debt collectors. No such complaints were made during the Review Period. APRA AMCOS have offered to make more information regarding the activities of its external mercantile agents available to me on request.

#### Copyright Tribunal of Australia

##### *Jon Sainken/White Dee - APRA and PPCA Licence Fees*

386. On 13 December 2018, APRA and AMCOS received a notification of an application by Dr Jon Sainken requesting that the Tribunal review the rate applicable under the societies' separate schemes applicable to Music for Dancing (also referred to as the 'Nightclub Tariff'). At a directions hearing before the President of the Tribunal on 19 December 2018, orders were made requiring the parties to attend a mediation during March 2019, and to return for further directions on 2 April 2019.
387. On 15 March 2019 the parties (Dr Sainken, and representatives of APRA and AMCOS and their legal representatives) participated in a mediation facilitated by a Registrar of the Federal Court. The mediation process was successful, and the application was ultimately withdrawn.

#### Alternative Dispute Resolution (ADR)

388. As reported previously, APRA AMCOS funds an independent ADR facility called "Resolution Pathways". Details regarding this ADR facility for licensees and members can be found at <http://www.resolutionpathways.com.au/>
389. APRA AMCOS's independent ADR facility assists with the resolution of disputes between APRA AMCOS and its licensees (or potential licensees), between APRA AMCOS and its members, and also disputes between APRA AMCOS members.
390. APRA appointed Shirli Kirschner of Resolve Advisors as the Independent Dispute Facilitator to administer its ADR scheme. Ms Kirschner worked with APRA's management and the ACCC to establish a prescribed governance framework for the independent ADR facility. A fundamental feature of this framework is the appointment of a Consultative Committee, made up of an equal number of Member and Licensee representatives. The Independent Dispute Facilitator must consult with the Committee on matters such as monitoring the operation of the ADR Scheme, including the costs of the Scheme; receiving feedback on the Scheme; and in consultation with the Facilitator, making recommendations about the budget for operation of the Scheme.
391. The ADR facility is publicised on the APRA AMCOS website and on the *OneMusic* website, in materials released to the public and in legal correspondence. APRA AMCOS's external solicitors also have a standing instruction to make the existence of the facility known to parties prior to the commencement of legal proceedings or negotiations.
392. APRA AMCOS strongly encourage their members to resolve disputes among themselves by way of ADR. Where APRA AMCOS are notified of a dispute between members, or involving members of an affiliated society, as to the allocation of shares in a work administered by them, APRA AMCOS may, at their discretion, if satisfied that it is appropriate to do so in all the circumstances, place all or any of the performance credits relating to the work in suspense until the dispute is settled by agreement between the parties or resolved by a Court or as a result of an ADR

procedure. APRA AMCOS's policy in this regard is set out at Rule 13 and Rule 7 of APRA's and AMCOS's respective Distribution Rules.

393. Under the terms of APRA's authorisation from the ACCC, the ADR facility's Independent Resolution Facilitator is obliged to submit an annual report to the ACCC detailing those disputes notified to her under the ADR facility.

## **Complaints by Members**

### ***APRA AMCOS Member (Carry Over) Complaint 1***

394. The complainant is the same person as the one who made APRA AMCOS Member Complaint 2 in my Compliance Report for 2017-18. In substance, the complaint is the same. The correspondence between the complainant and APRA which was the subject of that report ranged from 16 February 2018 to 22 May 2018. On this latter date, the CEO of APRA wrote to the complainant at length and in detail as recounted in [378] – [380] of last year's report.
395. The complainant renewed his complaint by a lengthy letter to APRA's CEO dated 5 January 2019. Unfortunately, the CEO was overseas in early January 2019 and missed the complainant's email.
396. On 18 February 2019, the complainant wrote to the CEO forwarding the original email, and the CEO replied the same day acknowledging receipt.
397. On 4 March 2019, APRA's CEO provided a detailed response and proposed a meeting with the complainant in Melbourne on 22 March 2019. That meeting took place.
398. The APRA AMCOS report states that the discussion on 22 March 2019 was "constructive", but that APRA's CEO explained that there was little that APRA could do to prevent "tribute and cover band shows but that APRA was focused on supporting local Australian songwriters in a number of other ways".

399. The report concluded with the statement that APRA considered the complaint to have been resolved on 22 March 2019.
400. The overlooking of the original letter of complaint dated 5 January 2019 speaks for itself – APRA should have in place a system that ensures that this does not happen.
401. In relation to the substance of the complaint, the member’s letter of 5 January 2019 (like his letter of complaint dated 1 April 2018 dealt with in last year’s Compliance Report) is persuasive. He is concerned to promote and protect the interests of songwriter members of APRA, of whom he is one. He says that live performances of a “tribute” kind and other live performances by “cover” bands, in Melbourne in particular, are damaging to the interests of local songwriters. He complains that either they are not being licensed at all or are being inappropriately licensed under APRA’s standard live performance licence.
402. If a performance falls within APRA’s definition of “dramatic context”, the licence fee is higher. However, if not, the performance is licensed under the less remunerative standard venue licence for live performance.
403. In response to the complainant’s letter of complaint of 5 January 2019, APRA’s CEO wrote on 4 March 2019 advising that there was little that he could add to his lengthy letter of 22 May 2018 to address the complainant’s concerns.
404. The complainant’s letter of complaint dated 5 January 2019 identified three particular shows by way of illustration of the problem and suggested four steps that APRA should take to address the issue. In his letter in reply of 4 March 2019, APRA’s CEO stated:

“In relation to your specific proposals, I welcome your input, but I am also concerned that if we were to commence a targeted communications campaign aimed at live venues telling them what they can and can’t play, this would be something that might cause them to be wary of all live music. Education of businesses about the value of using music is something that needs to be carefully managed.

We also find that our music publisher members are very keen to ensure that their rights in dramatic context performances of works they control are carefully managed, so we do receive information from them when there is a problematic show, as well.”

405. The APRA AMCOS report does not give a detailed account of the discussion between APRA's CEO and the complainant on 22 March 2019. It seems that the CEO felt unable to do more than to explain to the complainant that there was little that APRA could do and to assure him that APRA was supporting local Australian songwriters in other ways.

#### ***APRA AMCOS Licensee Complaint 1***

406. At [668] – [670] of last year's Compliance Report, I referred to a submission that was made to me directly by the Australian Hotels Association (AHA) concerning the then proposed introduction of *OneMusic Australia*.

