

**Report of Review of Copyright Collecting  
Societies'  
Compliance with their Code of Conduct  
for the Year 1 July 2017 to  
30 June 2018**

**The Hon K E Lindgren AM, QC  
10 December 2018**

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# **Report of Review of Copyright Collecting Societies'**

## **Compliance with their Code of Conduct for the Year 1 July 2017 to 30 June 2018**

### **INTRODUCTION AND SUMMARY CONCLUSIONS**

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1. This report of the Code Reviewer, the Hon K E Lindgren, AM, QC, is the fifteenth 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**"), 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 2017 to 30 June 2018 (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. During the Review Period, on 1 December 2017, Copyright Agency merged with Viscopy so that Viscopy members are now members of Copyright Agency, and Copyright Agency is now the licensor for the artwork licences that it had previously (since 2 July 2012) managed for Viscopy. Copyright Agency's constitution was amended to provide

for a new class of member: "Visual Artist Members". In consequence of the merger, Copyright Agency has reported in respect of Viscopy matters even in the period 1 July 2017 to 1 December 2017, and this Report refers to seven rather than eight collecting societies.

4. 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 the report (Accompanying Underlying Documents).
5. 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.
6. 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.
7. The Australian Government, in response to the Productivity Commission's *Inquiry Report into Intellectual Property Arrangements*, announced that a review would be undertaken of the Code of Conduct. In fact, the review was undertaken by the Bureau of Communications and Arts Research (BCAR) within the Department of Communications and the Arts.
8. The review was to examine the extent to which the Code promotes fair and efficient outcomes for both members and licensees of copyright collecting societies in Australia. The terms of reference for the review can be found at: [www.communications.gov.au/codereview](http://www.communications.gov.au/codereview).

9. BCAR produced a draft report in February 2018.
10. In response to invitations from the Department, I met with relevant officers both before and after the release of the draft report. The purpose was to enable the review team to be informed as to my views on the issues being considered by it.
11. At the time of preparation of this Compliance Report, BCAR's final report has not been made available and, so far as is known, has not been written.
12. A copy of the draft report can be accessed at <https://www.communications.gov.au/have-your-say/reviewing-code-conduct-copyright-collectingsocieties>.
13. 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". This structure itself directs the attention of the societies to all of the obligations imposed on them by the Code. In addition to the text of the reports, I have been supplied with the "Accompanying Underlying Documents" that are referred to in the reports.
14. The Code applies to all seven collecting societies, but Clause 2.9 applies only to declared collecting societies. Clause 2.9 appears as Appendix "B" to this Report.
15. Often in the Report I have used words that make it clear that I am giving an account of what the particular collecting society says. It

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

16. 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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17. 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**

18. As noted at [2] above, APRA administers AMCOS, and has done so under an arrangement between the two societies dated 1 July 1997.

19. APRA AMCOS have previously reported comprehensively in respect of earlier years and have also previously provided details of the history and constitution of each society, as well as a history and copy of each licence scheme offered by the companies. The current report provided by APRA/ AMCOS provides information covering the Review Period and, where applicable, indicates where there have been no developments since the previous Code Review.

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

20. APRA AMCOS state that they have not changed any of the principal characteristics of their membership structures during the Review Period.
21. The APRA Board has six writer directors, elected by the writer members, and six publisher directors, elected by the publisher members.
22. The AMCOS Board is elected by the members of AMCOS.
23. 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 was provided to the Code Reviewer in the Accompanying Underlying Documents.
24. Access to the following documents relating to the Review Period were provided by APRA AMCOS:
  - APRA AMCOS “Year in Review” (an annual summary of both organisations’ performance, achievements and initiatives) for the 2016/17 financial year, by way of a link to the website;
  - APRA Statutory Accounts for the 2016/17 financial year;

- AMCOS Statutory Accounts for the 2016/17 financial year;
  - An organisational chart showing the overall management structure of APRA AMCOS as at both 30 June 2018 and 1 July 2018; and
  - APRA AMCOS Privacy Policy.
25. The Constitutions of both APRA and AMCOS are available on the APRA AMCOS website and a link to them was provided to the Code Reviewer.
26. On 30 June 2018, after 28 years as APRA AMCOS' Chief Executive, Brett Cottle AM stepped down from the role. Dean Ormston, previously Head of Member Services, was appointed Chief Executive from 1 July 2018.
27. As at 30 June 2018, APRA AMCOS had 337 employees (including casual compliance staff) in Australia and 33 employees in the APRA AMCOS New Zealand office.
28. Neither APRA nor AMCOS is a declared collecting society under the *Copyright Act 1968* (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.

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

29. As at 30 June 2018, APRA had 99,453 Australian and New Zealand members, comprising composers, authors and publishers. Of these, 96,716 were local writer members, and 6242 were local publisher members. In addition, APRA had 2,106 overseas resident writer members and 7 overseas resident publisher members. Most

Australian and New Zealand composers and publishers of music are members

30. As at 30 June 2018, AMCOS had 19,074 Australian and New Zealand members, of whom 17,925 were writers and 541 were publishers. In addition, AMCOS had 389 overseas resident writer members and continues to have 5 overseas resident publisher members.
31. As at 30 June 2018, APRA AMCOS had 1,430 Aboriginal and Torres Strait Islander (ATSI) members, which represented an increase of 10.2% during the Review Period. Although indigenous membership is still relatively low, APRA AMCOS state that they are committed to increasing awareness through their national indigenous membership strategy, overseen by an Aboriginal and Torres Strait Islander (ATSI) National Representative.
32. APRA AMCOS maintain 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 are able to interact freely with APRA AMCOS, having direct access to all levels of management.
33. 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. Additionally, APRA AMCOS produce a large amount of written material for members, all of which has been provided in previous reports to the Code Reviewer.
34. Royalty queries to the Membership Department are logged in that Department's query tracking system that uses the companies'

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.

35. During the Review Period, the Writer Services Department engaged in email correspondence with writer members on 54,916 separate occasions. The Publisher Services Department sent 17,132 emails to publisher members. In addition, over 2,706,305 emails were sent to members as part of email broadcasts to the membership, which contained information including event notices, payment advices and APRA AMCOS publications.
36. 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 739 phone queries following distributions. Further statistics relating to the number of contacts with members were provided to the Code Reviewer.
37. 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.

### **International relations**

38. APRA AMCOS has an International Department which is responsible for the reciprocal representation agreements with other societies administering performing and mechanical rights around the world. 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.

39. In the Review Period, 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' licensing of certain publishers' repertoires to multi-territory digital services on a Pan Asian basis. That revenue is included in the APRA AMCOS digital revenue results.
40. In addition, during the Review Period, the International Department was involved in a number of regional and international activities.

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

41. APRA provides 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 17 license back applications and one opt out application. Further confidential details regarding these applications were offered to be provided to me as Code Reviewer. 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.

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 was previously the case. Put simply, members can now notify AMCOS that they wish to negotiate directly with particular international digital music services, provided the member gives AMCOS adequate prior notice.

### **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 have 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 147,416 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 143,000 businesses.
48. 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.
49. During the Review Period, the General Licensing, Business & Events Licensing and Finance (Credit Management) Departments engaged in more than 562,500 contacts with licensees, including by letter, email and telephone calls. A breakdown of the statistics was provided to the Code Reviewer, together with a sample of the more than 300 expressions of appreciation received during the Review Period by these Departments.

### **Media Licensing**

50. The Media Licensing Department covers three key areas of licensing: *Broadcast Licensing*; *Digital Licensing*; and *Recorded Music Licensing*.
51. *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 1,020 Australian production music clients licensed during the Review Period.

52. *Digital Licensing* includes video on demand services, digital subscription music services, music downloads, ringtones and general websites. In total, approximately 459 licensees of this category were administered during the Review Period.
53. *Recorded Music Licensing* includes CD sales, business to business applications, dance schools and videographers. In total, approximately 850 licensees of this kind were administered during the Review Period.
54. Media Licensing Department clients are, for the most part, aware of their copyright and licensing obligations.

### **Information provided to Licensees**

55. APRA AMCOS' website contains a Licensee section with information in relation to the various licences and with contact details for the relevant Licensing department.
56. 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 information provided by APRA AMCOS takes these factors into account.

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

57. APRA AMCOS report that they continue to work hard at maintaining 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 and Clubs Australia) by way of sponsorships.
58. 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**

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

### *CCLI Agency Agreement with APRA AMCOS for the public performance of music in places of worship*

61. Christian Copyright Licensing International (CCLI) is a copyright licensing agency that provides public access and licences of Christian music and media. It is very prolific in the church space and has a large number of licensees

62. APRA AMCOS appointed CCLI (Australian branch) to be a licensing agent for the public performance of APRA controlled works for Churches/Places of Worship. This commenced on 20 November 2017.
63. All APRA church licensees were notified of the change. CCLI manages all licensing, invoicing and queries in relation to the licensing of public performance of APRA controlled works for churches.
64. Licensees that hold an APRA licence transition to CCLI upon renewal of their licence. The first group of licensees to transition were those renewing on 1 January 2018. All licensees will be transitioned to CCLI by 31 December 2018.
65. Benefits include:
  - CCLI have market awareness amongst churches and many more licensees in the sector than APRA has;
  - Less market confusion as churches now need only to deal with one point of contact in relation to copyright licensing and the use of music;
  - CCLI provides data to APRA for distribution to APRA members.

#### *Dramatic Context*

66. During the previous review period, in response to the changing theatrical market, APRA and its members commenced a review of the Dramatic Context Licence Scheme. APRA is the appointed agent of its members to license the performance of musical works in a Dramatic Context. The agency appointment terms, the licence scheme and its processes have been in place for over 25 years.
67. One of APRA's main objectives was to ensure the new definition of "Dramatic Context" more closely aligned to the approach taken in larger theatrical markets, so that, where possible, international and

local shows would be subject to similar treatment when touring. It was also intended that while the licensing process would become less administratively burdensome for a range of parties, some performances that currently do not fall within the "Dramatic Context" definition, particularly those where there is a storyline about the life or work of a particular composer, artist or other figure, would, in future be licensed as "Dramatic Context".

68. APRA AMCOS consulted with members and licensees and in November 2017, at the AGM, the APRA members voted to adopt a new definition of Dramatic Context:

*Dramatic Context means: the performance of musical works:*

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

*Ballet means a choreographic work having a story, plot or abstract idea devised or used for the purpose of interpretation by dancing and/or miming. Ballet does not include country or folk dancing, tap dancing or precision dancing sequences.*

69. The tariff review was conducted to provide a clearer framework for Dramatic Context licensing that addresses concerns raised by both members and licensees. The end result was designed to improve service levels, widen the scope of Dramatic Context productions and provide for increased focus on larger productions.
70. Guidelines for music publishers and non-published writers, theatrical producers and venues that present dramatic context productions were created. The current licence fee structure was also reviewed, with the introduction of a minimum per work fee and a tiered minimum per production fee, based on Box Office thresholds.

71. On 1 January 2018, APRA AMCOS commenced licensing shows under the new Dramatic Context definition. More than 207 events have been licensed to date.

*Eisteddfod and Competition Licence Scheme*

72. The Eisteddfod and Competition Licence Scheme licenses rights controlled by APRA AMCOS, PPCA and ARIA, and came into effect in its first iteration on 1 January 2017. In accordance with the Code, APRA AMCOS (on behalf of the licensors) consulted the relevant industry association regarding the scheme. At the time when the parameters and rates of the licence were being developed, the Association of Eisteddfod Societies of Australia (AESA) was the most prominent industry body, representing the largest number of eisteddfodau in Australia.
73. After the first year of the scheme, as a result of feedback from the sector and further consultation, a review of the scheme was undertaken. In particular, with one full year of data, APRA AMCOS were able to assess how the rate had applied to eisteddfodau of different sizes. As part of this review APRA AMCOS consulted further with AESA and its members, existing licensees, and a Facebook group called Eisteddfod Organisers Australia (EOA), which had claimed that its members were not consulted.
74. As a result of the review the following changes were made:
- It was decided to freeze the 2017 rate for 2018, and that the fully phased-in 2020 rate would be approximately 30% less than the current rate;
  - A concession was introduced for regional based eisteddfodau (to be defined as an eisteddfod that is located within the

inner regional, outer regional, remote or very remote areas of Australia as defined by the Australian Statistical Geography Standard Remoteness Areas Map). Those eisteddfodau qualifying as 'regional' are eligible for a fee reduction of 10% per entry, whether paying through AESA or directly; and

- The distinction between for-profit and not-for-profit eisteddfodau was removed. The Eisteddfod and Competition Licence Scheme was expanded to include all dance competitions, calisthenics and cheerleading competitions. Any eisteddfod or competition with a ticket price of over \$40 is excluded from this scheme and is to be licensed under a separate Events licence.

