

560. At an interlocutory hearing on 24 June 2019, Screenrights applied to have the proceeding summarily dismissed. As at the end of the Review Period, a decision was awaited.
561. On 25 July 2019 (after the end of the Review Period), the Federal Circuit Court listed the matter for further mention in the light of communications from the company to the judge's chambers and the Court registry. After hearing submissions from both sides, the judge recused herself from hearing the matter taking into account the test for "apprehended bias". The matter has been referred to another judge of the Court.

Phonographic Performance Company of Australia Ltd ("PPCA")

General

562. PPCA again reports that it is committed to handling and resolving complaints equitably and that all of its employees are provided with information on this policy, and are encouraged to ask questions and to review related processes regularly.
563. The policy document is available on the PPCA website and its internal intranet site. As well, the policy is provided to new employees in hard copy form as part of their induction package.
564. Minor amendments were made to the PPCA complaints policy when it was reviewed in November 2018 to update references to the Australian Disputes Centre.
565. During the Review Period, a Complaints Officer was appointed. The Complaints Officer has access to all other PPCA employees in order to address issues raised properly.
566. The Complaints Policy incorporates the processes of mediation, neutral evaluation and conciliation.

567. The PPCA website, on which the Complaints Policy is readily accessible, is publicised via all promotional materials, advertisements, industry listings and flyers. As well, the website address is included in all correspondence issued by PPCA.
568. Staff members refer to the Complaints Policy in their presentations to licensee and licensor groups.
569. The Complaints Policy is written in plain language and sets out the means by which complaints may be made and how they will be handled. It encourages interested parties to contact the Complaints Officer. The Policy sets out the timeframe and manner of response to complaints.
570. PPCA makes no charge for the handling of complaints under the Complaints Policy, but if the matter is subsequently referred for an independent resolution, the costs will be shared equally between the two parties. PPCA states that it has tried to minimise the costs of any such procedure.
571. All complaints are recorded in a complaints register database and are reviewed for identification of recurring issues. As well, individual complaints and the process followed for the handling of them are reviewed annually.
572. Eight complaints were received during the Review Period. Of these:
- five related to public performance licences;
 - two were lodged by copyright owners; and
 - one related to potentially infringing material on iTunes.
573. A summary of the complaints has been provided by PPCA to me as part of its report. In fact, Appendix 1 to the PPCA report is an anonymised Complaints Table Summary. The Accompanying Underlying Documents contain the correspondence relevant to the complaints and a more detailed table summarising them in which the identity of the complainants is disclosed.

PPCA Complaint 1

574. The complainant was proposing to establish business as a "background music supplier". In an email dated 6 August 2018, he made the following complaint:

"How is it that through Foxtel Music for Business I can [pay] \$60/month and as they advertise on their website it includes PPCA fees BUT if I use any separate servers non-inclusive of PPCA fees a café paying on average 4.50 a day through your licensing scheme to play music is paying in excess of \$1,500 a year in fees."

575. In passing, I note that $365 \times \$4.50 = \$1,642.50$, and that $12 \times \$60 = \720 .

576. The General Manager/Complaints Officer of PPCA responded on 9 August 2018, suggesting a possible explanation of what was meant by the Foxtel statement. Moreover, she advised the complainant that she had reviewed the "Foxtel Music" section of the Foxtel website and noted that the text "PPCA fees included" may give the impression that the service was licensed by PPCA, which was not in fact the case. She informed the complainant that she had invited Foxtel to review the website and amend the content to eliminate confusion.

577. There has been no response from the complainant.

PPCA Complaint 2

578. I note that this complainant is the same person as made Complaint 1.

579. On 7 August 2018 (the day after his first complaint referred to above), the complainant wrote to the PPCA Complaints Officer

580. He said that he was in the process of "registering" as a background music supplier. He said:

"I have a product I would like to bring into the market to ensure all businesses pay for their respective use of music in their day to day operations so that generations on end can continue to enjoy creative talent in the music industry".