407. On 31 July 2018 the AHA wrote to me referring to my report for the period 1 July 2017 to 30 June 2018.

408. Over 34 numbered paragraphs, APRA has responded to the complaints raised by the AHA in its letter of 31 July 2018.

409. The AHA's complaints related to:

- Privacy
- Transparency
- Fair treatment and good faith
- Fair value
- Terms and conditions and understandable information

410. APRA has responded to all five complaints.

411. The last complaint was that *OneMusic* should provide the AHA with the terms and conditions, including definitions, of the licence to be granted.

412. APRA replies that at the date of the complaint, that information was not available but APRA understands that this aspect of the AHA's complaint would, by now, have disappeared, but would be happy to provide further information to the AHA on request.
413. It seems fair to say that the AHA's complaints are of a general and wide-ranging kind. This is not to say that a complaint of that kind cannot be one of non-observance of the Code. Indeed, the AHA has expressly tied each of its complaints to a particular provision of the Code.
414. The difficulty that I have, however, is to know how to deal appropriately with complaints of such a kind. Take the fifth complaint (fair value) as an illustration (incidentally, the AHA refers to cl 2.3(d)(ii) of the Code but refers to "the value of the copyright material" which is in fact referred to in cl 2.3(d)(i)).
415. The AHA complains that:
- APRA has not accepted that a key reason why *OneMusic NZ* has been a success is that its licence fees are "drastically cheaper" than those proposed for Australia;
  - APRA refuses to provide reasons why the value of music in New Zealand is "dramatically different" to that of music in Australia; and
  - *OneMusic Australia* should adopt the pricing structures in New Zealand.
416. APRA's response is as follows: (at [31], [32]):
- "[31] APRA is disappointed that an organisation such as the AHA has chosen to advance such an overly-simplistic argument that public performance licence fees must be the same in Australia as they are in New Zealand. The markets in those territories are completely different. For example, there is no wage parity between Australia and New Zealand, housing prices are not calibrated, school fees are different, and the price of liquor licences in the two countries is not matched.
- [32] Further, licence schemes in each territory are subject to the jurisdiction of that territory's own Copyright Tribunal."
417. The AHA could, indeed, apply to the Copyright Tribunal of Australia in relation to the *OneMusic Australia* scheme: see s 157 of the *Copyright Act 1968*.

418. In my report for last year, I indicated that I would initiate a dialogue between the AHA on the one hand and APRA AMCOS and PPCA on the other hand, and, as appropriate, issue a Supplementary Report. I did speak with the CEO of the AHA and a relevant officer of APRA AMCOS, but the development of the *OneMusic Australia* licence overtook that initiative.
419. Since receiving APRA AMCOS's report on 1 August 2019, I have taken up this complaint further with APRA AMCOS. APRA reports that prior to the launch of *OneMusic Australia* it provided to the AHA drafts of all relevant licences (including all relevant terms and conditions and definitions) and that this aspect of AHA's complaint was satisfactorily resolved.

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

420. On 27 November 2018 the complainant wrote to APRA expressing disgust at the "patronising and condescending tone of voice and comments a representative [she had] spoken to in regard to some enquiry [she had] about starting up [her] early childhood music business and what licences [she] needed".
421. There was an immediate and appropriately conciliatory response by APRA on 28 November 2018. The response apologised and sought the best telephone number on which to contact the complainant, but no response was received.
422. APRA reports to me that it was unable to identify the staff member about whose conduct the complaint was made. The complainant said that it was a male and that the call took place at 4:50pm, apparently on 27 November 2018. APRA reports to me that the APRA AMCOS staff members who would ordinarily be expected to have dealt with queries of the kind in question said that they had not spoken with the complainant.

423. APRA AMCOS said that this made it impossible for the complaint to be taken any further and the complaint was classified as closed. APRA AMCOS say that they remain open to reviving the matter at any stage if the complainant were to pursue the matter.

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

424. On 19 September 2018 the complainant wrote complaining about the difficulty she had experienced in cancelling her licence.
425. Somebody from APRA had telephoned the complainant requesting renewal of her licence and she had called back advising that she did not wish to renew as she was closing her business. The complainant did not hear from the APRA person again and so assumed that that person had received her message.
426. A few months later the complainant received a phone call from a law firm requesting payment and again she explained that she did not want a licence as she was closing her business. She also confirmed her correct email address and later on the same day received an email from the law firm and a letter. She again confirmed in writing that she did not want an APRA licence as she was closing her business.
427. On 19 September 2018, the date of her email of complaint, she received a further phone call from the law firm asking when she asserted that the licence had expired. The APRA AMCOS tax invoice dated 1 July 2017 (for \$70.47) had stated the period for which a licence fee was payable as being 1 August 2017 to 31 July 2018.
428. On the same day (19 September 2018) the complainant visited the APRA website to complete a cancellation form which had been a course suggested by the law firm but she could not submit it online. In her email of complaint dated 19 September 2018, the complainant stated the last day of the licence period as being 31 July 2018 (that was consistent with the invoice) and confirmed that she did not wish to renew her licence.

429. Promptly (on 20 September 2018), APRA acknowledged receipt of the complaint and assured the complainant that the matter would be investigated and a formal response provided within 14 days.
430. On Monday, 24 September 2018, APRA wrote to the complainant confirming that her account and billing had been revised to reflect the fact that the licence held ended on 1 August 2018, that the matter had been discontinued with the law firm, and that no further action was necessary from the complainant. The letter apologised.

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

431. While it is unfortunate that the requests for payment were made when there was no justification for them, the complaint was handled promptly and courteously.

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

432. On 30 April 2019 a café owner was telephoned by a staff member of APRA in regard to the obtaining of a licence to play music in the café.
433. The complainant told the caller that she would not be playing copyright music anymore and that the staff member sent her an email within ten minutes requiring her to pay money to APRA. The letter of complaint stated: "He was very aggravated that I was not listening to him or agreeing with him. He threatened me with inspectors and legal action."
434. The complainant concluded by describing the APRA staff member as "arrogant, aggressive and completely out of order" and indicating that she was proposing to take the matter to the Ombudsman. Another complaint that she made is that the APRA employee told her that he had previously spoken to an employee of hers and gathered a lot of information from the employee about the café business.
435. APRA promptly (on 1 May 2019) acknowledged receipt and undertook to investigate the matter urgently and provide a formal response within 14 days.