75. The scheme has gained widespread market acceptance in 2018 and APRA AMCOS state that the following are the main benefits of the scheme:

- Providing a one-stop shop where all four music rights (public performance of the musical work, public performance of the sound recording, reproduction of the musical work and reproduction of the sound recording) could be secured under one licence, simplifying administration, and providing time savings for each Eisteddfod organiser;
- The 'per-entry' fee and structure provides a fairer user-pays model that directly links licence fees to music use; and
- The reduced rate structure will have the effect of lessening the impact on eisteddfodau and competitions.

### **Pan Asian Licensing Project**

76. The aim of APRA AMCOS' Pan Asia licensing project 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.

77. A publisher gives APRA AMCOS non-exclusive rights in its Anglo-American repertoire of musical works. APRA then licenses digital service providers in the appropriate Asian territories and undertakes the ongoing invoicing, processing, claiming and distribution for online service types.
78. As previously reported, APRA AMCOS' Pan Asia licensing project commenced in July 2013 and currently represents Universal Music Publishing, Peermusic, Hillsong Music Publishing, Imagem, Mushroom Music Publishing, Downtown Music, Origin Music Publishing, Songtrust, Native Tongue Music Publishing, Cooking Vinyl and STIM (APRA's Swedish sister society). APRA AMCOS currently have licences in place via the Pan Asian Licensing hub covering 32 territories.

### ***OneMusic Australia Project***

79. In 2016, APRA AMCOS began work on *OneMusic Australia*, a joint licensing project between APRA and PPCA which aims to provide a single licensing solution for music and recordings in Australia.
80. *OneMusic Australia* is expected to launch in the second half of 2019. APRA AMCOS state that they 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" (Accompanying Underlying Documents, tab 12, page 1). APRA AMCOS state that a similar joint operating licensing arrangement has operated in New Zealand since 2014 and that it has been very successful for both licensors and licensees alike.
81. During the Review Period, work continued on the project with several key steps having been taken, including industry consultations. The

Accompanying Underlying Documents include a chronological table of the consultations that have taken place.

### **Disaster Relief**

82. 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.
83. APRA AMCOS's actions, intended to alleviate financial pressure on affected businesses, including deferring licence fees renewals for up to three months, extended payment periods, and corporate donations to relief appeals.
84. APRA AMCOS staff continue to 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)**

85. As previously stated, APRA AMCOS have a large Membership Department whose staff are trained to deal with members' (and others') enquiries, including in relation to distribution.
86. 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". The Committee also deals with complaints from and disputes between members. Members are strongly encouraged to resolve disputes between them using "Resolution Pathways"; an Independent Alternative Dispute Resolution facility.

87. The most recently audited financial statements for the year ended 30 June 2017 show that APRA AMCOS' total combined net distributable revenue for the year was \$335.9m. Further information regarding APRA AMCOS' performance is contained in the 2016/17 APRA AMCOS Year in Review and Sustainability Report.
88. APRA and AMCOS distribute royalties quarterly, with the exception of the APRA Performance Returns distribution, which occurs annually.

### **~~Distribution Rules and Practices~~**

89. APRA and AMCOS maintain, and make available on the website, comprehensive Distribution Rules and Practices.
90. The APRA Distribution Rules were most recently updated in in February 2018 to update the policy regarding the application of Debits and Credits when adjustments are performed.
91. The APRA Distribution Practices were most recently updated in November 2017 to:
  - show that Spotify and Apple Premium, Les Mills streaming and Vevo are processed in full;
  - describe the amended application of the >\$2 threshold for Streaming;
  - state the inclusion of a discrete Tidal distribution pool;
  - note that P1710 is the last Pandora distribution;
  - show the change of NITV to full census analysis;
  - update the name "NZ TV FOUR" to "NZ TV Bravo"; and
  - state the inclusion of a discrete Lightbox (NZ VOD) pool.

92. The AMCOS Distribution Rules were most recently updated in February 2018 to update the policy regarding the application of Debits and Credits when performing adjustments.
93. The AMCOS Distribution Practices were not updated during the Review Period.

### **Investment in Systems Development**

94. As previously reported, 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), was initially due to be completed by November 2015, however the timeline has now shifted on several occasions to allow more time to develop testing régimes, to undertake user acceptance testing, to carry out training, and to perform data migration.
95. In the meantime, APRA AMCOS Writer Members continue to enjoy the new portal that was implemented in 2015 and the further enhancements which are continuing.
96. APRA AMCOS Publisher Members continue to transact with APRA AMCOS via a direct connection to the current system, and a new interface will be required in the move to CLEF. They report that the new web-based interface, the publisher portal, which is currently in development, has been structured to follow the implementation schedule of the CLEF project.

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

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

98. Commission on revenue pays AMCOS's expenses. The commission rate depends on the source of the revenue.
99. According to the most recent audited financial statements, for the year ended 30 June 2017, APRA AMCOS achieved a group expense to revenue ratio of 13.1%, which includes expenses relating to its heavy investment in the CLEF project.

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

100. The Annual Report of each of APRA and AMCOS contains the matters set out in clause 2.6(e) of the Code.
101. 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 Committees, which continue to meet at least six times a year and which concentrate exclusively on issues relating to Corporate Governance.
102. The APRA AMCOS management also has an internal Governance Committee, comprising the Chief Executive, Divisional Heads and Director HR, which meets regularly to discuss matters relating to the day to day operation and management of the organisations. This Governance Committee deals with policy setting and other matters relating to Human Resources and Industrial Relations, risk management, infrastructure, general administration, and regulatory compliance.
103. APRA AMCOS also have an internal "Staff Code of Conduct", which continues to supplement the Code: it sets out the standards by which staff are expected to treat one another.

104. 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.
105. 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.
106. APRA claims that it has complied with all the ACCC's conditions of authorisation.
107. 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)**

108. APRA AMCOS report that their staff at management level continue to be trained regarding the Code.
109. The Executive Leadership Team meets on a weekly basis and discuss matters relating to policy and strategy development and assessment. At these meetings issues relating to service and staff performance and training are regularly tabled.
110. 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.

111. Senior Manager, Manager and Team Leader forums are held annually at which the Chief Executive and Divisional Heads 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.
112. The General Licensing, Business & Events Licensing and Member Services Departments continue to hold their own staff training conferences annually.
113. Additionally, 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.
114. 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
115. APRA AMCOS have provided details of the induction and training sessions that they provide for staff. The Code and internal Staff Code

of Conduct (a copy of which is provided in the Accompanying Underlying Documents) 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.

116. APRA AMCOS have developed a brand blueprint, which further outlines their purpose, values and personality.
117. APRA AMCOS also report that as part of their response to concerns raised by music customers during the ACCC re-authorisation process, they widened the channels by which members and licensees could contact APRA AMCOS. The website now includes a "live chat" facility so that responses to urgent enquiries can be provided in real time. The staff who respond to live chat enquiries are required to attend two, two-hour training sessions to understand the live chat service guidelines and to ensure that the highest level of customer service is offered via this channel.
118. APRA AMCOS assert that they are committed to taking a proactive approach to staff development and wellbeing, such internal programs include:
  - Higher Education Assistance Program
  - Leadership Development Programme
  - Mentoring & High Potentials Programme
  - Buddy Program
  - In-house Training Programs
  - BeSpoke Coaching (leadership presence and presentation skills)
  - Employee Assistance Programme
  - Purchased Leave Scheme

- Seminars on resilience, stress management, work-life balance and dealing with change
- Lunchtime yoga for staff members twice a week on the premises

119. 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 2018.

120. 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 which contains policies relating to Client Service, Human Resources, Work, Health & Safety and Departmental Organisation.

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

121. 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. A list of the organisations and associations with which they have an ongoing relationship was provided to the Code Reviewer in the Accompanying Underlying Documents.

122. 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
- Sounds Australia & Live Music Office; and
- Various industry related organisations and programs
- Seminars and public forums and working groups

123. 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".

124. I will not set out the detail here. Of note, however, are the following statistics:

- Member Education – 384 events conducted and attended by 10,588 members;
- Publisher Members – Portal Reference Groups and Publisher Pulse seminars;
- Licensee Education – 139 industry association functions and events attended;
- APRA AMCOS Website – considerable growth across users, sessions; page views and time spent decreased;
- Social Media – Facebook and Instagram: increased followers; YouTube: increased views;

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

125. 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)**

126. 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.

127. In addition, on their website they invite any interested person to make submissions to the Code Reviewer as part of the annual compliance process.

128. 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")**

129. As noted at [3] above, 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.

### **General**

130. 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.

131. In its report to the Code Reviewer, Copyright Agency has categorised its operations as follows (at page 4):

- “• 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.”

132. Copyright Agency reports annually to the relevant Minister in accordance with statutory obligations in the Act and the *Resale Royalty for Visual Arts Act 2009* respectively. Annual reports are tabled in Parliament and are available from the Copyright Agency website.

133. Copyright Agency also operates in accordance with the Attorney General’s Department guidelines for ‘declared’ collecting societies.

134. As a result of amendments to the Act that came into effect in December 2017, the statutory licences for people with disabilities were repealed and replaced by exceptions for people with disabilities. As a result, Copyright Agency is no longer a ‘declared’ collecting society for these statutory licences, but is continuing to work with its members and associations assisting people with disabilities to improve access to content for people with disabilities.

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

135. 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.

136. 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
- Code of Conduct for Copyright Collecting Societies
- the Attorney-General's Guidelines for Declared Collecting Societies;
- the Attorney-General's Declaration of Copyright Agency for Part VB of the Act (but see [134] above); and
- the Copyright Tribunal's declaration of Copyright Agency for Div 2 of Part VII of the Act.

137. 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)**

138. Copyright Agency membership is free and 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 Board.

139. 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.

140. 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.

141. In addition, Copyright Agency reports information about new members in its annual reports.

#### *Viscopy merger*

142. As a result of the merger with Viscopy on 1 December 2017, Copyright Agency's Constitution was amended to introduce a new class of membership: Visual Artist Member. Members in the new class include members of Viscopy who have become members of Copyright

Agency under the merger of the two societies. The classes of membership determine which prospective Board directors a member is entitled to vote for.

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

143. Under this heading, Copyright Agency repeats what it has said in relation to Members as recounted at [139] above, substituting "Licensees" for "Members" and "licence agreements" for "membership agreements".
144. 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 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.
145. 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 payment, 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.
146. 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*).
147. There is also information currently on *viscopy.net.au* about artwork licences (which will be migrated to the Copyright Agency website).

148. 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.
149. 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.
150. New industry licence schemes are usually designed by Copyright Agency with the input of the relevant industry association.
151. 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*

152. Copyright Agency has data access arrangements with Copyright Advisory Group to the COAG Education Council and Universities Australia to provide access to data from surveys in schools, universities and TAFEs. The survey records are 'processed' by Copyright Agency to extract:
- information relevant to estimating the overall extent of content usage under the statutory licence, which is taken into account (together with other matters) in licence fee negotiations; and
  - data to assist in the distribution of licence fees.

### *Tribunal proceedings with licensees*

153. Copyright Agency is currently engaged in the following proceedings in the Copyright Tribunal:

- with the government of New South Wales, regarding arrangements under section 183A of the Act; and
- with three media monitoring companies – Meltwater, Isentia and Stream – regarding Copyright Agency’s licensing arrangements for media monitoring.

### *Licence negotiations with peak bodies for the education sector*

154. Copyright Agency is currently engaged in negotiations with peak bodies regarding licensing arrangements for the education sector:

- with the Copyright Advisory Group to the COAG Education Council (CAG) for the school sector;
- with Universities Australia (UA) for UA’s 39 university members; and
- with CAG for the TAFE sector (excluding Victorian TAFEs, which are covered by a separate agreement).