581. The complainant's email described the fee demanded by PPCA as "extortionate". He complained in particular about a "\$5,000 security bond".
582. His letter of complaint contrasted PPCA's position with that of APRA AMCOS, which, he said, did not demand an upfront fee for signing "a near identical agreement".
583. It seems clear that his reference to "extortionate fee" was in fact a reference to the \$5,000 "security bond".
584. The complainant said that unless PPCA could justify requiring the upfront payment "to enter the market and how it immediately benefits the parties you collect on behalf of", he would begin operating and would do the right thing by PPCA by setting aside fees and pay them to PPCA quarterly. He would cease doing that, however, if PPCA commenced legal proceedings against him.
585. On 9 August 2018, the PPCA General Manager/Complaints Officer replied at length. The reply explained that the upfront payment was required because the terms of the licence allowed for quarterly retrospective reporting within 21 days after the end of the calendar quarter. PPCA then reviews the report and, if satisfied that it appears to be correct, issues a tax invoice which the licensee has a further 14 days to pay. In the result, PPCA receives no licence fees until, at best, the fifth month into a licence term (when the second quarter is already itself well advanced).
586. In effect, without the upfront payment, PPCA would be left to recover in respect of a past period, with the risk of non-recovery and loss to the rightsholders.
587. Promptly, on 9 August 2018, the complainant replied saying that he was still not satisfied. He asked for the name of the appropriate person within PPCA who could draw up a customised agreement for him. Alternatively, he said, he could commence operating with only the agreement with APRA AMCOS, putting aside PPCA fees on a monthly basis supported by reporting details.

588. The following day, 10 August 2018, PPCA responded suggesting that the complainant obtain licences directly from the relevant record labels. The email explained that the writer was the appropriate person, being not only the Complaints Officer but also the General Manager at PPCA.
589. Her email concluded by suggesting that the complainant obtain legal advice.
590. A little later on 10 August 2018, the Complaints Officer/General Manager spoke to the complainant and, according to her file note, took him through the mechanics of the agreement. The file note records the following:

“He agreed he had perhaps contacted us a bit quickly and had not yet taken in all the details. In particular, he was pleased to note that his quarterly licence fees would be offset against his initial, recoupable, advance, and that he would not be required to make any further/additional payments unless/until his actual quarterly licence fees (plus any advances for the next quarter) had extinguished the balance of his initial advance.”

PPCA Complaint 3

591. On 14 August 2018 a licensor complained of a breach of privacy. The complaint was that PPCA had published on the internet the private addresses of musicians and artists.
592. The email of complaint contained the following:
- “My personal address has been published online, as has my partner’s (...). It’s searchable through Google.
- I discovered several PDFs online from PPCA that contain hundreds of addresses, many of my friends are amongst them, and I’ve contacted them to inform them of the privacy breach.
- This is a large scale breach, which I’m sure you’re already aware of.”
593. The complainant demanded that PPCA contact all parties affected to inform them of the breach of privacy, and that it change its policies so that no personal data is publicly available online unless written consent is provided by members.

594. The complainant said that she had spoken to the Office of the Australian Information Commissioner and would be lodging a formal complaint with that Office after 30 days. So far as PPCA is aware, none was lodged.
595. On the same day, in fact within seven minutes after receiving the complaint, PPCA's General Manager replied, undertaking to look into the matter immediately. She said that as a matter of routine PPCA always checks with the licensor before including the person's details on the list, and provides the licensor with an opportunity to opt out.
596. The General Manager offered to arrange a time for a phone call to discuss the complaint further if the complainant so wished.
597. PPCA reports that the published list of licensors was immediately amended so as to omit licensors' contact details.

PPCA Complaint 4

598. This licensee held a dance school licence and complained that she had been contacted about an outstanding account when it had in fact been paid.
599. The complaint was made by email on 16 November 2018. The amount in question was \$72.22.
600. The way in which the complaint was made was by the sending of a copy of the EFT form establishing that payment had been made on 23 October 2018 bearing a note "would appreciate not being called about my account supposedly not being paid when in fact it was paid – after not having been invoiced in the first place!"
601. On 3 December 2018, PPCA responded. The General Manager first apologised for the delay in the response. I assume that the delay may have partly been attributable to the fact that the complaint was made by way of being endorsed on an EFT Notice of Payment.

602. The General Manager explained that although the payment had been received into PPCA's bank account on 23 October 2018, it did not identify a particular account or licence, and was merely noted as "direct credit – Bendigo Bank". The General Manager explained that as the amount was the amount of a common fee for particular categories of licence, it was impossible for PPCA to link the payment to the complainant's account without additional information.
603. Of course, the General Manager's letter concluded by assuring the complainant that the amount had now been applied to her account to clear the outstanding invoice.