436. On 14 May 2019, APRA's Director, General Licensing, wrote to the complainant.
437. The letter expressed regret that the complainant had felt offended in her recent dealings with an APRA AMCOS staff member. The letter explained the role of APRA AMCOS where a licence is required. The letter noted that the complainant's advice that she was now playing non-copyright music at the café and therefore confirmed that APRA AMCOS would not contact her further.
438. The APRA AMCOS letter prompted a response on 16 May 2019 in which the complainant said that nothing appeared to have been done to address the situation in which the staff member had spoken to a casual employee in the café and elicited information from her that she knew nothing about.
439. The Director, General Licensing wrote to the complainant on 20 May 2019 assuring her that the staff member had been counselled so that other business owners would not feel aggrieved in the way that she did.
440. This elicited a reply from the complainant on 20 May 2019 stating that counselling of the employee was a much better response than just talking to him. The complainant said that knowing that APRA had taken those further steps which had not been referred to in the initial letter from APRA was "comforting" as she "really felt violated by this incident". The email concluded by expressing the hope that when she and APRA next had contact, it would be "on friendlier terms".
441. The APRA AMCOS report states that the staff member has received additional training in how to handle difficult telephone calls and has been closely supervised by the Director, General Licensing.

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

442. In my view, the complaint was satisfactorily handled and resolved.

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

443. The complaint, made by email on 16 May 2019, was that the organisers of an annual festival were not paying APRA although they used live music and DJs. The complainant said that she ran events locally and always paid APRA.
444. APRA's Director, Business & Events Licensing, replied on 28 May 2019 thanking the complainant for drawing the matter to APRA's attention. The email confirmed that APRA was aware of the festival and would ensure that music used at the festival was appropriately licensed.
445. There was no response from the complainant and APRA considered the complaint resolved. They state that the promoters of the particular festival would be approached by APRA in the course of their standard licensing practices, in connection with the next upcoming festival.

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

446. The complainant is an event promoter who is presently involved in a broader dispute with APRA AMCOS relating to his company. The relevant papers in the Accompanying Underlying Documents are fairly voluminous
447. The broader dispute has been on foot since at least August 2016 when the company was referred by the APRA AMCOS Licensing Department to the APRA AMCOS Legal Department after correspondence was received from the company's solicitors.
448. In December 2017, the APRA AMCOS Legal Department referred the company to APRA AMCOS's external solicitors who have had the carriage of the broader dispute since that time.
449. APRA AMCOS report that the broader dispute is multi-faceted and concerns the licensing of various events presented by the company. The broader dispute concerns:

- the amount of APRA AMCOS’s repertoire performed at the company’s events;
  - documentation and reporting requirements under APRA AMCOS licences;
  - the terms under which the company’s events ought to be licensed; and
  - the right and authority of APRA AMCOS generally to seek licences for the company’s events.
450. APRA AMCOS report that the broader dispute remains on foot and that correspondence between APRA AMCOS’s solicitors and the company’s solicitors continues in respect of the dispute.
451. In the course of the correspondence relating to the broader dispute, APRA AMCOS’s solicitors received a letter from the company’s solicitor dated 26 January 2019, which APRA AMCOS regarded as raising three reportable complaints:
- that telephone calls made by the APRA AMCOS Director of Business and Events Licensing to the complainant on 24 and 25 January 2019 might be construed as bullying or harassment and as a failure by APRA AMCOS to meet their obligations under the Code;
  - that APRA AMCOS contacted venues affiliated with the complainant’s events to seek assistance in connection with the licensing of those events, leaving the venues feeling pressured to refuse to work with the complainant; and
  - that such conduct by APRA AMCOS put the complainant at risk of suffering reputation damage and/or lost opportunity.
452. The APRA AMCOS report to me includes 26 items of correspondence.
453. On 13 June 2019, APRA AMCOS’s external solicitors wrote to the complainant’s solicitor rejecting the first and third claims and requesting elaboration on the second. The complainant’s solicitor has yet to respond to the rejection of the first and third and to the request for elaboration of the second.

454. APRA AMCOS have summarised their position underlying the approach adopted in the letter of 13 June 2019 as follows:

- A. Since December 2017, APRA AMCOS's solicitors have corresponded with the company's solicitors regarding both the broader dispute and licensing of ongoing events presented by the company as those events have arisen. Any events presented by the company that remain unsatisfactorily licensed are added to the list of matters that comprise the broader dispute.
- B. APRA AMCOS licensing staff did contact the complainant directly between 23 and 25 January 2019, not in his capacity as sole director of the company, but as a co-director of a different company which APRA AMCOS understood to be the promoter of the relevant event.
- C. It is standard practice for APRA AMCOS to contact venues to seek their assistance in connection with the issue of a licence in circumstances where the event promoter is non-responsive.
- D. APRA AMCOS's Director of Business and Events Licensing was unaware that the complainant's mother was in hospital when calls were placed to the complainant on the afternoon of 23 January 2019 and the morning of 24 January 2019 in connection with the relevant event.
- E. Upon receiving a text message from the complainant on the morning of 25 January 2019 requesting that future correspondence be directed to his legal representatives, APRA AMCOS staff acknowledged receipt by a return text message and ceased further contact with the complainant directly. The other company and the particular event were then referred to APRA AMCOS's external solicitors who have liaised directly with the complainant's solicitor about the licensing of that event.
- F. A licence application from the other company for the event was subsequently provided via the complainant's solicitor. Issues that have arisen with respect to that licence have now been incorporated into the broader dispute.
- G. The company promoted a separate event which took place on 26 January 2019 (the 26 January 2019 Event). Prior to 23 January 2019, APRA AMCOS's external lawyers had been separately corresponding with the company's solicitor about the 26 January 2019 Event. APRA AMCOS speculated that the complainant

and his solicitor had combined the two separate matters of the licensing of the two events into the one issue.

H. APRA AMCOS staff have now been instructed not to contact the complainant directly regarding any matters (including those unrelated to the company but related to companies affiliated with the complainant), and that all correspondence regarding the complaint and the broader dispute must take place solely between APRA AMCOS's external solicitors and the complainant's solicitor.

455. The complaint and the broader dispute both remain unresolved. APRA AMCOS consider the resolution of the complaint interconnected with the resolution of the broader dispute.