155. The agreements covering all of these sectors expire in December 2018.

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

156. 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.

157. Copyright Agency distributes in accordance with its Distribution Policy and its Constitution.
158. From time to time, some members have raised concerns about payments that Copyright Agency makes to rightsholders who have an obligation to share the payment with any other rightsholders: for example, under a book publishing agreement. Copyright Agency says that it is reviewing its processes and communications to improve members' understanding and implementation of their obligations regarding the sharing of payments.
159. Copyright Agency informs members of changes to distribution policies and processes, via its website and eNewsletter, 'Creative Licence'.
160. During the Review Period, members were informed about such matters as:
- a new process for images copied with text;
  - distribution-related matters considered by the Board at its December 2017 meeting; and
  - the use of undistributed funds.

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

161. Copyright Agency reports that the administrative 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.
162. Copyright Agency's Board of Directors approves the society's annual operating budget and reviews the budget at each Board meeting.

163. Copyright Agency's Constitution allows it to deduct up to 1.5% of revenue for 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.
164. Copyright Agency publishes information about deductions in its "Distribution Policy" and 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)**

165. Under Copyright Agency's Constitution, its Board comprises directors elected by author 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 appears on Copyright Agency's website.
166. The merger with Viscopy entailed amendments to Copyright Agency's Constitution to provide for a new class of member, Visual Artist Members, and an additional Board director elected by them. An interim Visual Artist director was appointed, pending the election of directors at the annual general meeting in November 2018.
167. 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 and the Arts. In addition, the Annual Report is tabled in Parliament.

168. Copyright Agency provides, on request, information to members about entitlement to payment, in accordance with privacy and confidentiality obligations.

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

169. 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.

170. 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)**

171. Education and awareness activities conducted by Copyright Agency for its (including Viscopy's) members, licensees and other stakeholders include:

- information on the corporate website and other websites managed by Copyright Agency;
- eNewsletter to members and other stakeholders ('Creative Licence');
- eNewsletter to visual arts stakeholders ('Canvas');

- 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).

172. 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.

173. 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.

174. 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.

175. 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)**

176. As noted earlier, for convenience a copy of clause 2.9 of the Code is Appendix B to this Report.

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

178. 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)**

179. 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)**

180. The Code is available on the Copyright Agency website as is information about the review of its compliance with the Code, the

Code Reviewer's annual Compliance Reports and his triennial review of the operation of the Code itself.

181. Copyright Agency alerts members and other stakeholders to the Code and its annual review in a number of ways including on its website and in its monthly eNews.
182. Copyright Agency includes reference to its compliance with the Code in its annual reports.
183. 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**

184. 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 IVA Division 4 of the Act. Under this Part, 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.
185. 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.

186. Finally, Screenrights has also been declared to be the collecting society in respect of television, radio and internet broadcasts under the government copying scheme s183 of the Act (Copyright Agency is also declared for that purpose).

187. As at 30 June 2018, Screenrights had 4,228 members and 1,343 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:

<b>Type of Entity</b>	<b>Number</b>
Screenrights Members	4,228
Licensees	1,343
<i>Schools -- Government, Catholic Systemic, Independent -- Peak Bodies</i>	26
<i>Higher education including universities</i>	47
<i>Private Vocational Education/Training Organisation (inc ELICOS)</i>	11
<i>Government Agency</i>	387
<i>TAFE (including individual institutions and Departments representing multiple institutions)</i>	1
<i>Resource Centre</i>	8
<i>Retransmitter</i>	5
<i>NZ -- Tertiary</i>	27
<i>NZ – Schools</i>	829
<i>NZ – Resource Centre</i>	2

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

188. Screenrights claims to have complied with the legal framework governing its operations and has made no changes to its Constitution or other documents relevant to the legal framework during the Review Period.

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

189. Membership of Screenrights remains open to all eligible rightsholders. Membership increased in the Review Period from 4,107 to 4,228 members.

190. 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 in the Review Period:

1. Corporate Website – In April 2018 Screenrights launched a new corporate website. The website aims to provide information to members based on their membership type for example, producer, director or writer - <https://www.screenrights.org/screen-industry/membership/>
2. Online Membership Application – In May 2018 Screenrights introduced an online Membership Application process on its corporate website - <https://www.screenrights.org/screen-industry/membership/join/>. The online application has minimised the need for paper based forms and streamlines the membership process.

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

191. During the Review Period, Screenrights updated its application forms for licensees to reflect annual CPI based changes in rates.
192. Screenrights updated its applications for Australian educational licensees as a result of the changes to the statutory licence enacted in the *Copyright Amendment (Disability Access and Other Measures) Act 2017*. This Act deleted the existing educational statutory licence for broadcasts in Part VA, and replaced it with a new simplified provision in Part IVA, Division 4. One aspect of the amendment was to simplify the process whereby certain institutions qualify as “educational institutions” for the purposes of the statutory licence. The administrative process of publishing a notice in the Government Gazette was removed. Accordingly, Screenrights was able to simplify its application forms.
193. In addition, with regard to for-profit institutions, Screenrights has replaced the per student amount calculation of equitable remuneration with a percentage of gross tuition fees set at 0.1%. This approach is simpler for institutions to comply with as it does not require them to calculate their student numbers. In setting the rate, Screenrights calculated a level that was equivalent to the pre-existing per student fee to ensure that the level of remuneration remained fair.
194. Finally, the agreement, application and calculation of remuneration were merged into a single document which further simplified the process and increased transparency for the applicant institution.

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

195. The Distribution Policy was updated in November 2017 to provide for

a Cultural Fund. In accordance with Screenrights' Articles of Association, from the Review Period onwards, Screenrights' Board will be able to allocate amounts to the Cultural Fund of up to 1% of Screenrights' distributions.

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

196. Screenrights' expenses for the year ended 30 June 2018 were approximately 16.55% of gross revenue (see Clause 2.5 (a) of the Code). This figure is unaudited and the audited figure was in Screenrights' Annual Report for the financial year 2017/2018, where a comparison with the years 2015/2016 and 2016/2017 was depicted.

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

197. Screenrights Annual Report for 2017/2018 includes the audited accounts as at 30 June 2018.

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

198. Screenrights reports that it has taken steps, including through staff training, to ensure that all staff are aware of and comply with the Code. A copy of this year's training materials was provided to the Code Reviewer.

199. In addition, Screenrights reports that it has arranged training sessions to familiarise staff with its ADR procedures and complaints handling procedures. The relevant information is available on Screenrights' website.

200. 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)**

201. Screenrights continues to promote and provide information about Screenrights on its website, which is reviewed and updated regularly.

202. In addition, Screenrights continues to promote its role and functions as a collecting society by sponsoring and participating. through speaking engagements, industry market stalls and providing attendees with hardcopy marketing material about Screenrights at the following events:

- Australian International Documentary Conference March 2018
- Screen Edge NZ May 2018
- 37°South Market at Melbourne International Film Festival August 2017
- Screen Production and Development Association Summit (NZ) November 2017
- Screen Forever (run by Screen Producers Australia) November 2017

203. Also during the Review Period, in April 2018, Screenrights launched a new Cultural Fund.

204. By way of background, Screenrights' Articles of Association 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)).

205. The Board approved the decision to create a Cultural Fund in its meeting of 27 September 2017. The purpose of the Cultural Fund is to support people who have exciting and innovative new projects which will foster the creation and appreciation of screen content in Australia and New Zealand. The Cultural Fund is promoted on the corporate website (see: <https://www.screenrights.org/cultural-fund/>) and through direct email mailouts.

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

206. As noted earlier, a copy of clause 2.9 of the Code is Appendix B to this Report. In response to clause 2.9 (a) (i) and (ii) of the Code, Screenrights referred me to the Appendix to its Annual Report for 2016-2017 (page 52 of that Report). That was the latest Annual Report in existence when Screenrights provided its Compliance Report to me. Subsequently, its Annual Report for 2017-2018 was tabled before Parliament on 7 December 2018, and the comparable information for that period (being the Review Period) was contained in an Appendix to that Report (page 57 of that Report).

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

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

208. In addition, in the Review Period, Screenrights had over 1.6 million individual claims and opened competing claims involving 558 series and 1,581 one off programs. These competing claims were published on Screenrights' member portal MyScreenrights. Throughout the year competing claims were closed for 515 series and 1,318 one off programs.

209. In the report for the last review period (2016-2017) it was noted that

on 3 March 2016, the Australian Writers' Guild (AWG) and the Australian Writers' Guild Authorship Collecting Society (AWGACS) commenced litigation in the Federal Court of Australia against Screenrights. Screenrights filed its defence to AWG/AWGACS' Statement of Claim on 1 June 2016.

210. Since that time, the litigation remained on foot, despite attempts at mediation. The hearing was to commence on Wednesday, 7 November 2018, but happily the three parties settled the dispute, and published a statement to that effect. The joint statement is to the effect that "the settlement agreement ... will see the three organisations working together for the benefit of scriptwriters and the industry as a whole".

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

211. 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.
212. Screenrights includes a statement in its Annual Report (under "Governance") on its compliance with the Code.
213. 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”)**

## **General**

214. As stated in previous reports, PPCA was established in 1969 by the owners of copyright in sound recordings. The object was the issue of blanket licences for the broadcast and public performance of copyright-protected sound recordings and music videos.

215. The constitution of PPCA makes clear that its objects are focussed on the exercise and enforcement of copyright in respect of the communication rights and public performance rights in (a) sound recordings; and (b) music videos that embody sound recordings, or soundtracks which, if made as a sound recording, would be a sound recording.

216. PPCA is not a declared collecting society under the Act.

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

217. PPCA reports that neither its constitution nor its Privacy Policy was changed during the Review Period.

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

218. PPCA is a company limited by shares, the shares still being held equally by the remaining three of the six founding members. The three members are ineligible to receive any dividend, and they receive remuneration only on the same basis as other licensors, in line with PPCA’s “Distribution Policy”.

219. As a result, whereas other collecting societies represent the interests of their “members”, PPCA represents the interests of “licensors” (ie the owners or exclusive licensees in respect of copyright in sound recordings).
220. PPCA’s relationship with licensors is governed by the terms of its standard “Input Agreement”, rather than by PPCA’s constitution. The Input Agreement allows PPCA to sub-license on a non-exclusive basis, and to create blanket public performance and broadcast licensing schemes for the users of sound recordings (particularly, small businesses).
221. 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 depend on ownership of copyright by the artists.
222. As at 30 June 2018, PPCA had 2,401 licensors representing major record companies and independent copyright owners. The number of registered artists was 4,064.
223. Neither the Distribution Policy nor the Input Agreement were amended during the Review Period.
224. 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.
225. 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.

226. The PPCA website includes “FAQ” sections for both licensors and artists, to assist in the explanation of the services provided by PPCA.
227. During the Review Period, PPCA emailed its registered artists and licensors several times, including to:
- announce the call for expressions of interest for Indie Week 2018
  - inform Artists and Licensors of The Australian Cultural Fund AFC Boost grant initiative
  - convey a message from the PPCA Artist Representative Directors

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

228. At 30 June 2018, PPCA had over 61,600 businesses licensed for the public performance of protected sound recordings and music videos. By volume, this remains the largest sector of PPCA’s licensing activity and is managed by the largest team of staff (the Public Performance Licensing Department).
229. PPCA also has in place communication licences for those offering other services (including broadcasters and linear and customer-influenced streaming services).
230. All radio broadcast, television broadcast and communication licences previously advised remain on foot. They include, for example:
- radio broadcast licences and separate simulcast licences for Commercial Radio Australia members;
  - radio broadcast and optional simulcast licences for members of Community Broadcasting Association of Australia (“CBAA”) and those community radio stations that operate independently of CBAA;

- television broadcast licences and communication licences with free to air television broadcasters (including Free TV members);
- broadcast and communication licences with subscription television operators (including IPTV operators); and
- television broadcast licences, communication licences and simulcast licences with the ABC and SBS.

231. PPCA also continued established licences with online music streaming services including linear and semi-interactive online services.