PPCA Complaint 5

604. This complaint was made 19 February 2019 and arose out of letters from PPCA to the complainant dated 18 January and 8 February 2019.
605. The letters drew the complainant's attention to the fact that to play sound recordings or music videos in his business without a licence from the copyright owners might be an infringement of copyright. The letters also explained that PPCA was in a position to offer a blanket licence in respect of all sound recordings and music videos under the record labels owned or controlled by the licensors identified on the PPCA website. PPCA informed the complainant that if no sound recordings or music videos were played in his business at any time, he did not need a licence, and in that case PPCA invited him to complete and return a form of confirmation to that effect.
606. The complaint, if that is what it was, sought an explanation of the source of the information identifying his business. It concluded:
- "You are not authorised to release any further information regarding our business to any other source, list, file, individual, department or marketing organisation."
607. The General Manager of PPCA replied on 26 February 2019, explaining that PPCA had a record of the business that had been operating at the location for some time past, previously known by a different trade name. She explained that as part of PPCA's regular reviews, PPCA became aware that the business had changed its trading name.

As a result, PPCA had sent the letters, as was its custom, in which it explained copyright obligations as they relate to the use of sound recordings and music videos, together with information on the licences that PPCA was able to offer. The General Manager said that the first "information pack" was sent in January 2019 and that, in the absence of a response, a follow up letter was sent on 8 February 2019.

608. Finally, the General Manager explained that none of the information held was "personal in any way" and that it was all "readily available" on the business's website and FaceBook page. The letter concluded:

"PPCA routinely obtains information from such sources to advise businesses of the need for licences to publicly perform recordings, the risks associated with copyright infringement, and the licences PPCA is able to offer. Any information we gather is only used for that specific, educative purpose."

609. Also on 26 February 2019, the complainant requested a form of application for a licence, which crossed with the General Manager's response of the same date.

610. Subsequently, a completed application for a licence was received and processed and remains on foot.

PPCA Complaint 6

611. This complaint was made by a recording artist/songwriter on 8 May 2019.

612. The email of complaint commenced: "I have just come across a release with my name and image on it. They have spelt my name wrong ...".

613. The complaint was that the complainant had been unaware of the remix release and iTunes on which she was incorrectly credited.

614. The PPCA Complaints Officer replied by email on 10 May 2019 advising that PPCA does not license Apple for any of its services and therefore does not collect any revenue from it. The Complaints Officer recommended that the complainant contact

APRA AMCOS, which would have agreements in place with Apple in relation to the exploitation of musical works on the service.

615. The Complaints Officer added that if the complainant was the owner of rights in the relevant master recording, she should contact Apple in relation to this potentially infringing compilation, or alternatively seek legal advice about her options. The Complaints Officer provided the complainant with contact details of the Arts Law Centre of Australia which, she said, provides inexpensive legal advice to creators.

PPCA Complaint 7

616. This complaint was made by a licensee on 24 May 2019. The complainant had received an email from a debt recovery agency which was acting for PPCA. The complainant attached a copy of the email. The amount was \$237.92. The email threatened that if payment was not received within 48 hours (of 24 May 2019), PPCA might commence legal action to recover the debt without further notice.
617. The complainant asserted that he had not been trading since the account was due for renewal. He requested that PPCA withdraw the demand. The complainant concluded:
- “We will not pay this amount to a recovery agency. Our licence account is held with PPCA and will only be paid directly to PPCA when we wish to renew our licence. We will attempt to renew our licence within the next month. If we experience any issue we will notify PPCA. We urge you to withdraw your claim from ... immediately.”
618. On 27 May 2019 PPCA’s Complaints Officer responded, explaining that the licence automatically renews for a further 12 months on each anniversary, unless the licensee terminates the licence. She explained that PPCA’s practice is to send out a renewal invoice at least a month in advance of the renewal date inviting the recipient to advise PPCA if there has been any change to the licensee’s business necessitating amendment of the licence. As the complainant had not contacted PPCA to request amendment of the arrangements, the licence had been renewed automatically.
619. The Complaints Officer explained that at the end of each month, PPCA issued a statement setting out the outstanding amount. In addition, PPCA had written to the

complainant on 4 April 2019 in relation to the debt and, as PPCA had not heard from him, the matter was referred to PPCA's collection agent.