456. Correspondence continues between the respective solicitors with respect to the broader dispute. While APRA AMCOS and the complainant continue to maintain their respective positions robustly, recent correspondence between the two firms of solicitors has suggested the possibility of a commercial settlement to resolve the broader dispute.

457. APRA AMCOS say that to the extent possible they remain open to negotiating a reasonable commercial settlement with the complainant in lieu of more formal means of escalating the broader dispute.

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

458. While it is understandable and commendable that APRA AMCOS have identified the complaint as reportable and have reported it, nonetheless, in substance it seems to be part of the broader dispute. In any event, apparently the complainant would not be satisfied if direct contact were to be made with him with a view to addressing the complaint – rather, he would insist that it be addressed through his solicitors.

459. It is important that where a disputant is represented by solicitors, communications with the party take place through the solicitors. It is understandable that in this case

APRA AMCOS considered that the matter the subject of the complaint lay outside the broader dispute, but in a case where there is any doubt, the disputing party and that party's solicitor should both be asked in advance to which of the two communications from APRA AMCOS are to be directed.

### ***APRA AMCOS Licensee Complaint 7***

460. As in the case of the AHA, I feel at liberty to identify this complainant because, with its consent, it was identified in last year's report. It is Nightlife Music Pty Ltd (Nightlife).
461. I set out the nature of Nightlife's concern at [664] – [667] of last year's Compliance Report and at [667] indicated that I would arrange for a dialogue between Nightlife and APRA AMCOS and, as appropriate, provide a supplementary compliance report.
462. I did speak to representatives of Nightlife.
463. During the Review Period, on 27 July 2018, and on 18 January 2019, Nightlife provided me with supplementary materials.
464. The concern raised by Nightlife has also been raised by it in its submissions to the ACCC in the course of APRA's application for re-authorisation. Nightlife has done so both under its own name and in the name of a new industry body it has formed, BPM Limited.
465. Nightlife has made similar submissions to the House of Representatives Standing Committee on Communications and the Arts in connection with its inquiry into the Australian music industry, and also to the BCAR in connection with its review of the Code.
466. APRA has responded to Nightlife's concerns by way of submissions to the ACCC and to the House of Representatives Standing Committee on Communications and the Arts. However, for completeness, to the extent that Nightlife's concerns raise matters

that may be relevant to the Code, APRA has summarised its position in a lengthy document that is before me.

467. Since APRA AMCOS provided their report on 1 August 2019 on their compliance with the Code, I have taken up this complaint further with APRA AMCOS. They report that they stand by their comments related above. APRA thinks it unlikely that the dispute with Nightlife will be resolved by the parties directly but states that it is open to exploring an appropriate form of alternative dispute resolution through the Resolution Pathways facility.

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

468. The complainant operates a restaurant. She says that it has been “touch and go” whether she would be able to stay open, having regard to “start up” costs and expenditure. She states that she has not drawn any remuneration for herself, and is operating on borrowed funds.
469. Her complaint is that, perhaps via free publicity that she has had, an APRA representative “singled [her] out for constant harassment and threats of legal action”. She states that she received multiple phone calls and letters demanding that she pay licence fees to APRA AMCOS.
470. In her letter of complaint dated 21 October 2018, the complainant said that APRA AMCOS should focus their attention on established businesses rather than start ups like hers. She complained that owing to the harassment, she would not be playing music in her restaurant and that this would affect her business adversely. However, she added that in the future when she is established she would pay APRA AMCOS. She asked how many of the local restaurants listed in TripAdvisor pay licence fees to APRA AMCOS.
471. The APRA AMCOS Director, General Licensing investigated the complaint. The staff member in question denied that he had harassed the complainant and had only followed up with her and escalated the matter in accordance with the APRA AMCOS

usual business practices, which include the sending of a letter if a business continues to refuse to take out a licence.

- 472. On 23 October 2018, APRA AMCOS acknowledged receipt of the letter of complaint and undertook to investigate it as a matter of urgency and provide a formal response within 14 days.
- 473. On 31 October 2018, the Director, General Licensing wrote a lengthy email to the complainant explaining the role of APRA AMCOS and expressing the hope that the complainant would play music at her restaurant as soon as she became able, and that at time she contact APRA in connection with taking out an APRA AMCOS licence for the restaurant.
- 474. APRA AMCOS did not receive a response from the complainant and justifiably considers the complaint resolved in the sense of not to be taken further at this time.

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

- 475. Copyright Agency (CA) has provided in two tables its account of the follow up on seven complaints made in the 2017-2018 period on the one hand, and eight complaints that were made in the Review Period on the other hand.
- 476. I will turn, first, to the follow up to the 2017-18 report. The table provided by CA is as follows:

| Matter | Code Reviewer’s request for follow up   | Follow up   |
|--------|---|---|
| #1     | I will take up with Copyright Agency developments between the time of its report to me and the date of this Report. | In January 2019, we reported to the Code Reviewer that we had emailed the Member’s CEO to draw his attention to the Code Reviewer’s report on compliance in 2017–18, and to ask if he would like to meet with Copyright Agency’s CEO when he is next in Sydney. In July 2019, the Member’s CEO met with Copyright Agency senior staff [subsequently, Copyright Agency has said that the senior staff were its General Counsel and Director, Corporate Affairs] at Copyright Agency’s offices to discuss a different matter that |