232. In addition, PPCA continued to license background music services that provide music services to commercial premises by means of a broadcast or stream.

233. Joint licences with ARIA and APRA|AMCOS for eisteddfodau, and ARIA, APRA|AMCOS, Copyright Agency and Viscopy, for early learning providers, remain in place.

234. The PPCA website contains extensive information on its standard public performance licence schemes, including descriptions of tariff categories and costs of the relevant licences (tariff sheets).

235. Licence applications, incorporating Licence Terms, may be submitted (a) online, (b) via a downloadable application form, (c) using PPCA's hard copy application form, or (d) by phone.

236. In preparation for the transition of public performance licensing to *OneMusic Australia* (see [79]-[81] above), the standard terms and conditions for PPCA's public performance licences were amended in October 2017 with the following change:

*"Clause 3.2*

*Either you or PPCA may terminate this Agreement by written notice to the other party. A termination notice under this clause must be given to the other party at least two weeks before the termination date specified in the notice and will take effect on and from the date specified in the notice."*

237. In addition, the Licence Application form was updated in October 2017 to provide the following notation against the Commencement Date of Licence on page 3:

*"Note: Date on which you started using protected sound recordings/music videos at the premises. This will be the date from which the PPCA licence will start unless otherwise agreed."*

238. These changes were introduced in further support of the transition to single joint licences through *OneMusic Australia*, now scheduled for the second half of 2019.
239. PPCA's website also contains information on the range of broadcasting and digital licences available (including the application process) and a range of FAQs covering matters both specific to PPCA and on copyright generally.
240. PPCA's public performance tariffs generally increase annually, on 1 July, by an amount equivalent to 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 2018 the notification letters were issued on 29 March.

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

241. 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, and allocates and

distributes them to licensors who have authorised PPCA to issue licences on their behalf. 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.

242. 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.

243. 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)**

244. 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.

245. PPCA's Annual Report for the year ended 30 June 2017 (published during the Review Period) showed that the expense to revenue ratio was 14%.

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

246. PPCA's financial records are audited annually.
247. 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.
248. In addition, 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.
249. The PPCA Board, committees and relevant managers are also provided with PPCA's "Competition and Consumer Compliance Guidelines" and "refresher" presentations are held periodically.
250. 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. At each meeting of the PPCA Board, directors are reminded of their obligations and duties.
251. The PPCA Management Team meets each week to discuss operational and strategic matters.

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

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

253. Members of the Licensing Department meet 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 other PPCA policies.
254. A document containing standard responses to frequently asked questions is provided as a resource to the Licensing Department. These responses to FAQs were updated in August 2017 to include advice on *OneMusic Australia* (question 15) and licensing requirements obligations when using streaming services for the public performance of sound recordings (question 26).
255. During the Review Period, Licensing Department staff attended training sessions on data matching and refund processing and case management, as well as updates to the document management system.
256. Licensing and credit teams also attended training on contract law and other areas of commercial law. All PPCA staff attended training in EEO, Anti-Discrimination, Bullying and Harassment.
257. Both the Licensing and Distribution Departments also meet regularly for staff training and process review purposes.
258. Departmental managers continue to be provided with copies of any complaints received so that they can be discussed and reviewed at team meetings.
259. Staff training sessions on the Code for the Licensing, Credit, Enforcement and Distribution Departments are held regularly.
260. 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.

261. During the Review Period, new staff were sent to external courses dealing with customer service / telephone skills.

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

262. In addition to the communications previously outlined, PPCA reports that it meets regularly with licensees and key licensee representative bodies.

263. In addition, PPCA representatives also participated in a range of interactions with licensees and their representative bodies in order to consult on proposed joint licensing schemes to be offered by *OneMusic Australia*. Details of this joint consultation process is provided in the 2017/18 Compliance Report provided by APRA (see [79] – [81] above).

264. PPCA distributes explanatory materials (either by mail, distribution at specific industry events, placement in trade publications, or publication on the website), and publishes a quarterly newsletter, *In The Loop*, which is forwarded to each licence holder with the periodic licence renewal documentation.

265. PPCA itself is a member of several licensee representative bodies.

266. During the Review Period, PPCA wrote to approximately 7,850 businesses advising them of the licensing obligation relating to the use of protected sound recordings, and the convenience offered by the PPCA licence. The information pack supplied to them includes notification of the operation of the Code.

267. 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.
268. PPCA regularly issues a newsletter, *On the Record*, to artists and licensors.
269. PPCA continues to use Facebook and Twitter to communicate directly with registered and potential artists and licensors, 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 2,335 "likes" on Facebook and 1,895 "followers" on Twitter.
270. 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.
271. 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.

272. PPCA's website is a source of information for music users and copyright owners, and is updated regularly.

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

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

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

274. PPCA publishes notification of the process for the annual review of compliance with the Code on its website.

275. 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**

276. The Australian Writers' Guild Authorship Collecting Society states that there have been no substantive changes to its practices since the last reporting period in 2017, outside of its ongoing issues with domestic collection and distribution with Screenrights previously raised with the Code Reviewer. As reported in the Screenrights' section of this Report, that dispute and the associated litigation was settled (see [210] above).

277. The number of members of AWGACS at 31 July 2018 was 1,696 members, an increase of 27 since the last report.

278. AWGACS is not a declared society under the Act, but elects to submit voluntarily to the Code of Conduct for Collecting Societies.
279. 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, reflecting 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.
280. 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)**

281. AWGACS asserts that it has met all of its obligations with regard to its obligations under clause 2.1 and that there has been no change since the previous annual Compliance Report.

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

282. As noted above, the number of members of AWGACS as at 31 July 2018 was 1,696, an increase of 27 since the last report.
283. There was no change to the membership criteria or to the constitutional obligations of members during the Review Period. 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.

284. Membership remains available to all scriptwriters.

285. AWGACS states that it has received no complaints from its members about any of its obligations under the Code.

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

286. 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)**

287. AWGACS does not grant licences and therefore does not recover licence fees for distribution.

288. AWGACS distributes monies collected from partnered societies to its members on their behalf. This is in accordance with its constitution and is governed by its Distribution Policy as determined by the Board.

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

290. The AWGACS reporting period changed as of 1 January 2017 from a calendar year to a financial year. In the six months ended 30 June 2017 AWGACS collected \$865,126.57 for distribution in 2018 and distributed \$139,340.80 from prior year collections.

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

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

292. 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.
293. In addition, AWGACS claims that it invests, to the extent that human and cash resources permit, in pursuing new sources of income for its constituents.
294. A special levy for legal costs of 5% was charged on the funds collected in 2016 that were distributed to members in 2017.

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

295. 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.
296. The audited annual accounts for the six months to 30 June 2017 were presented to members at the AGM and included: details of total revenue, the total amount and general nature of expenses, and the allocation and distribution of payments to members.
297. As previously stated, AWGACS voluntarily submits to the extensive governance and accountability reporting measures and reviews of CISAC.

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

298. During the Review Period, there were two staff appointments, to the position of "AWGACS Officer" within AWGACS. The appointees were advised of AWGACS's obligations under the Code.
299. Existing AWGACS 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)**

300. As a small "developing" society, AWGACS itself 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 collecting societies in general in Australia.
301. AWGACS has also made five submissions to various reviews since AWGACS last report.
302. Internationally, its membership of CISAC is directed to accomplish the same purposes.
303. AWGACS seeks to increase awareness among its members and the scriptwriting community via sponsorship of the Annual AWGIE Awards.
304. In addition, AWGACS promotes awareness of scriptwriting royalties to its members and industry stakeholders via electronic bulletins and an accessible and regularly updated website.
305. Similarly, all of AWGACS foundation documents are available to

international collecting societies via the CISAC online portal, and domestically via the AWGACS website.

306. AWGACS also provides an advice service to members and to the industry on copyright and related issues.

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

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

308. 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)**

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

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

311. 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**

312. Established by the Australian Directors’ Guild (ADG), the Australian Screen Directors Authorship Collecting Society Ltd (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.
313. As has been previously noted, ASDACS is not a declared collecting society under the Act.
314. ASDACS reports that if continues to be administered by the ADG through a services contract but continues to be governed by a separate board and its own constitution.
315. ASDACS consists of two full-time staff members and two part-time staff members.
316. ASDACS states that it 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 unwaivable right to remuneration for audio-visual authors across the globe.

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

317. ASDACS reports that there were no changes during the Review Period.

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

318. By the end of the Review Period on 30 June 2018, membership had grown to 1,109 – an increase of 108 members (10%).

319. ASDACS reports that there was no change to its membership rules or procedures during the Review Period.

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

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

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

321. ASDACS reports that its international royalty income for the 2017 calendar year totalled \$1,213,315. Additionally, a small amount of domestic retransmission royalty revenue totalling \$17,371 was received from Screenrights

322. A total of \$26,007 bank interest earned on ASDACS income over 2017 will also be distributed to members in accordance with its constitutional rules.

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

323. ASDACS' 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:** an administrative fee of 20% which covers ASDACS' operational expenses;
- **Membership fee:** a membership fee of 10%, waived for members of the Australian Directors' Guild (ADG), as well as of

the Directors and Editors Guild of New Zealand (DEGNZ); beneficiaries and retirees; and

- **Cultural Purposes Fund:** a cultural fund fee of 4%; In 2017, this amounted to \$49,294, \$33,000 of which was granted to the ADG (ADG Awards and ADG/DGA Finder Awards) and \$5,000 was granted to the DEGNZ (Directors master class event) for the support and promotion of directors in accordance with the ASDACS Constitution.

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

324. At its Annual General Meeting, six members were appointed to the ASDACS Board, including four ADG members and one DEGNZ member. The appointed specialist director in finance retired from the board.

325. ASDACS is 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)**

326. An ASDACS full-time staff member attended the Legalwise seminar on 'Legal updates in Film, TV and Entertainment', as well as the '18th Biennial Australian Copyright Council Law and Practice Symposium', to keep updated on legal developments. The newly appointed full-time staff member received further training on ASDACS' technical systems and processes from the full-time staff member.

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

327. ASDACS launched a new website in May 2018 with the aim of increasing access to information and resources for directors, members and stakeholders.
328. A new Distribution Rules and Practices Policy was also launched with the new website in order to increase transparency and awareness around ASDACS processes and compliance requirements.
329. The ASDACS website continues to promote the importance of copyright and makes detailed reference to the nature of copyright as administered by collecting societies in Australia and overseas, addressing the functions and policies of ASDACS in particular.
330. ASDACS continued to send a quarterly e-news to keep members informed and aware of its work and progress. Social media (Twitter, Facebook and LinkedIn) have also been utilised to keep ASDACS members and international partners updated.

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

331. 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)**

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

333. 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 2018 Call for Submissions.

334. Members can download those documents or obtain hard copies upon request to the ASDACS office.

335. 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**

336. 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**

337. APRA AMCOS deal with complaints and disputes in paragraphs 9.1 – 9.15 of the text of their report to me and in a separate volume of Accompanying Underlying Documents. Allowing for the self-interest that a collecting society has in the way in which it describes complaints and its handling of them, it must nonetheless be acknowledged that APRA AMCOS’s report is commendably detailed and, apparently, frank.
338. APRA AMCOS say that they have applied the distinction between complaints and disputes referred to above.
339. The relevant volume of Accompanying Underlying Documents is Volume 2 which is divided by tabs.
340. The APRA AMCOS “Complaints Procedure” document is at Tab 1. It is publicised on the APRA AMCOS website and explains to readers who is entitled to make a complaint and how to do so, offers to provide assistance in formulating a complaint, and sets out APRA AMCOS’s procedure for dealing with complaints. For example, the societies undertake to acknowledge the complaint within seven days of receiving it and the Complaints Procedure document sets out a timetable of steps that APRA AMCOS undertake to take. The first of the steps, is to respond to the complaint in writing within 14 days after the acknowledgment of receipt.