620. Finally, the Complaints Officer advised that in the light of the advice that the business had ceased trading and no longer required the licence, the licence would be terminated and the invoice would be cancelled.

621. Perhaps surprisingly, the complainant advised that he did not wish to cancel the licence and wished to continue with it and would pay the renewal fee at the end of May 2019. He asked if PPCA could "accommodate" him until then.

622. The Complaints Officer on 30 May 2019 sought clarification as to whether the complainant wished the licence to continue for the period commencing 1 March 2019 and ending 29 February 2020, or simply to accommodate a delay in payment until 31 May 2019.

623. In the latter case, PPCA looked forward to receiving the payment later that same week.

624. On 2 June 2019, the complainant confirmed that he wished the licence to continue and to pay the overdue amount. The licence was reinstated.

PPCA Complaint 8

625. On 24 June 2019 the complainant wrote to PPCA stating that he had been "a long serving member with APRA". He referred to his having received an email from APRA AMCOS on the same day, 24 June 2019, in regard to *OneMusic Australia*.

626. He inquired whether he was eligible to join PPCA as a recording artist even though he had not been signed to any "distribution deal" as yet. He said that he was also seeking film placements.

627. He had recorded a total of 47 songs on four CD albums, each song having its own ISRC (International Sound Recording Code) number.
628. On 25 June 2019, PPCA replied, explaining that PPCA collected for the copyright in sound recordings of commercially released recordings. The writer said that on the basis of the information provided, PPCA thought that he may hold the master rights in his recordings himself, rather than having licensed them to a record label. If that is so, he would need to register as a licensor (that being how a record label would normally register) for his recordings. The writer explained the procedure that he would have to follow.
629. On 26 June 2019 the complainant replied. He confirmed that he owned copyright in all of his music/lyrics, and also the master recordings on the four CD albums. He said that he had not been doing any live public performances and was not a record label/company or operated a business: "I am just a musician/songwriter that has recorded and produced my own music onto CDs".
630. That email was dated 26 June 2019 at 1:22 am. Two days later, on Friday, 28 June 2019 at 12:23 am, the complainant sent an email to PPCA complaining that he had not received a reply to two emails that he had sent previously.
631. On 28 June 2019 at 4:25pm, PPCA's Complaints Officer wrote to the complainant apologising if the failure to reply by the Thursday evening had caused inconvenience.
632. The Complaints Officer concluded by saying that to the best of her knowledge, all queries had now been dealt with but that if that was not the case, the complainant should let her know.
633. There has been no further contact from the complainant.

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

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

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

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

SUBMISSIONS MADE DIRECTLY TO THE CODE REVIEWER

638. Under this heading I deal with submissions that have been made directly to me as Code Reviewer, as distinct from complaints made to a collecting society which it reports to me.
639. There are two submissions to be dealt with: one by Live Performance Australia and the other by Waddington Educational Resources Pty Ltd.
640. Both organisations have consented to their identity as submitters being revealed in this report.

LIVE PERFORMANCE AUSTRALIA

641. Live Performance Australia (LPA) is the peak body for Australia's \$2.5 billion live performance industry. LPA represents licensees of APRA, AMCOS and PPCA for the public performance of musical works in Australia. LPA's members include producers, promoters, venues (stadiums, arenas, theatres, performing arts centres), performing arts companies and festivals which, collectively, contribute a significant portion of royalty revenue collected for the public performance of music in Australia.
642. LPA's detailed submission, which evinces an attempt to state objectively its members' experiences in dealing with APRA AMCOS (not all in the nature of complaints), is divided into the following sections:
1. Licensee experiences with APRA
 2. Licensing process
 3. Transparency
 4. Alternative dispute resolution
 5. Consultation with industry associations

I have referred LPA's complaints to APRA AMCOS which have responded to them, one by one. Below, I summarise the complaints and then quote (in italics) APRA's responses.

1. *Licensee Experiences with APRA*

643. LPA reports that its members' experiences in dealing with APRA AMCOS are mixed: some report good relationships with their licensing representatives while others report frustration, in particular a lack of responsiveness from APRA to licensing requests or queries, requiring the member to chase APRA for a response. As well, some members are frustrated by APRA's adherence to its own timelines.
644. The latter experience particularly relates to the use of music in a dramatic context, when APRA needs to obtain consent from a copyright owner. Copyright owners may

not respond in a timely manner and may therefore prevent APRA from doing likewise. This causes stress for licensees due to the uncertainty about whether they can use the music in question.