| Matter | Code Reviewer's request for follow up  | Follow up   |
|--------|--|---|
|        |  | is covered in the report for 2018–19. Copyright Agency understands that the matter raised in 2017–18 has now been resolved.   |
| #2     | –  |   |
| #3     | Although the result seems to have been satisfactory, the reporting of the complaint to the Code Reviewer was unclear. I will take up this issue with Copyright Agency.   | We provided additional information to the Code Reviewer in December 2018, and acknowledged that this information should have been included in the original report.  |
| #4     | It is difficult to be unequivocal, but I do have some sympathy for the complainant. No doubt, Copyright Agency was correct as a matter of law (although I have not seen the contract) in asserting that a termination would take effect only on the following 31 December. By 13 March 2018 it was plain that the complainant did not wish to continue with the licence. It seems harsh that the contract would only allow a three-month written notice of termination which would take effect the following 31 December. It should be asked, What legitimate interest of Copyright Agency was that provision intended to protect? This is a question that Copyright Agency and its legal advisers should explore. | <p>We advised the Code Reviewer in January 2019 that we were reviewing the termination arrangements in licence agreements, and would likely change those arrangements as a result of the review.</p> <p>We have since amended the agreements for individually licensed education institutions (that are copying and sharing content under the education statutory licence). The agreements now provide for a three-month notice period to terminate a licence agreement. This aligns with the three-month period for revocation of a remuneration notice for the education statutory licence, set out in the Copyright Act. The licensing staff also developed a communications plan, with the communications team, to ensure that licensees are aware that if they wish to terminate a rolling licence agreement, they should do so by 30 September.</p> |
| #5     | –  |   |
| #6     | I will take up with Copyright Agency developments that may have occurred between the date of its report to me and the date of this Report.   | We informed the Code Reviewer in January 2019 that there had been no further communication from the complainant. There has been no communication since then.  |
| #7     | This complaint raises again the reasonableness of a lengthy cancellation period. In this case, however, the context of the settlement of litigation in which, apparently, the complainant was legally represented, is a distinguishing feature. Nonetheless, the reasonableness of the contract should be carefully considered by Copyright Agency and its legal advisers.   | <p>We advised the Code Reviewer in January 2019 that we were reviewing the termination arrangements in licence agreements, and would likely change those arrangements as a result of the review.</p> <p>The arrangements are now as follows:</p> <ul style="list-style-type: none"> <li>• Where a client on a six month cancellation notice clause terminates their agreement: <ul style="list-style-type: none"> <li>○ If they have paid for the Licence Year, we will provide a pro-rata refund past the termination point</li> </ul> </li> </ul>   |

| Matter | Code Reviewer's request for follow up | Follow up   |
|--------|---------------------------------------|---|
|        |                                       | <ul style="list-style-type: none"> <li>○ As it's a term in the existing agreement, our first position is that the six month notice period stands. We do consider this on a case by case basis and where the situation requires it, we will reduce the notice period to three months.</li> <li>● We have amended the licence templates: <ul style="list-style-type: none"> <li>○ all new licensees now have to provide three months' notice rather than six</li> <li>○ all licensees who sign a new version of the licence agreement will have the three months' notice period as a standard clause</li> </ul> </li> <li>● We are also considering whether to further decrease the notice period for small licensees (such as sole traders, eisteddfod and religious organisations) to thirty days when those licence agreements will be available for purchase via the RightsPortal.</li> </ul> |

### **CA Follow up Complaint 1**

477. The complainant was a very substantial publisher and the correspondence between it and CA extended over the period from 4 July 2017 to 23 July 2018. I dealt with the complaint at [486] – [502] of the 2017-2018 Compliance Report. At [501] I noted that on 31 May 2018, CA's CEO telephoned the complainant publisher's CEO and they agreed to have a discussion when the publisher's CEO was in Sydney later in 2018.
478. This explains why I said (at [502]) that I would take up with CA developments between the time of its report to me and the date of my compliance report (10 December 2018).
479. I note CA's follow up information set out in the table in [476] above and do not think it necessary to take the matter further.

### ***CA Follow up Complaint 3***

480. This complaint concerned a work of art in the form of a painted mural which had appeared in the background of two photographs that had been used for the promotion on television of a sporting event. I dealt with the complaint at [513] – [522] of the 2017-2018 Compliance Report.

481. Again, it seems unnecessary to take the matter further in the light of CA's follow up information contained in the table in [476] above.

### ***CA Follow up Complaint 4***

482. I dealt with this complaint at [523] – [540] of the 2017-2018 Compliance Report.

483. I note, according to CA's response, that it has taken action pursuant to my recommendation.

### ***CA Follow up Complaint 6***

484. I dealt with this complaint at [547] – [557] of the 2017-2018 Compliance Report.

485. The complaint arose out of a communication by CA to a company which, apparently, advertised real estate, suggesting that it may have been publicly displaying media content, the copyright in which was owned by some of CA's members.

486. There followed correspondence in which the complainant complained about the level of licence fee. On 25 June 2018, CA wrote outlining an option at \$1,103.92 plus GST per annum and at the date of CA's report to me, there had been no response from the complainant.

487. I assume from this year's report in the table in [476] above that the licence has not been taken up and that CA has abandoned the matter.

## CA Follow up Complaint 7

488. This complaint also raised the issue of the reasonableness of a lengthy cancellation period. I dealt with it at [558] – [569] of the 2017-2018 Compliance Report.

489. CA's response in the table above seems to deal with the matter adequately.

## Copyright Agency complaints in 2018 - 2019

490. CA has provided the following table by way of summary, but in addition, the Accompanying Underlying Documents relevant to the complaints.

| Matter | Date      | Issue  | Status   |
|--------|-----------|--|--|
| #1     | 3/10/2018 | Absence of payments to Member resulting from perceived deficiencies in surveys in schools and universities.  | 21/12/2018: letter from General Counsel addressing concerns raised by member. There has been no further communication.   |
| #2     | 24/6/2019 | The member's belief (also communicated in previous years) that his material is copied by schools before the start of term 1, when schools are not participating in surveys of usage. | 26/6/2019: emails from Copyright Agency to Member responding to Member's questions, and referring him to the section of the Distribution Policy regarding discretionary payments. There has been no further communication.             |
| #3     | 21/6/2019 | <ul style="list-style-type: none"> <li>withholding tax deduction made by Copyright Agency</li> <li>authorisation to include member's works in non-statutory licences</li> </ul>      | 18/7/2019: <ul style="list-style-type: none"> <li>emails from Copyright Agency to Member responding to Member's questions</li> <li>additional information about scope of non-statutory licences managed by Copyright Agency</li> </ul> |
| #4     | 5/6/2019  | Review of Copyright Agency's distribution policies and processes for printed workbooks sold with a photocopying licence ('blackline masters').                                       | 9/7/2019: meeting with Member's Managing Director, explaining the reasons for the review and the member consultation process.  |
| #5     | 24/6/2019 | Reduction in payments to Member for illustrations in school textbooks.   | 27/6/2019: emails following by phone call with Member's husband explaining the reasons for the reduction.  |

| Matter | Date      | Issue   | Status   |
|--------|-----------|---|--|
| #6     | 25/2/2019 | Prospective licensee contacted the Office of the NSW Small Business Commissioner about aspects of the licence offered by Copyright Agency and settlement for past infringements. The Office contacted Copyright Agency.   | 22/3/2019: phone call between Copyright Agency and Office of NSW Small Business Commissioner, followed by email from prospective licensee confirming that it did not want to proceed with a licence.   |
| #7     | 17/7/2019 | Complaint from art market professional about artists' resale royalty payments that have not yet been passed on to artists, and that Copyright Agency has not sought information from him to assist us to identify and locate those artists (as we have done in the past). | 19/7/2019: email and phone call to explain that some of the royalties in the report he was viewing had actually been paid (we have a systems upgrade underway that is delaying reporting), and that some payments were taking longer than usual because of the systems upgrade. We also obtained information from him to identify some of the artists, and arranged to meet with him in August 2019. |
| #8     | 14/6/2019 | Concern about reduction in payments from the school sector in 2019, following a concern raised previously about reduction in payment in 2018 compared to previous years.  | 23/7/2019: email addressing Member's questions and concerns. There has been no further communication.  |