341. APRA AMCOS state that they have included all documents and correspondence that have been dealt with as complaints during the Review Period.
342. Member complaints, together with related correspondence and documents, are in behind Tab 2, while Licensee complaints are behind Tab 3.
343. Eight new Member complaints were received during the Review Period and there were none carried over from the previous review period.
344. Five new Licensee complaints were received during the Review Period and one was carried over from the previous review period.
345. Where APRA AMCOS are unsuccessful in their attempt to license a user of music and the matter is referred to APRA AMCOS's external solicitors, the matter is not categorised as a complaint unless a complaint is received regarding the actual conduct of an APRA AMCOS employee or of APRA AMCOS's external solicitors.
346. As at 30 June 2018, there were 133 ongoing general infringement matters under the management of APRA AMCOS's Licensing Departments, of which 51 were being handled by APRA AMCOS's external solicitors.
347. Where a licensee refuses to pay invoices issued by APRA AMCOS, the matter is pursued by their Finance Department and then referred to external mercantile agents to manage, and, if necessary, to pursue through debt recovery proceedings. As at 30 June 2018, there were 1,018 "clients" under the management of APRA AMCOS's Australian external mercantile agent, and 273 under that of APRA AMCOS's New Zealand external mercantile agent.

348. Debt recovery steps are not characterised as “complaints” unless a complaint regarding the conduct of the Finance Department or debt collector is made. No such complaints were made during the Review Period.
349. As previously reported, in April 2015 APRA AMCOS launched a new independent ADR facility called “Resolution Pathways”.
350. The ADR facility assists in the resolution of disputes between APRA AMCOS and their licensees or potential licensees, and between APRA AMCOS and their members, as well as disputes between members themselves.
351. APRA AMCOS appointed Shirley Kirschner of Resolve Advisors as the Independent Dispute Facilitator to administer the ADR scheme. Ms Kirschner worked with APRA AMCOS’s management and the ACCC to establish a prescribed governance framework for the independent ADR facility. A fundamental feature of this is a Consultative Committee comprising an equal number of member and licensee representatives. The Independent Dispute Facilitator must consult with the Committee on matters such as the monitoring of the operation of the scheme, including its cost; receipt of feedback on the scheme; and the making of a recommendation about the budget for the operation of the scheme.
352. The ADR facility is publicised on the APRA AMCOS website, in materials released to the public, and in legal correspondence. APRA AMCOS has given its external solicitors standing instructions to make the existence of the ADR facility known to parties prior to the commencement of legal proceedings and negotiations.

353. When a dispute arises between members, APRA AMCOS encourage them to resolve it themselves or by way of ADR.
354. Where APRA AMCOS are notified of a dispute among members or involving members of an affiliated society, as to the allocation of shares in a work administered by APRA AMCOS, the societies may, at their discretion, place all or any of the performance credits relating to the work in suspense until the dispute is settled or resolved by a court or by ADR. The APRA AMCOS policy in this respect is set out at Rule 13 and Rule 7 of APRA's and AMCOS's respective Distribution Rules.
355. Under the terms of APRA's authorisation from the ACCC, the ADR facility's Independent Resolution Facilitator must submit an annual report to the ACCC detailing the disputes that have been notified to her. A copy of her report to the ACCC for the year ended 31 December 2017 is at Tab 4.
356. Ms Kirschner's report for that year states that there were 10 referrals to her over the year. A short summary of them is set out at pages 7 – 8 of Ms Kirschner's report without identifying the participants.
357. Ms Kirschner reports that most of the matters referred involve the issue of splits between writer members.
358. In addition to the 10 new referrals to Ms Kirschner during 2017, there were a further two that were associated matters and two that were carried over to 2017 from the past.

## **Complaints by Members**

### ***APRA AMCOS Member Complaint 1***

359. A Writer Member contacted APRA in relation to the system for election to the Board of Directors and voting more generally at the Annual General Meeting (and see Member Complaint 4 and 7 below).

360. Briefly, under the APRA constitution, the right to vote depends upon whether the Full Member receives an allocation of some share of monies collected by APRA during the previous two consecutive financial years. A Full Member is entitled to receive notice of, and to vote at, the next general meeting after he or she is allocated any such share of monies.

361. The Writer Member complained that he had had original music broadcast on community radio in the last two years for which he was entitled to be paid, but that the community radio station's reporting system had failed him. His email of complaint stated:

"I believe my rights as a member are unfairly denied. I believe, as previously stated, this is due to the combination of the less than adequate reporting for community radio and the financially based voting policy."

362. APRA, through its Head of Legal, Corporate & Policy, wrote a detailed response to the complainant explaining that under the APRA constitution a member is not entitled to receive notice of or vote at general meetings if he or she has not been allocated any share of monies collected by APRA during the previous two consecutive financial years. The letter added that a Full Member who is entitled to receive notice of and to vote at general meetings is entitled to cast one vote plus an additional vote for each \$500 of that member's earnings during the preceding financial year, with votes being capped

so that no member can control more than 15% of the votes able to be cast at any meeting.

363. APRA also explained the difference between the reporting of the broadcasting by commercial radio stations as against that by community radio stations. The latter have informed APRA that detailed music reporting is not currently feasible.
364. There appears to have been no response by the complainant to that letter. The complainant is also a member of an organisation, a number of other members of which had raised the same concern with APRA, either by way of email or posts on the organisation's Facebook page.
365. APRA gave permission for its letter of explanation to be posted on the organisation's Facebook page as a way of responding to all members of that organisation who had raised concerns.
366. APRA AMCOS concludes their report on this complaint as follows:
- "While the writer members concerned do not appear to have accepted APRA's position, the reality is that APRA's Board election and AGM voting system can only be changed if the APRA Constitution is amended by way of special resolution at an AGM or EGM. No such special resolution was put at the 2018 APRA AGM."
367. Finally, the report states that the particular complainant did not proceed to make a claim against APRA's unlogged performance pool as he had been invited to do.
368. In the circumstances APRA regards the matter as concluded.

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

369. I think that APRA AMCOS was entitled to take the view that the particular complaint had been dealt with as well as it could be in the circumstances.
370. It cannot, however, be overlooked that Member Complaint 1, Member Complaint 4 and Member Complaint 7 seem to raise the same issue: a view that there is an element of unfairness in the voting rights of members at the Annual General Meeting, and, I assume as a result, the system for the election of directors.
371. Since three members, apparently quite independently of each other, raised a generally similar complaint, I raise for consideration by APRA the desirability of sending out to all members a simple explanation of the voting régime and the rationale underlying it.
372. Inadequate reporting by the community radio sector seems to lie at the heart of the particular problem. It is difficult to understand how APRA can overcome that problem.

### ***APRA AMCOS Member Complaint 2***

373. This complaint commenced with an email from a Writer Member dated 16 February 2018. It relates to "tribute" and "cover" bands which perform for a monetary reward without a licence.
374. The letter of complaint stated: " ... as a songwriter I would not want my songs being played somewhere by someone who is, whether it be the promoter, performer or the venue, using my work to make a profit when I should receive royalties from any such performances unless that performance has my or my publisher's specific authorisation."

375. The complaint was, in substance, that APRA was not active or vigilant enough in enforcing copyright.

376. APRA responded promptly and this was followed by a lengthy letter dated 1 April 2018 from the songwriter member. The lengthy letter included the following:

“I have attached an official letter of complaint in respect to the continued performance of these unlicensed Dramatic Context Shows and hopefully something is done and it does not get to a point where it needs to be addressed via the Dispute Resolution Process.”

377. The “Notice of Complaint” complained about “the unrestricted proliferation of unlicensed Dramatic Context Musical Shows”.

378. The matter was elevated to the incoming CEO of APRA who replied at considerable length and in detail on 22 May 2018. The letter explained the nature of a “dramatic context” according to APRA’s new definition. Apparently, the new definition is more broad than the previous one. The result is that if the performance falls within the (broader) definition, it will not be covered by the venue’s standard APRA licence, and will involve an infringement of copyright.

379. APRA’s CEO advised the complainant:

“We believe the new definition is easier to understand and more consistent with the definitions used in peak theatrical markets overseas. However, it remains the case, in relation to tribute and cover bands, that a band that simply “dresses up” in the style of a particular band and covers that band’s songs may well not be considered to be performing in a “dramatic context.”

Of course, as soon as there is a plot and character element, the performance requires a different type of licence. In particular, it is highly likely that if a performance is biographical in nature, it will fall within the “dramatic context” definition. The licence fees under our

Dramatic Context licences are higher than under our standard Live Performance licences to take account of the issues you have raised.”

380. The CEO’s letter of 22 May 2018 concluded by making three suggestions of the way forward.
381. Apparently, the complainant has not corresponded further with APRA and APRA, justifiably, considers the complaint to have been resolved as far as it could be.

### ***APRA AMCOS Member Complaint 3***

382. On 6 December 2017, a Writer Member complained that the APRA registration system did not permit an individual who was both a composer and a publisher to register his or her work. He complained that APRA’s system should recognise that the composer might also be the publisher, or, even if not, that the composer may be entitled to 100% of the copyright royalties, notwithstanding the existence of a commercial publisher. Finally, he complained that there was no obvious way for his individual “classical” work to be identified.
383. On the same day an APRA officer telephoned the complainant and discussed the complaint.
384. The next day (7 December), APRA acknowledged receipt and undertook to investigate the matter as a matter of urgency.
385. Twelve days later (on 19 December), APRA’s Writer Services National Manager emailed the complainant to clarify the work registration process, including an explanation of what the published tick box referred to, and responding to the complainant’s concerns.
386. There has been nothing further and APRA justifiably regards the issue as resolved.

#### **APRA AMCOS Member Complaint 4**

387. A Writer Member complained about the régime that governs voting at general meetings of members of APRA (see Member Complaint 1 and Member Complaint 7).

388. By email of 22 September 2017 the Writer Member complained that he was aware of APRA members who had composed music that was broadcast in the preceding two years on which they should have, but had not, received royalties, and therefore were not allowed to vote. The writer of the email said: "I have seen letters and published radio playlists supporting their claims".

389. The email contained the following paragraph:

"Composing is a life long vocation for tens of thousands of Australians, with many ups and downs, so it's unfair and undemocratic to exclude dedicated, talented musicians in our music community from voting because they haven't earned royalties for 2 years, or because APRA failed to collect the relevant data from community media.

The "2 year" rule, and the rule allowing members an extra vote for every \$500 earned, have been described by musicians as "active discrimination", "a closed loop of designed disadvantage for independent musicians" and "APRA controlled (policies) act together to limit members' rights".

390. Apparently, the writer was writing on behalf of an association of musicians and he proposed that APRA should remove the two-year rule, that it should limit voting to one vote for each Writer Member and each Publisher Member, and that it should endeavour to report all "community music playlists".

391. The Head of Legal, Corporate & Policy acknowledged receipt of the complaint on 22 September and wrote a lengthy and comprehensive

substantive response on 3 October 2017 which argued, for reasons stated, that the voting régime was not undemocratic or inequitable. The letter also pointed out that the voting régime was entrenched in APRA's constitution which would have to be changed if the voting system were to be changed.

392. The complainant asked for permission to post the letter on Facebook or to quote from it, to which consent was immediately forthcoming.

393. On 5 October 2017, the complainant asked a number of further questions and the answers were provided promptly.

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

394. I agree with APRA that in these circumstances, it was entitled to regard the complaint as "resolved" in the sense that there remained nothing for APRA to do to address it.

395. But see my comment under Member Complaint 1 above and Member Complaint 7 below.

### ***APRA AMCOS Member Complaint 5***

396. A Writer Member complained by email on 24 September 2017 over a lack of response to his enquiries regarding unpaid international royalties. In his email he asserted that he had not received a single cent from APRA since December 2013, despite performing live himself and having his music performed publicly by other musicians for whom he writes. He said that prior to December 2013 he was paid at least something every six months, and that his catalogue had only increased over the intervening period.