645. LPA reports one instance during the Review Period where the APRA representative was rude and unprofessional in dealing with the LPA member over a debate between them about the calculation of licence fee.

APRA AMCOS's Response:

APRA acts as agent for its members for dramatic context licensing and oftentimes we need to refer licence requests to them, and they in turn have to refer those requests overseas to the original publisher and writer. Response times are consequently slower than for other licences and largely outside of APRA's control. Some of APRA's members have opted to license dramatic context uses directly and completely outside of APRA's processes. We are introducing streamlined processes from next year that will provide greater clarity on what works can be licensed 'immediately' by APRA AMCOS and what works will require direct licensing.

We are not aware of the alleged instance of APRA AMCOS' staff acting in a "rude and unprofessional" manner to an LPA member. We believe we have a good working relationship with LPA and would have hoped that if one of their members had felt aggrieved, they would have lodged a complaint directly or referred it to LPA to bring the matter to us immediately, with details, so that we could investigate and respond accordingly. If the alleged incident did occur it is highly concerning and we encourage LPA to provide us with sufficient information so we can investigate.

2. Licensing Process

646. Some LPA members are of the view that the process for "dramatic context" licensing is inappropriate and does not reflect the reality of how the industry works.
647. APRA requires dramatic context licensing requests to be submitted at least six to eight weeks prior to the first performance. But in many cases, the requirements are not yet known. Generally speaking, decisions are made during the rehearsal process which usually occurs only two to four weeks prior to the first performance or preview. And even if there are initial ideas prior to rehearsals, they may change during the creative process. If licensing requests are not responded to quickly by APRA, there is a risk that licensees will not have the relevant approval to use a piece of music.

APRA AMCOS's Response:

As mentioned above we act as agent for dramatic context licensing and in the absence of a traditional blanket licence, works need to be cleared with publishers and writers directly. Those copyright owners are under no obligation to approve a licence. The alternative would be for APRA to step away from DC licensing completely, requiring all to go directly to the publishers which would significantly increase admin for all applicants. APRA bears the disproportionate costs of the agency arrangement in order to provide a service for users, and APRA's knowledge of and relationship with publishers makes the process – although sometime slow – infinitely easier for users.

3. Transparency

648. Members of LPA frequently question whether the licence fees they pay reach the relevant copyright owner. As well, they question what happens to undistributed funds.

649. LPA notes that APRA AMCOS and PPCA have distribution policies but questions whether APRA AMCOS make the industry aware of their existence. LPA says that information on revenue, distributions and expenses could be presented in a more user-friendly manner.

APRA AMCOS's Response:

LPA is aware of our distribution practices and we have held numerous conversations with them on the subject. Our Info Guide for event licensing provides the following summary information "For most events, APRA will distribute licence fees directly to the works you report used at the event. Where we do not ask for these details, the money is added to APRA's Live Performance pool for distribution to members according to the performances they have submitted." LPA members are aware that we require them to provide set list information in order for us to make distributions directly to the composers of the works on those set lists.

4. Alternative Dispute Resolution

650. LPA refers to the little use that has been made of the APRA's ADR scheme (apparently a reference to Resolution Pathways) which has been in place since 2014. In that time, only one dispute involving a licensee from the live performance industry has been resolved through the scheme. LPA says that its member considered the process to be beneficial.

651. LPA has not had any experience with PPCA's ADR scheme and is not aware of any of its members having used it.
652. LPA says that it is pleased that APRA AMCOS and PPCA have an ADR scheme in place, but points out that ADR will not be appropriate to overcome all disputes, in particular where time is of the essence.
653. As well, LPA encourages APRA AMCOS and PPCA to advise licensees up front and early that their ADR scheme exists to resolve disputes.

APRA AMCOS's Response:

LPA is one of the industry bodies on the Resolution Pathways Consultative Committee and is very familiar with our ADR processes. Resolution Pathways is now the ADR partner for OneMusic licences and will therefore cover both APRA AMCOS and PPCA disputes under the OneMusic brand. We consider that the fact only one matter involving an LPA member has been referred to ADR is a reflection of the high level of service APRA AMCOS provides rather than any failure in the ADR process itself.