### **CA Complaint 1**

491. There was correspondence between the complainant and CA extending over a period from 3 October 2018 to 21 December 2018.
492. The complainant operates a website and complains that CA's surveys do not adequately reveal the extent of the copying or communication within universities of his website or material on it.
493. Separately, he complains about the archiving of his website by the National Library of Australia (NLA) as part of its web archive collection (commonly known as "PANDORA"). According to the NLA "the curatorial work including selection, obtaining of permissions, and scheduling and scoping for harvests was conducted by the State Library of Victoria being a partner in the PANDORA web archiving".

494. The NLA asserted that the complainant had given consent to the archiving of his website.
495. CA forwarded to the complainant the email it had received from the NLA. The complainant responded that he had “consented to one archive for one year”.
496. That particular aspect seems to be an issue between the complainant and the NLA.
497. In relation to the complaint of inadequate sampling, the complainant provided evidence of the large number of times that his website had been visited. CA pointed out that it is not visiting a website that generates a right to payment, but copying or communicating material on it.
498. CA raised the possibility of an ex gratia payment being made to the complainant if he should be able to prove the extent of copying or communication of the website or material on it.
499. The way in which the matter ended, in terms of the correspondence provided to me, was a letter dated 20 December 2018 from CA’s General Counsel to the complainant. That letter informed the complainant that his complaint would be reported to the Code Reviewer, and added the following:

“We do allocate payments to owners of copyright whose material is published online and copied or communicated under the licences we manage. This is principally based on information provided by schools and universities, in annual surveys, about online content that they have used. We survey different schools and universities faculties each year. We do not use server logs provided by members to allocate payments to members. This is mainly because server logs from members’ websites do not, of themselves, constitute evidence of remunerable uses made under our licences. We have the same position for all members with websites.

I will investigate the complaints you have made about [name withheld], and the handling of your complaint, and report the outcome of investigation to you in early 2019.

If you have concerns about the ongoing inclusion of your website in the Pandora archive, I suggest you contact the National Library about those concerns.

We acknowledge that issues associated with the use of content available on websites are very complex, as you highlighted. This is one [of] the issues that will be considered by the Copyright Tribunal in the proceedings regarding universities’ use of content under the education statutory licence.”

500. The complaint about the individual member of staff of CA was that she had been condescending by explaining to the complainant the nature and role of as ISBN. He had taken offence because of his extensive experience in the world of publishing – in fact he had worked for a number of publishers.

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

501. Since receiving CA's report on compliance on 31 July 2019, I took up this complaint with it further. CA reports that the General Counsel reviewed the complaint and that the staff member undertook to take additional care to ensure that communications with members are perceived by them to be respectful of their professional experience. In relation to the complaint about sampling, see [657]-[663] below.

**CA Complaint 2**

502. Like CA Complaint 1 above, this complaint also related to inadequate recognition of the extent of copying of the complainant's work. As the table reveals, the complaint was made on 24 June 2019. On that date, the complainant, an author, complained that CA's survey does not cover the two weeks prior to the commencement of school Term 1. According to the record of the complaint (it had been made by telephone), the complainant had been told by schools that they are not allowed to record copying until after the commencement of Term 1. He believes that he is "missing out on huge payments because we [Copyright Agency] are not surveying in this period".
503. CA responded promptly the next day. CA explained that the surveys of copying in schools are primarily designed to estimate the overall extent of copying and sharing under the statutory licence, which is taken into account in licence fee negotiations. CA explained that the design of the survey is agreed between CA and CAG, and the surveys are conducted by an independent research company. The email explained that data from the surveys are also used as the basis for distribution of licence fees. Finally, CA's email referred to the possibility of making a discretionary (ex gratia) payment to a rights holder who can establish that his or her work was substantially copied under a licence administered by CA but who received no payment or little

payment for that use. The email provided a link to the Attorney-General's Department Guidelines relating to such ex gratia payments.

504. The complainant replied on 25 June 2019 explaining that the importance of the early part of the year in terms of the copying of his works: "the data you collect cannot be a true representation of works duplication/copying when you fail to survey the most critical weeks of every school year, particularly for me when my works are copied the most".
505. The complainant asked to be informed of how CA intended surveying schools in 2020 and onwards.
506. CA replied to the effect that there were no plans to change the methodology for the surveys in 2020. The complainant then asked for a full explanation as to how the surveys were conducted over the last 30 years and how they would continue to be conducted in 2020.
507. CA directed the complainant to its website for information about the surveys.
508. In response to a question by him concerning the possibility of discretionary payment, CA explained that it would need to have evidence that his work was copied in reliance on the statutory licence and that he received little or no payment for that copying, eg a statement from a teacher that the teacher had copied the member's content under the statutory licence for a class with information such as when and where this occurred and how many copies were made.
509. On 25 June 2019 the member replied to the effect that the website did not provide an answer to his question. He explained that he was concerned with "the weeks leading up to and the weeks immediately following the return of students in 2020". He explained that by this he meant at least one week prior to the students returning to school and during the first four weeks of Term 1.

510. On 26 June 2019, the end date in the course of correspondence, CA answered questions that had been posed by the complainant to the effect that CA did not survey and capture data pertaining to the period covered by the week prior to, and the four week period following, return to school; that so far as the writer was aware, and certainly not since 2002, did CA survey and capture data pertaining to the copying and/or duplicating of hard copying and/or electronic works in the period mentioned; and that evidence would have to be furnished by the complainant for the Board to consider if a discretionary payment was to be made.