397. The thrust of his complaint was that he had written to APRA several times explaining the problem but with no answer.
398. The next day, 25 September, APRA's Head of Legal, Corporate & Policy, acknowledged receipt of the complaint and promised a formal response within 14 days.
399. That response was provided on 20 October (outside the 14 day period promised) but was comprehensive.
400. APRA explained that it has reciprocal arrangements with sister Performing Right Organisations (PROs) overseas including "GEMA" in Germany. The letter said:
- "The reality is that APRA is very much reliant on its sister PROs overseas performing their obligations in order for APRA to fulfil its obligations to its members. Overseas PROs have their own distribution rules & practices which do not allocate royalties to every performance of a work and even when they do, the distribution of the royalties can be significantly delayed."
401. APRA's email explained that the only course available to APRA in such a case was to take the matter up with the PRO in the territory in which the unremunerated performance occurred. The email said that the matter had been taken up with GEMA in Germany and that, assuming that GEMA had collected licence fees from the relevant venues, it would distribute royalties to APRA as part of its distribution for 2017, which APRA should receive in April 2018 and pay to the complainant in the second half of 2018.
402. APRA's email dealt with other specific issues that the complainant had raised, and referred to the possibility that if the complainant's activities were focussed in Germany, he might be better served by resigning from APRA and joining GEMA.

403. The complainant replied on 25 October 2017 expressing appreciation for APRA's detailed response and indicating his unwillingness to join GEMA and his preference to stay with APRA.
404. On the same day, APRA's Head of Legal, Corporate & Policy replied to the effect that he would pass the complainant on to APRA's UK/EU Representative, who was best placed to follow the matter up via APRA's International Services Department.
405. APRA reports to me that its UK/EU Representative has resolved the concerns of the complainant who has maintained his membership of APRA. APRA reports that the complainant received his outstanding royalty claims for German performances, and that his AMCOS account has been set up for future collection of mechanical royalties earnings.
406. APRA justifiably says that it considers the complaint to have been resolved.

### ***APRA AMCOS Member Complaint 6***

407. A Writer Member complained about the "gender parity" policy of APRA (and see Member Complaint 8 below). Apparently, there was an APRA article referring to the APRA AMCOS policy of ensuring that 25% of all *new recruits to membership* are women. The member's letter of complaint referred to "sexist nonsense". The member referred to highly paid women performers on the international scene. The member complained that APRA AMCOS were in fact showing undue favouritism to women solely on the basis of their gender. He asserted that APRA AMCOS were offering money for training to women and not to men, and that this is unfair. As well, he asserted that APRA AMCOS were restricting membership based on gender preference. His concluding sentence referred to "sexist, hypocritical bigoted nonsense".

408. APRA responded on 10 August undertaking to provide a formal response within 14 days, which it did on 18 August. APRA's response attempted to assure the complainant that it was not "discrediting" men or excluding men from the training and professional development opportunities offered by APRA AMCOS. The reply said that APRA AMCOS's commitment to promote in parity would see a minimum 40% - 60% of their programs and initiatives taken up by men, and that it was only fair that the visibility of female songwriters, who were qualified and able to represent in their field, be increased. The letter responded to the complainant's point about high earning female artists by pointing out that within the APRA AMCOS membership, female members share in only 10% of the total royalty pool paid to writers.

409. The letter concluded by saying that APRA AMCOS had made a commitment to promote a level playing field between men and women within their membership, and that they stood by those initiatives.

410. There was no further response from the complainant and APRA considers the complaint to have been resolved.

411. I suspect that "resolved" in this context means "reached a stage where nothing remained to be done by APRA AMCOS".

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

412. This complaint raised fundamental issues of policy on which I make no comment. The complaint was expressed in intemperate terms in some respects. The response by APRA AMCOS was appropriately restrained.

413. A possibility that occurs to me is that the complainant could be invited to address the Board. Another possibility is for APRA AMCOS to issue to its members a document explaining its policy on gender (if it is a self-contained policy) and repeating some of the matters that were communicated to the complainant. (And see APRA AMCOS Member Complaint 8 below).

### ***APRA AMCOS Member Complaint 7***

414. On 18 July 2017, an irate Writer Member telephoned APRA complaining about the services that APRA provided to its members, including its failure to protect members' rights in relation to illegal download sites housed in overseas territories. The complainant also expressed concerns about APRA's Board election and voting procedures (see Member Complaints 1 and 4 above).

415. APRA's Writer Services Representative Team Leader and National Manager spoke at length with the complainant in an attempt to alleviate his concerns. The matter was escalated to APRA's Writer Services Director.

416. The conversation of complaint occupied some 45 minutes. It included a statement by the complainant that he wished to terminate his membership of APRA, that the organisation was a "scam", and that he was ready to "go public" and institute a "class action suit against APRA" with details published on social media.

417. APRA's National Manager telephoned the complainant and listened to him. The National Manager suggested that he should speak to Music Rights Australia regarding his concerns about online infringement in overseas territories. The complainant requested certain documents in order to better understand the process.

418. The National Manager noted that the complainant had not submitted a "Performance Report" for many years, and advised him that APRA could set up a retrospective performance report and that he could claim retrospectively for the preceding three years. The following day, 19 July, the National Manager wrote to the complainant explaining the Performance Report system, and offering assistance in the completion of the online performance reports.
419. On the same day, 19 July, the Director Writer Services wrote to the complainant supplying her contact details.
420. Finally, again on 19 July, the complainant wrote at some length to the Director, Writer Services, this time complaining about the "undemocratic voting procedures put in place by this institution". The complaint was that for every \$500 of royalty earnings, members received a single vote, which was an "undemocratic" and "un-Australian" system. He asserted that the system ensured that "the same names and faces are voted onto both the Writers and Publishers Board and creates a situation which is inequitable for members".
421. Apparently, there was further contact from the complainant and the result was a further email from the complainant dated 19 July 2017 thanking the National Manager for sending him information "and for all the help you have given me over the last couple of days". The email concluded: "you have been very kind and I appreciate it greatly".

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

422. I agree with APRA that in these circumstances, it was entitled to regard the complaint as "resolved" in the sense that there remained nothing for APRA to do to address it.

423. But see my comment under Member Complaint 1.

### **APRA AMCOS Member Complaint 8**

424. On 5 June 2018 a Writer Member emailed APRA's Head of Member Services raising further questions and concerns after a meeting at APRA at which he had initially raised his concerns. The complaint related to APRA's position on gender parity within the Australian music industry. The complainant's email listed eleven questions including:

"From where within APRA does the social justice agenda emanate?"

"Fewer female APRA members. Why is this a problem?"

"How does one leave APRA?"

425. On 22 June 2018 APRA's Head of Member Services provided the Writer Member with a comprehensive response to address all of the questions raised in his email. APRA's response noted that APRA represented a broad and diverse membership and that its challenge was always to balance and reflect the diversity of membership.

426. There was no further communication from the complainant and APRA justifiably considered the complaint to have been "resolved" in the sense that there remained nothing for APRA to do by way of responding to the particular complaint.

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

427. See my comments in relation to Member Complaint 6 above.

## **Complaints by Licensees**

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

428. The complaint arose out of a notification by APRA AMCOS about quarterly billing for licensees who pay an annual amount of \$500 or more. The complainant had been billed annually and wrote on 4 July 2017:

"I believe organisations should have the right to choose how they pay their bill. For some organisations it works out better to pay it annually. Organisations should have the choice."

429. Promptly, on 7 July, the Legal Liaison Officer of APRA AMCOS replied confirming that the annual billing option was offered.

430. Also on 7 July, the APRA AMCOS officer telephoned the complainant who said that she did not actually wish to be on annual invoicing but wanted to know that she had the option if desired. In fact, she said that quarterly invoicing works out well for her when lodging her quarterly BAS statements.

431. Finally, the complainant wrote on 7 July saying:

"You certainly have addressed my concerns. Thank you for taking the time to email me. My conversation with [name] this morning was also wonderful. I'm amazed at the level of service from the organisation."

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

432. Enough said!

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

433. On 10 July 2017 the complainant company which operated a recording studio stated that it had used “royalty-free music within all its recordings for the last 23 years” and therefore did not need an APRA licence.
434. In 2015 another company engaged the complainant company to produce an audio for the client who required “commercial music” which required the complainant to apply to APRA for a licence which the complainant did.
435. The complainant asserted that the gross income from this business was at the time about \$200 a month, but, so it was said, APRA insisted on a payment of \$5,000 as a deposit. The complainant asserted that APRA had sent a contract to it which was “take it or leave it”, and the complainant had to sign and pay the \$5,000.
436. The complainant sought to negotiate a refund of the unused portion of the \$5,000, which was in the order of \$4,900, but APRA’s response was negative.
437. The complainant’s letter concluded: “having been in business for 30 years I find such an attitude to be unacceptable and will be submitting the matter to the ACCC should a successful outcome not be forthcoming”.
438. On the same day, 10 July, APRA acknowledged receipt and assured the complainant that the matter had been referred to APRA’s Complaints Officer as a matter of priority.

439. What occurred next was a remarkable turn of events. It emerged that the complaint should have been directed to the Australian Recording Industry Association (ARIA). APRA's Senior Legal Liaison Officer wrote to the complainant on 25 July advising that this was the position and that ARIA had acknowledged that the complaint related to dealings between the complainant company and ARIA. The Senior Legal Liaison Officer supplied to the complainant ARIA's contact details.
440. There was no further response from the complainant. APRA AMCOS justifiably consider the complaint resolved.

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

441. This complaint was the subject of extensive correspondence between APRA AMCOS and the complainant. The complaint was that his credit rating was adversely affected by reason of a judgment for debt entered in favour of APRA for outstanding legal costs payable by the complainant. The complainant was particularly concerned to achieve a restoration of his credit record (credit rating issue).
442. Separately, the complainant asserted that he had been overcharged in the two years since his licence commenced as he had been paying fees for televisions at his premises when they were on "mute". The complainant said that his wife had tried to address this matter with APRA before the complaint was made and that incorrect advice had been given that fees were payable for muted television (the television issue).
443. There was correspondence between APRA AMCOS and the complainant from 24 October 2017 to 18 July 2018.
444. On 24 October 2017 the complainant asserted that he had been overcharged for the previous two years by APRA because he was

advised that licence fees were payable even though the television sets were not playing any audio.

445. Apparently a statement of claim was served on 23 August 2017, after which the complainant paid \$1,044.78 to APRA on 28 August. APRA said that its external collection agency had made numerous attempts to contact the business and had left messages but that no response or payment was received until the statement of claim was served.
446. On 31 October the complainant was advised that the matter had been referred to APRA's Complaints Officer as a matter of priority.
447. On 1 November the complainant repeated that he had relied on the expertise of APRA's staff, and that notwithstanding payment in August 2017, "we were defaulted and this affects all our credit, both business and personal".
448. On 10 November the complainant advised APRA that its action had "derailed" the complainant's current lending application with a certain bank and that he would now have to resort to a private source of finance which would involve payment of additional interest. He asserted that the credit reference agency had advised him that APRA had acted improperly and that he was seeking legal advice with a view to commencing legal action against APRA for recovery.
449. On 13 November, APRA's Senior Legal Liaison Officer wrote at length to the complainant explaining that an internal review of his account had been conducted as a priority.
450. The letter listed the outstanding licence fees for the period 1 December 2016 to 31 August 2017, as a result of which a statement of claim had been filed in the Local Court of NSW on 15 August and served on the complainant company the following day.

451. The letter explained that although payment of the outstanding licence fees was received on 28 August, because a recovery action had already commenced and legal costs had been incurred, a default judgment was entered on 29 September 2017 for recovery of \$865.94 for the legal costs and filing fees. The letter from APRA explained that until receipt of the complainant's email on 24 October 2017, APRA was not aware that the music usage was to be calculated differently from what the complainant company had declared in its application back on 15 February 2016, which had referred to the use of three televisions.
452. By way of compromise, the Senior Legal Liaison Officer offered to refund \$677.90 being the fees for the period 1 December 2015 to 31 August 2017 incurred for the televisions, and therefore to accept the difference between \$865.94 and that amount, namely, \$188.04 in full settlement.
453. On 14 November the complainant advised that payment would be made immediately if APRA would "remove (not mark as paid), which is possible [APRA would] contact [the credit reference agency] directly and make this request". The complainant explained that this would enable it to rectify its position with the bank and proceed with its application to the bank for finance.
454. The complainant paid the amount of \$188.04 on 15 November. On the same date, APRA's Senior Legal Liaison Officer spoke to the complainant confirming that APRA did intend to "remove the default" as a priority, but that the process can involve a setting aside of the judgement and contacting the credit reference agency regarding removal of the default from its records. In the conversation the complainant insisted upon immediate removal and said that he could not wait even a week.