5. Consultation with Industry Associations

654. LPA considers that the introduction of *OneMusic Australia* leaves something to be desired. In particular, LPA expresses concern that licensees will be charged as from 1 July 2019 for fees that have not been budgeted. LPA does not believe that there has been adequate transparency or proper consultation about the impact of the proposed changes for licensees.
655. In its submission, LPA states that many licensees will be considerably worse off, as aspects of the proposed *OneMusic Australia* scheme deviate from current industry practice.
656. Finally, LPA notes that it will continue to liaise with *OneMusic Australia* over the coming weeks and months to express its concerns and to see how they can be addressed.

APRA AMCOS's Response:

The OneMusic Event consultation paper was released in May 2019. In June 2019 LPA provided a very useful summary of the paper to their members. Accordingly we were surprised to read their comments in this complaint. We have also met with LPA on two occasions to discuss both the proposals in the document and the 'status quo' provisions (i.e. continuation of the old APRA AMCOS and PPCA rates with no change to licence fees) that will operate until we have completed consultations. We look forward to LPA responding to the paper outlining their concerns and putting forward alternative proposals should they have them.

COMPLAINT BY A PROVIDER OF EDUCATIONAL RESOURCES

657. A provider of educational resources that are much used in schools complains in relation to educational surveys conducted by Copyright Agency. The complainant considers the surveys to be invalid and the resulting distributions severely compromised due to the fact that the surveys fail to include all weeks of every school year, including the weeks leading up to students returning from summer holidays, when a peak of copying and duplicating occurs.
658. The complainant asserts that "anyone under the age of 30 would most likely have been given my tests at some point during their schooling, helping to assess their foundation skills and develop effective teaching and learning plans for facilitating their early or remedial educational success".
659. The complainant states that he believes that he has been "considerably short-changed" by CA's surveying policies and practices. The complainant asks to be informed how CA intends to survey schools in 2020 and afterwards.
660. CA has supplied the following response:

"The survey design is negotiated between Copyright Agency and the Copyright Advisory Group for the COAG Education Council (CAG), with advice from an external research company (e.g. on statistical sampling), and carried out by that external company. The periods in which the surveying can occur are dependent on agreement and cooperation from CAG. Since we submitted our report for 2018–19, in July 2019, we have had further discussions with CAG about various aspects of the survey design for 2020 and future years. One of CAG's requests was that at least some of the training for teachers, on how to participate in the surveys, occur at the end of term 4 of the previous year, rather than at the beginning of term 1 of the survey year. We have agreed to this request. A consequence is that the surveying in at least some schools will, from 2020, cover the first two weeks of term 1. While this would seem to address [the complainant's] concern, it is not a consequence of his complaint."

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

661. With respect, it accords with common sense that the volume of copying would be likely to be larger at the start of a school year as the complainant has suggested.

662. I took up the complaint with CA subsequent to its provision on 31 July 2019 of its report on compliance.

663. I can only suggest that the complainant re-assess the position in the light of the change referred to in CA's response set out above once it is implemented and its effect on his level of remuneration is known.

This report is now submitted to the societies and to the Department of Communications and the Arts of the Commonwealth of Australia.

Dated this 20th day of November 2019.

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

The Hon Kevin E Lindgren, AM, QC

Code Reviewer

APPENDIX A CALL FOR SUBMISSIONS 2019

Notice of the Review, with an invitation to make submissions by mail to the Code Reviewer at a specified address or by email by 31 July 2019, was given by the Societies to their members, and by the Code Review Secretariat to the licensees of the various societies or to bodies representing large classes of licensees, as well as to other interested persons, names and addresses having been supplied by the societies. The Notice was published in an advertisement in *The Australian* newspaper on 1 June 2019 and it was also placed on the websites of the societies. It was in the following terms:

The Code Reviewer

*Suite 704, 4 Young Street
NEUTRAL BAY NSW 2089
EMAIL: codereviewer@gmail.com*

COPYRIGHT COLLECTING SOCIETIES CODE OF CONDUCT CALL FOR SUBMISSIONS 2019

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

A copy of the Code is available on each Society’s website and can be downloaded or, if requested, a copy can be supplied by post.*

Compliance by participating collecting societies with the Code’s standards of conduct is the subject of an independent annual review. The Code Reviewer for this purpose is former Federal Court judge and former President of the Copyright Tribunal of Australia, The Hon Kevin Lindgren AM, QC. He is currently reviewing the Societies’ compliance with the Code during the period 1 July 2018 to 30 June 2019.