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

511. Since receiving CA's report on 31 July 2019 on its compliance with the Code, I took up this complaint further with CA. CA reports that the complainant has been in contact with CA but on another matter and has not raised the complaint again. The persistence of this species of complaint is cause for concern. See [657]-[663] below.

**CA Complaint 3**

512. This complaint was about a withholding tax deduction of \$71.36. The complaint was that CA had deducted that amount from licence fees that it had collected because the individual had not provided an Australian business number (ABN).

513. In response, CA referred to recent editions of the eNewsletter, "Creative Licence" which reminded members to provide ABNs.

514. The complainant's company had an ABN. CA took the sensible course of making a discretionary payment of \$71.36 by EFT into the complainant's bank account.

515. There was also a complaint in relation to the recording of the individual as distinct from her company as to the owner of the copyright in the images in question. In an email dated 16 July 2019, CA explained that its record showed that when the individual joined CA, she authorised it to include works in which she owned copyright

in non-statutory (“voluntary”) blanket licences, and that the authorisation did not apply to pay-per-use (“transactional”) licences.

516. CA’s email explained that a member could change his or her licence participation if desired.
517. The complainant raised numerous questions directed to seeking clarification which prompted a lengthy reply from CA on 17 July 2019.
518. So far as I can see, that email provided the information that the complainant had been seeking.

#### ***CA Complaint 4***

519. The table in [490] above indicates that this complaint was made on 5 June 2019, but the background correspondence makes it clear that there was correspondence between the complainant and CA under way from 17 May 2019. The significance of the date 5 June 2019 seems to be that that was the date on which a complaint was made about “blackline masters”. The Managing Director of the complainant company wrote to CA at some length on that date. The Managing Director’s letter contained the following:

“Rosanna, thank you for the update and phone conversation you have had with Amy, to keep us up to speed on where the education licence is going. I am concerned about the interpretations being used in these discussions in relation to blackline masters. There have been many discussions and rulings in the past on the treatment of blackline masters. There is nothing in evidence to say that this should be changed.

I readily appreciate that there are a number of subscription download sites that teachers are using for blacklines that compete directly with us. How teachers treat the material they download from these sites should not be confused, within the licence, with how they treat material that they have bought from ourselves. It should be made abundantly clear to teachers that there is a difference in how these should be treated for the education licence. I do not understand, nor will I readily accept, that there should be any change in how our material is treated in respect of the licence. Our methods of selling our product has not changed, our customers buying patterns have not changed. Our blacklines continue to be predominantly bought [by] individual teachers. The last ruling on these accepted that teachers brought product that they bought themselves into schools and shared these with other teachers. This sharing is compensated by the % of the education licence payment that is allocated to them. This is a ruling.

There seems to be some suggestion that this ruling is going to be questioned. We would certainly be engaging our solicitors to review this and fight any change aggressively. The effects of any change to the education licence will have a significant impact on [name of complainant]. The licence has been a significant contributor to provide an education landscape that has been conflict free. We are aware of the vast number of schools that are illegally copying significant portions of our products and have been able to sustain this through the benefits of the licence. We have seen significant change in how our artwork has been treated within the licence and again, have had to facilitate strategies that make the working of the licence more streamlined. We will not tolerate a position where this work will not be recognised at all. We are a significant employer of artists in [name of State] and a significant contributor to bringing art to children throughout Australia.

I would appreciate and expect some greater clarity from CAL on what is now being discussed. I note your comment about the negotiation process being 'without prejudice', however, as a member of the organisation and CEO of a company that will be impacted by decisions made, I believe that I have a right to ask and obtain clarification on these points. We will certainly not be in a position to advise our legal team on the strategy that we wish to follow without this clarification.

I would like to know what the time frame on any proposed changes will be and what the completion process for these negotiations will involve. It would help to have these points answered in writing so that we can be clear on the points discussed and on what the position of CAL is in relation to them."

520. The Managing Director of the complainant company met with staff members at CA's office. At that meeting apparently the Managing Director of the complainant explained the complainant's position that when a book is sold with a photocopying licence ("blackline masters"), that photocopying licence is limited to the individual teacher who purchases the book, and that copying by others must be treated as being under the statutory education licence, for which the company is to be compensated.

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

521. Since receiving CA's report on 31 July 2019 on its compliance with the Code, I have taken up this complaint further with CA. CA has provided the following explanation of the term "blackline masters":

"The term 'blackline master' refers to a workbook that a publisher sells with a licence to photocopy. A teacher who photocopies a blackline master in reliance on that licence does not need to rely on the education statutory licence. On the other hand, photocopying of a blackline master by someone other than the purchaser may not be covered by the publisher's direct licence, but allowed by the education statutory licence. Photocopying of blackline masters is one of the factors taken into account in licence fee negotiations between Copyright Agency and the Copyright Advisory Group for the COAG Education Council (CAG). It is also taken into account in distributions of licence fees. Currently, allocations are for copies of blackline masters, but they are lower than allocations for other material. Copyright Agency and CAG have agreed to work together to resolve certain contentious issues, which include blackline masters. At the same time, Copyright Agency is reviewing its policies and processes regarding allocations for copying of blackline masters."

522. It seems to me that CA should review its practices with a view to ensuring that it is brought home to teachers that it would be an infringement of copyright for teachers other than the one who has the benefit of “the blackline masters photocopying licence” to make copies of the work.

### ***CA Complaint 5***

523. This complaint, made on 24 June 2019, related to the amount paid to an artist. The email of complaint, asserted that the payment advice received from CA did not provide for any payment for 2017 – 2018.

524. On the following day, 25 June 2019, CA responded explaining that it had developed a new methodology for allocating payments to artists that is fairer overall for artists whose images are available for use under the licences managed by CA. The email explained that the new methodology took into account research in the United Kingdom that led to amounts being set aside there for artists by Copyright Licensing Agency.

525. The email explained that the payment allocated to the particular artist was the outcome of the methodology applied by CA in respect of all artist members, and took into account titles that have appeared in surveys of usage in schools and universities.

526. Nonetheless, the complainant pointed out that there was a 70% drop in income as a result of the “new methodology” which was said to be “fairer to artists”.

527. The complainant made the point that the earnings for the 30 plus years previously based on approximately 8,500 illustrations in about 160 books which were widely used in schools throughout Australia and indeed throughout the world was reflected in the amounts that she had received in the past.