455. On 16 November, APRA advised the complainant that its advice was that credit reporting bodies would only remove a default from a credit file where there is a court judgment entered if the judgment is formally set aside by the court. APRA's mercantile agents had been instructed to attend to that and they had indicated that they intended to file the documents within the next 24 hours. APRA explained that once the setting aside had been completed, the complainant should contact the credit reference agency directly.
456. On 16 November, the complainant wrote thanking the Senior Legal Liaison Officer for the speedy response.
457. On 7 December, APRA advised the complainant that the judgement had been set aside and the credit reporting agency notified of this, and that the complainant's file had been updated accordingly.
458. In order to enable updating of the complainant's licence details, APRA requested completion and return of the two reassessment forms that had been sent to the complainant on 13 November.
459. On 21 June 2018, APRA's Senior Legal Liaison Officer again wrote to the complainant setting out a proposal to regularise the licensing arrangements with APRA AMCOS, which would involve a payment of \$335.37 to APRA AMCOS prior to 6 July 2018. Tax invoices were enclosed.
460. On 24 June, the complainant replied to the effect that he was on holidays until 4 July and would make payment on his return.
461. On 4 July APRA wrote a reminder email to the complainant but still payment was not made and a follow up letter was written on 13 July. The amount was paid on 17 July and payment was acknowledged by

APRA on 18 July in an email which concluded: "Thank you for your payment and APRA AMCOS trusts that any outstanding matters are now resolved".

462. There was no response to this, and APRA AMCOS correctly considered the complaint resolved.

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

463. This complaint was made on behalf of a small community band that, according to the letter of complaint dated 14 May 2018, plays music composed and arranged by members of the band. APRA had apparently issued a statement of claim for monies said to be due pursuant to a copyright music licence.

464. The email of complaint said that for the first time an invoice had been received on 17 April 2018, and that the statement of claim was received on 9 May 2018. The email stated that payment had not been made during the intervening period because there had been no meeting of the committee in that time.

465. The complainant, a member of the band, requested that the court action be withdrawn as the band could not afford to pay APRA's legal fees or its own.

466. The email of complaint also asserted that someone at APRA had advised that the invoice had previously been emailed to a different address. The writer explained that that was not the correct email address and that in the past the band had received APRA invoices through the band's usual email address and hard copies at a certain street address, both of which, according to the email of complaint, APRA had on file.

467. It was also a complaint that the complainant felt harassed by APRA's external mercantile agents.
468. On 15 May, the Chief Executive of APRA acknowledged receipt and advised that he had asked for a report on the matter. On the same day, the president of the band called APRA giving further details of the nature of the music played.
469. Later on the same day, another officer of APRA called to update the complainant advising that licensing arrangement had been changed under an arrangement with the band president, the matter taken off APRA's lawyers, and that a new invoice would be issued that would have to be paid. The complainant said that she was happy with that and thanked the APRA officer.
470. Again on 15 May, the complainant wrote to APRA's Chief Executive advising that APRA had confirmed that the court action would be withdrawn and that the band would be placed on a more appropriate licence. The complainant's email concluded:
- "Thank you again for your help with this – we really appreciate it".
471. The Chief Executive responded on the same day thanking the complainant and stating that he was glad that the matter had been resolved and he apologised for any difficulties that may have been caused.
472. APRA AMCOS justifiably regards the complaint as resolved.

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

473. As noted earlier in this Report, on 1 December 2017, Copyright Agency and Viscopy merged. From 2 July 2012 until the merger, Viscopy’s services were managed by Copyright Agency under a services agreement, but since the merger, members of Viscopy have been members of Copyright Agency, and Copyright Agency has been the licensor for the artwork licences which it had previously managed for Viscopy.
474. Therefore, although I will refer to “Copyright Agency” alone, as the heading above indicates, the following account of complaints deals with complaints made to Copyright Agency and to Viscopy down to 1 December 2017, and to Copyright Agency alone since that date.

### **Follow Up to Compliance Report for 2016 - 2017**

475. In my Compliance Report for 2016 -2017 I required Copyright Agency to provide follow up reports regarding two complaints. The two complaints were numbered 2 and 3 in last year’s Compliance Report. Copyright Agency has provided a follow up report. It has done so first by providing in the following anonymised table, a summary account:

Matter	Follow up required	Resolution
#2	Outcome of review of distribution processes and systems	<p>The first phase of the review was completed in August 2017, and the subsequent phase is ongoing. In response to concerns raised by the member, Copyright Agency has:</p> <ol style="list-style-type: none"> <li>1. introduced a process whereby members receive information before a forthcoming distribution that is based on survey data about the extent to which their content appears in the dataset for the forthcoming distribution compared to previous years, as an indicator of whether the payment from the forthcoming distribution is likely to be lower or higher than previous years;</li> <li>2. created an information sheet for members on how surveys are conducted in schools and universities; and</li> <li>3. created an information sheet for members on how survey data is used to distribute licence fees from schools and universities.</li> </ol>
#3	Response to letter of 27 July 2017 and subsequent developments	Copyright Agency's CEO met with the member's CEO on 20/9/2017, and emailed a letter responding to the member's concerns on 26/9/2017.

476. In relation to both follow-ups, Copyright Agency has provided documentation.

477. In order that the up-dating reports be understood, it is necessary to know something about the original complaints. Complaint 2 was over a substantial decrease in the payments made by schools in respect of the Publisher Member's works, in fact a decrease of 62% on the previous year's figure. Copyright Agency explained to the member that this was due to two factors: a lesser number of works in the data set for last year's distribution as opposed to the previous year's; and a very substantial reduction in the number of pages that the member's content that were copied.

478. Further detail is contained in paragraphs 423 – 430 of my Compliance Report for the year 1 July 2016 to 30 June 2017. The correspondence suggested that as at 29 June 2017, an independent consultant was

conducting a review of Copyright Agency's distribution processes and systems, and I required Copyright Agency to inform me of the outcome of the review – thus the Report in the table set out above.

479. The correspondence between Copyright Agency and Complainant 2 extended over a period from 30 August 2017 to 7 June 2018. In the course of the correspondence, Copyright Agency provided much information to Complainant 2 who seemed, on the correspondence, to be satisfied.
480. The complainant in relation to Complaint 3 in the table above was the same complainant as in relation to Complaint 2, although I will now refer to it as "Complainant 3". The background as recounted in paragraphs 431 – 437 of my Compliance Report for the year 1 July 2016 to 30 June 2017, is that Copyright Agency launched an online subscription platform for schools which had come to include 16 participating publishers including Complainant 3.
481. Complainant 3 raised concerns relating to the establishment and governance of the online platform, the entitlements of the founding publishers (who numbered four) and arrangements regarding the sharing of data and revenue. Complainant 3 took the view that there had been insufficient transparency.
482. There was a meeting on 27 July 2017 between the publisher's Managing Director and Copyright Agency's CEO and Policy Director, at which Complainant 3 gave Copyright Agency a letter setting out Complainant 3's concerns.
483. In the table above, Copyright Agency summarises its response to the letter of 27 July 2017. I have read the supporting correspondence.

484. A representative of Copyright Agency met with the CEO of Complainant 3 in September 2017. Copyright Agency then wrote a letter dated 26 September 2017 to the Managing Director of the Complainant 3. The letter explained the background to the establishment of the online subscription platform for schools, and the methodology according to which the revenue was distributed. Copyright Agency's report does not suggest that there has been any development since 26 September 2017 and I assume that Complainant 3 was satisfied by the terms of that letter, at least for the time being.

### **Complaints made during the Review Period**

485. Helpfully, Copyright Agency has provided the following table which summarises seven complaints made during the Review Period. It has provided the underlying accompanying documents which provide the basis for the following report by me.

<b>Matter</b>	<b>Date</b>	<b>Issue</b>	<b>Resolution</b>	<b>Date resolved</b>
#1	4/7/2017	<ol style="list-style-type: none"> <li>1. Decrease in payments since 2015.</li> <li>2. Change in distribution process from 2018 for images copied with text.</li> </ol>	Copyright Agency has provided a series of reports and explanations, but the member wishes to discuss these matters further. The member will meet with Copyright Agency's CEO later in 2018.	–
#2	23/11/2017	Absence of recent payments.	<ol style="list-style-type: none"> <li>1. Review of payments followed by discretionary payment to member</li> <li>2. Review of allocation processes for journal articles</li> </ol>	22/4/2018
#3	6/7/2017	Pursuit of infringement claim on member's behalf for unlicensed use of images.	Settlement with company that used member's images.	8/11/2017

<b>Matter</b>	<b>Date</b>	<b>Issue</b>	<b>Resolution</b>	<b>Date resolved</b>
#4	26/6/2018	Termination arrangements for licence with private business school.	Licence terminated. Ongoing communication between Copyright Agency and licensee regarding notice period for terminating a licence.	–
#5	31/5/2018	Follow up by debt collection agency for non-payment of invoice by public relations firm for licence for 2018–19.	Licence terminated, and revised invoice sent to licensee for termination notice period.  Licensee happy with outcome, and indicated willingness to renew licence in the future when its financial circumstances allow.	31/5/2018
#6	28/5/2018	Reference to prospective licensee's past use of newspaper content, and whether it may have been unauthorised, in email to prospective licensee regarding purchase of a Copyright Agency business licence.	Escalation of concern to Director of Commercial Licensing, followed by email to prospective licensee apologising for the reference and clarifying the licence options.	25/6/2018
#7	12/4/2018	Termination arrangements for a business licence. The licensee agreed to the licence in 2015 as part of the settlement of a copyright infringement matter, on which the licensee had received legal advice.	Copyright Agency: <ol style="list-style-type: none"> <li>1. terminated the agreement without the notice period required by the contract;</li> <li>2. referred an unpaid amount due under the licence while it was in place to a debt collection agency; and</li> <li>3. reviewed its approach for companies that may have having infringed copyright in the past, to focus on the benefits of a Copyright Agency licence.</li> </ol>	7/5/2018

## ***Copyright Agency/Viscopy Complaint 1***

486. The complainant is a very substantial publisher and the correspondence between it and Copyright Agency extends over the period from 4 July 2017 to 23 July 2018.
487. Unusually, the correspondence began with Copyright Agency seeking suggestions as to how it might improve its distribution processes. Copyright Agency explained that it had engaged an external company to assist it, and had asked a person at that company to talk with key publishers to get their “thoughts and feedback”.
488. Unfortunately, the representative of the external company failed to contact the complainant publisher, which led to the publisher's writing on 20 September 2017:

“We took time out a very busy period to prepare our feedback, and to not be given the chance to contribute is frustrating.

Having a consultant, paid for by a portion of our money, treat us with such little regard is hugely disappointing. Please do keep us in mind for the next phase, we would like to contribute.”

489. Copyright Agency apologised (as did the external consultant).
490. There was a meeting between representatives of Copyright Agency and the publisher member on 28 September 2017, in which the complainant raised the following issues:

- Transparency about distribution process
- Why has their distribution dropped in the last two years?
- Why has allocation for images decreased from 50% to 30%?
- Why don't their distribution track to sales data from APA
- Are any of their authors getting the images money?

491. There was a further meeting on 21 November 2017. In an internal memo it was recorded that that was the third meeting held about the fluctuations the publisher had experienced in payments for its illustrations. The publisher apparently employed six in-house illustrators but over the last three years had seen payments for artistic works drop by \$300,000 per year, with which the company's auditors did not readily accept.

492. The complainant said that Copyright Agency should have a mechanism in place to alert members of any variables or outlier copying instances, so that members can "re-forecast".

493. At the meeting on 21 November 2017 and in further correspondence, the complainant elaborated on its grievance. In an email dated 20 December 2017, the Managing Director of the complainant publisher referred to "significant inconsistencies in the handling of our CAL payments". He said:

"Coming to the end of the year, we are keen to get sight of the calculations you have used on these. We are looking at putting provisions in our accounts for perceived shortfalls in income and payments to authors in relation to this and would welcome some clarity."

494. Correspondence continued. This included an email dated 22 December 2017 from Copyright Agency attaching three lengthy and informative documents.