The Code allows for interested parties to make submissions to the Code Reviewer concerning a collecting society’s compliance or non-compliance with the Code. Accordingly, should you wish to make such a submission to Dr Lindgren, please do so in writing to the address above by no later than **31 July 2019**.

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

* Please note that for the month of July 2019, two versions of the Code will appear on each Society’s website. The version titled “*2018 Code of Conduct*” applied from 1 July 2018 to 30 June 2019 and is relevant to *this year’s* compliance review. The version titled “*2019 Code of Conduct*” will apply for the period 1 July 2019 to 30 June 2020 and will be relevant to *next year’s* compliance review.

The Code Reviewer
Suite 704, 4 Young Street, Neutral Bay NSW 2089
Email: codereviewer@gmail.com

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Clause 2.9

2.9 Reporting by declared collecting societies

(a) The Annual Report of a Declared Collecting Society shall include the following information in relation to each statutory licence for which the society is declared, for the financial year to which the Annual Report pertains:

(i) For each Statutory Licensee Class:

- A. total licence fees received;
- B. income on investments of licence fees;
- C. total amount allocated and paid to members;
- D. the total amount of licence fees held in trust; and
- E. total licence fees for which the trust period expired.

(ii) the total expenses of the Declared Collecting Society.

(b) A Declared Collecting Society will, upon request from a representative of a Statutory Licensee Class, provide the following information to the extent that it can do so at a reasonable cost:

(i) proportions to classes of recipients from the distribution of licence fees from the Statutory Licensee Class;

(ii) for each of the total amounts referred to in clause 2.9(a)(i)(E), the proportion not paid to rights holders due to:

A. the entitled member not being located;

B. the relevant rights holder not being a member;

C. entitlement disputes;

D. the amounts being below the distributable threshold; and

E. other reasons (which reasons the Declared Collecting Society may elect to specify).

(c) In this clause 2.9:

Declared Collecting Society means a Collecting Society that has been declared under ss. 135P, 135ZZB or 153F of the *Copyright Act 1968*;

Statutory Licensee Class means:

(i) the Commonwealth Government;

(ii) the State and Territory Governments;

(iii) schools;

(iv) universities;

(v) Technical and Further Education institutions; and

(vi) other educational institutions.

APPENDIX C EXPLANATORY MEMORANDUM

EXPLANATORY MEMORANDUM ACCOMPANYING COLLECTING SOCIETIES' CODE OF CONDUCT

The heading to clause 3 of the Code is "COMPLAINTS AND DISPUTES"

In the various paragraphs of clause 3, both expressions, "Complaints" and Disputes" are used, sometimes separately and at other times in association with one another.

Clause 3(a) obliges each collecting society to develop and publicise procedures for:

- (i) Dealing with complaints from Members and Licensees; and
- (ii) Resolving disputes between the Collecting Society and:
 - A its Members and/or
 - B its Licensees.

Clause 5.1 (c) sets out the functions of the Code Reviewer. These include:

- (i) to monitor, and prepare annual reports on, the level of compliance by Collecting Societies with the obligations imposed on them by the Code; and
- (ii) as part of that function to consider complaints from Members or Licensees.

Finally, paragraphs (c) to (e) of clause 5.2 deals with the reception of complaints by the Code Reviewer.

In summary, it is only "complaints" and not "disputes" that the Code Reviewer is to receive and deal with under clause 5.2.

The expressions "complaint" and "dispute" are not defined in the Code.

In his Report of his review of the operation of the Code issued in April 2014 the Code Reviewer suggested that the following definitions might be considered appropriate:

"complaint" means "an allegation that a collecting society's conduct has fallen short of a standard of conduct required of it by the Code"

"dispute" means "the taking of rival positions by a collecting society on the one hand and a member, licensee or other person on the other hand, as to their respective legal rights and obligations, resolution of which depends on a determination of what the relevant law is and/or a finding as to what the relevant facts are".

For example, an issue as to whether a licensee owes an amount of money to a collecting society is a dispute, whereas an allegation that the collecting society has not responded within a reasonable time to correspondence from the licensee or has been rude in dealing with the licensee over the dispute is a complaint.

Readers should understand that it is part of the role of the Code Reviewer to address complaints by them about the conduct of a collecting society but not to resolve disputes between them and the collecting society.