528. On 26 June 2019, CA wrote at length explaining the new methodology. This led to a phone call from the complainant’s partner on 27 June 2019. The new methodology

was explained again and, in particular, it was explained that the new process was similar to that used by the Design and Artist's Co-operative Society (DACs) in the United Kingdom, in that it combines information provided by artists with usage data from surveys in schools. It was noted that the particular artist was also a member of DACs. It was confirmed that the recent payment received from CA was for both 2018 and 2019.

529. Finally, the artist's representative sent an email to CA stating: "now that some clarity was restored and we know what to expect, I look forward to future communications under happier circumstances".

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

530. Since receiving CA's report on 31 July 2019 on its compliance with the Code, I took up this complaint further with CA. CA reports that it has been in touch with the member (by email) and her husband (by telephone) regarding the provision of information for the artist-owned images distribution in 2020.

### **CA Complaint 6**

531. On 22 October 2018 CA wrote to the complainant advising that it had identified its members' works on the complainant's website. CA encouraged the complainant to take out a licence to use that content.
532. There was subsequent correspondence in which the complainant said that it had not been aware that a licence was required as its staff were included in the articles.
533. On 3 December 2018, CA emailed the complainant providing details of the usage said to infringing. There was further correspondence in the course of which the complainant's solicitor requested amendments to the standard form of licence agreement provided by CA. CA did not agree to amend its standard form. The complainant then said that the issue had been discussed at board level and it had been resolved never to put newspaper articles or anything else that contained

copyright material on the website again. A price for a "retro licence only" was then sought.

534. CA explained that retrospective licensing was only available at a discount as part of an annual general corporate licence which, for the year ahead, would amount to \$1,987.05 plus GST. However, it was explained that if the complainant wished to cover only unauthorised prior use, the amount would be \$3,186.18 plus GST.
535. Apparently, the complainant reported its dispute to the Office of the NSW Small Business Commissioner who then contacted CA seeking information to enable that Office to understand better the way in which the licensing system worked.
536. On 22 March 2019, CA asked the complainant if he wished to proceed with copyright licensing, to which he replied in the negative.
537. CA decided not to pursue the question of a licence or retrospective payment.

### ***CA Complaint 7***

538. An art market professional complained that it seemed that the royalties paid by his clients had "never made it into the artists' pockets". The complaint related to artists' resale royalties. The complainant was the director of an art gallery.
539. CA discovered, and informed the complainant, that some of the royalties in question had in fact been paid.
540. It seems that a "systems upgrade" that was under way was delaying reporting and causing delay in the making of payments.
541. In the past, CA had sought assistance from the complainant to identify and locate artists. CA had resumed that practice.

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

542. Since receiving CA's report on 31 July 2019 on its compliance with the Code, I have taken up this complaint further with CA. CA reports that the Manager Visual Arts and Indigenous Engagement Manager met with the art dealer in August 2019. It was agreed that the Indigenous Engagement Manager would provide more information to him than previously about the status of royalties paid by his clients through him. The royalties about which he raised concerns have now all been paid to the artists. The broader systems issues are being addressed.

543. The particular complaint seems to have been adequately addressed.

**CA Complaint 8**

544. This complaint, made in November 2018, is another one about sampling, and, in particular, the failure of CA sampling to reflect copying in the first two weeks of the academic year. CA asked the complainant to collect some evidence of that usage and to submit the evidence to CA for an ex gratia payment.

545. The Chief Executive Officer of the complainant sought information about CA's survey methodology.

546. Correspondence continued over a period in which CA supplied information.

547. On 28 February 2019, CA supplied detailed information on the payments that had been made to the complainant in the years 2013 – 2017. Eventually, on 14 June 2019, CA wrote to the complainant noting that it had forwarded to the complainant a claim for \$1,994.00 which was a component of a total allocation that had been made to the complainant of \$136,000.

548. On 14 June 2019 the complainant expressed disappointment, stating: “as we have been discussing, the demand and use of our products is not diminishing and yet the royalty payments are dramatically declining”. The complainant provided a graph demonstrating this.
549. CA replied, asserting, inter alia, that the complainant had “actually done well out of the survey process”. The reply explained why this was so, but the complainant was not persuaded.
550. There was further correspondence in which CA explained that the complainant was apparently assessing the position by reference to the 2014 survey, but that there were atypically high levels of copying of the complainant’s contents in a small number of schools in that year. CA explained that the 2014 data resulted in unusually high payments to the complainant in 2015, 2016 and 2017, all based on data sets that included the 2014 data. It added that those atypically high levels of copying have not occurred since, and that the recent payments to the complainant are more in line with the payments it received in 2013 and 2014.

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

551. Since receiving CA’s report on 31 July 2019 on its compliance with the Code I have taken up this complaint further with CA. CA informs me that there have been no further developments. The complainant seems to have accepted CA’s explanation.

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

### **General**

552. Screenrights reports that it has developed and regularly reviews procedures that implement clause 3 of the Code. The procedures are described in the “Corporate Governance” section of the Screenrights’ website. The website includes information on its complaints handling procedures and procedures for resolution of disputes between Screenrights and licensee and between Screenrights and its members.

553. Screenrights also reports that its staff are trained to understand that responding to complaints and resolving disputes in a timely manner is a key priority.
554. In relation to competing claims by members, Screenrights reports that it regularly reviews its Alternative Dispute Resolution procedures. These are set out on the Screenrights Resolution Portal (<https://resolution.screenrights.org/>)
555. In the year ended 30 June 2019 Screenrights had over 1.8 million individual claims, and it opened competing claims involving 359 series and 1,268 one-off programs. These competing claims were published on Screenrights' member portal, "MyScreenrights". Screenrights reports that during the Review Period, competing claims were closed for 448 series and 1,102 one-off programs.

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

556. On 26 March 2019, the complainant, self-represented, commenced a proceeding in the Federal Circuit Court of Australia, initially in his own name against officers and directors of Screenrights. After amendment, the applicant became a company under his control, and Screenrights became the respondent.
557. The proceeding arose out of the competing claims complaint dealt with at some length in my Compliance Report for 2017-2018 at [573]-[591]. I will not repeat here what I said there.
558. What was sought in the proceeding was a declaration that the company was the owner of the copyright and distribution rights in respect of a movie. Also sought was an order that Screenrights remove the claim of the competing claimant from its systems. Finally, the company sought damages and compensation from Screenrights.
559. The position taken by Screenrights was that no relevant claim existed against it, and that the proper respondent was the competing claimant to the copyright.