495. Nonetheless, on 13 February 2018, the complainant said that Copyright Agency seemed to have misunderstood, adding:

"Our greatest concern was in the deterioration of our artistic rights payments and this was to be one of the main focus points of the deep dive."

496. This prompted a speedy reply on 14 February 2018 from Copyright Agency which explained that the problem partly arose from amendments to the Act in 1998 which affected the processing of all images copied with text.
497. On 21 March 2018 Copyright Agency's Director of Policy met with the complainant's external lawyer and explained aspects of Copyright Agency's distribution methodology and processes. On 23 March 2018 Copyright Agency supplied the breakdown of payments made to the complainant which had been provided by Copyright Agency to the external lawyer on that date.
498. Unfortunately, the complainant was not satisfied and wrote a lengthy email on 18 April 2018, which began:

"I just wanted to register to you and the board of Copyright, the disappointment of all at [name of publisher] at the decision of Copyright Agency to change the way in which text and creative art are being interpreted in the distribution of the school licence for copyright. We are all deeply disappointed at how the extensive Australian artwork, that has been part of our portfolio of product for over 30 years, has been reduced to the value of text."

499. Among many things, the email stated:

"Our remaining contracts will be thrown into total disarray by the decision that you are now currently making. There is not sufficient time to make the adjustments needs to all our contracts to allow for this change in artistic rights payments. There was not sufficient discussion with publishers on the implications of this decision, nor was time provided to publishers to make the amendments needed to contracts to reflect this change."

500. The letter of complaint concluded by expressing understanding of Copyright Agency's desire to rationalise the methodology that it was seeking to implement, but stating that the adverse implications for the complainant had not been recognised or discussed.

501. On 31 May 2018 Copyright Agency's CEO telephoned the complainant publisher's CEO to discuss the concerns raised. They agreed to have a discussion when the publisher's CEO was in Sydney later in the year.

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

502. I will take up with Copyright Agency developments between the time of its report to me and the date of this Report.

### ***Copyright Agency/Viscopy Complaint 2***

503. By an email dated 23 November 2017 an academic author member complained about the lack of any royalty payments since 2014, and sought confirmation that Copyright Agency had not received any record of the author's works being copied since that time. The complainant noted that significant amounts had been paid in 2013 and in years before that.

504. Promptly (on the same day in fact) Copyright Agency replied, explaining that payments depended on an author's works being both copied and picked up in Copyright Agency's surveys. In relation to articles in journals, unless Copyright Agency has been advised to the contrary by the publisher of the journal, it pays 100% to the publisher which, where applicable, should pay to the author the author's share.

505. On 28 November, the complainant replied seeking an explanation for the sudden falling away of payments, and he listed the payments that he had received in the period 2003 – 2015.

506. On 29 November 2017, Copyright Agency wrote to the complainant providing further information which elicited a reply dated 23 December 2017.
507. On 18 December 2017, Copyright Agency provided further information, then on 29 December, the complainant set a list of eight questions to Copyright Agency which were answered on 18 January 2018.
508. The complainant thanked Copyright Agency in an email of 18 January 2018 and there was further correspondence in which the complainant author said that he was content for his case to be treated as a complaint and considered as part of Copyright Agency's general review of its distribution practices.
509. Arrangements were made for the complainant to be paid a small amount for outstanding royalties for 2015 – 2017. The course of correspondence ended with the author member expressing thanks for the payment and posing the question whether the onus rested on him to enquire from time to time, or whether he could expect to receive notification of an entitlement payment at least once a year regarding any copying that occurred "as used to be the case up to 2014".
510. On 20 April 2018, Copyright Agency replied that it was not necessary for the complainant to enquire but that he was welcome to do so.
511. In its report to me, Copyright Agency states (page 51):

"In September 2018, we will be supplementing the information we hold about articles published in journals by inviting members and other writers or articles to provide us with information, via an online form and / or spreadsheet, about articles that they have had published for which they retain copyright. The process is similar to the one used by the UK copyright management organisation Authors

Licensing and Collecting Society (ALCS). This will assist us with allocating payments to writers who have retained copyright.”

512. The development just referred to is welcome. The particular complaint by the academic author appears to have been resolved.

### ***Copyright Agency/Viscopy Complaint 3***

513. This complaint concerned a work of art in the form of a painted mural. Two photos had been used for the promotion on television of a forthcoming sporting event. The mural appeared in the background. The complainant stated in his email of complaint dated 27 February 2017:

“For charity events I’m flexible about the licence but for commercial ventures I believe payment is warranted and have had many such payments.”

514. Oddly (since the email of complaint was dated 27 February 2017), the next piece of correspondence in the Accompanying Underlying Documents is an email dated 22 June 2017 from Copyright Agency to the complainant stating that his email regarding “details of an unresolved matter” had been received and inviting the complainant to call the writer. But the expression “details of an unsuccessful matter” did not appear anywhere in the email of complaint.
515. Oddly, on the same day (22 June 2017), the complainant wrote to Copyright Agency an email commencing “Many thanks for getting back to me so promptly”. Yet nearly four months had passed between the complaint on 27 February 2017 and Copyright Agency’s email of 22 June 2017. There seems to be correspondence that has not been provided to me. I will take this up with Copyright Agency, but in view of the conclusion reached below, the confusion need not delay finalisation of this Report.

516. In his email of 22 June, the complainant complained about a lack of responsiveness on the part of Copyright Agency to his various telephone calls and emails (he referred to the email dated 27 February 2017).
517. By an email of 23 June, Copyright Agency's Visual Arts Licensing Manager wrote to the complainant explaining that by the operation of s 67 of the Act, the copyright in an artistic work is not infringed by the inclusion of it in a cinematograph film or television broadcast if its inclusion is "only incidental to the principal matters represented in the film or broadcast".
518. On the same day, 23 June, the complainant replied to the effect that he was aware of that provision but contended that it was not applicable on the facts.
519. On 23 June, Copyright Agency wrote to the effect that if it had exhausted its avenues and the television company had been unresponsive, so that the complainant might contact Arts Law for legal advice.
520. On 29 June 2017, the complainant wrote expressing his disappointment that Viscopy had declared itself unable to pursue an infringement of the copyright in his work. He sought information as to how to take the matter further.
521. Finally, on 8 November 2017, after communications between Copyright Agency and the television company, the latter had agreed to pay upon being invoiced by Copyright Agency, and that is what happened.

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

522. 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.

***Copyright Agency/Viscopy Complaint 4***

523. This complainant was a private educational institution.

524. Over a period from 2 March 2017 to 21 April 2017, it communicated with Copyright Agency and renewed its licence.

525. On 1 February 2018, Copyright Agency wrote to the complainant pointing out that under the terms of its agreement with Copyright Agency, it was required to update information relating to its activities no later than 21 February 2018, in order for its licence to remain current. Copyright Agency's letter invited the complainant to log in and provide the information. As well, the letter asked the complainant to advise Copyright Agency if its circumstances had changed in a way that might affect the complainant's eligibility to rely upon the statutory licence for educational institutions.

526. On the same day (1 February 2018), the complainant replied to the effect that it used only in-house written workbooks and that it purchased course guides.

527. On the same day again (1 February 2018) Copyright Agency replied to the effect that it still needed details of the complainant's receipts for 2017, as there was a three-month notice period for cancellations, which meant that the complainant could "continue using third party copyright material until the end of 2018".

528. On 7 March 2018 the complainant again asserted that it did not need a licence as all of its materials were purchased or produced in-house.
529. The following day (8 March), Copyright Agency wrote to the effect that it had requested updated information on 31 January 2018 (a communication of that date has not been supplied to me) and had sent a further two reminders. The email from Copyright Agency advised that if it did not hear within the next two weeks it would invoice the complainant based on its previous year's invoice plus 5%.
530. On 13 March 2018, Copyright Agency wrote to the complainant pointing out the risks of not holding a current licence. It referred to five hypothetical situations in which the complainant would find itself in infringement of copyright.
531. On 13 March the complainant replied dealing with the five situations that Copyright Agency had referred to, explaining that none of them posed a risk to the complainant.
532. On 13 March 2018, Copyright Agency wrote to the complainant advising that the provision for termination in the contract was to the effect that the agreement could be terminated on three months' written notice with effect on the next following 31 December, so that the licence fee would still be payable for the current year.
533. The complainant replied on 13 March: "As we are not undertaking a contract I don't think we are liable for any payment".
534. On 14 March, Copyright Agency sent a copy of the agreement that had been signed back in 2008, in which clause 14.1 provided for termination.

535. On 19 March the complainant replied to the effect that it had been “coerced into thinking” that a licence was needed for the last couple of years and that in good faith it had paid for something not used. The email concluded:

“I do not appreciate your previous and current bullying tactics of trying to force us into something we do not use.

As stated previously, we do not wish to have licence with you and we stated this clearly last year.”

536. Copyright Agency replied on 19 March observing that the complainant had never previously asserted that it had terminated the licence and Copyright Agency requested the complainant provide any correspondence to that effect.

537. On 26 March 2018 Copyright Agency wrote to the complainant noting that there had been no response to Copyright Agency’s email of 19 March and that any invoice for 2018 would be issued. That happened on 27 March 2018, on which date the complainant again said that it did not wish to participate in any contract with Copyright Agency.

538. There followed a sequence of emails in which Copyright Agency sought to recover the amount of the invoice.

539. On 25 June 2018 the complainant wrote to the Code Review Secretariat, repeating that the complainant had no need for a licence as all of its materials were written in-house or purchased from providers. The email contained the following:

“For several years we were virtually blackmailed into paying copyright fees and did not want to continue doing so.

Over the last eight months we have had repeated abusive, aggressive and accusatory phone calls from the agency, the last one was Friday the 22<sup>nd</sup> of June. ... I find the Copyright Agency, abrasive, aggressive,

misleading and harassing, even though we have politely told them on each occasion we do not want to have anything to do with them.”

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

540. 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.

### ***Copyright Agency/Viscopy Complaint 5***

541. The complaint was over an attempt by Copyright Agency’s debt collection agency to recover an amount of \$1,014.87.

542. On 31 May 2018, the complainant said that he had never previously been chased by a debt collection agency. The complainant said that he wished to cancel immediately the existing licence and to terminate the relationship with Copyright Agency. He said that if his business situation should improve, he would re-subscribe, adding:

“I want to place on the record my distress at your Agency passing this matter on to a debt collecting agency in this manner and as discussed, would like you to pass my view ‘up the line’ for consideration.”

543. On 31 May 2018, Copyright Agency replied enclosing a copy of the licence agreement which provided, apparently, for a six-month

cancellation period. The email advised that if the complainant should email a request for cancellation, that would reduce the amount of the invoice to \$76.88, for which amount a fresh invoice could issue.

544. The complainant replied on 31 May, still registering a protest at the way in which he was being treated, but asked for the new invoice.
545. On the same day, Copyright Agency replied to the effect that a credit note and revised invoice would issue shortly. On the same day, the complainant replied expressing thanks, and on the same day again Copyright Agency replied, to which the complainant responded:

“Thanks ... and my intention is to re-subscribe next year as quickly as I can.

I just have to dig myself out of this downturn.

I actually think you guys provide a great service, obviously for the content creators but also peace of mind for agencies like us.”

546. Copyright Agency correctly treats the complaint as having been resolved.

### ***Copyright Agency/Viscopy Complaint 6***

547. On 28 May 2018 Copyright Agency wrote 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 Copyright Agency’s members.
548. The letter from Copyright Agency outlined in general terms the role of Copyright Agency.

549. Apparently there was a telephone or face to face communication, after which, on 4 June 2018 Copyright Agency wrote to the complainant, again discussing the licensing options available.
550. On 4 June 2018 the complainant replied to the effect that over the telephone, the licence fee had been quoted at \$1,104 per annum, including retrospective licensing, but that the pricing in documents that had been forwarded exceeded that amount and referred to "8 users on an annual licence plus a retrospective licence".
551. On 6 June 2018 Copyright Agency responded in detail, explaining the fee structure.
552. There was no immediate reply and on 19 June 2018 Copyright Agency sent a reminder.
553. Again, there was apparently telephone communication, and this was followed by an email dated 22 June 2018 from the complainant to Copyright Agency, protesting that amounts in excess of \$2,000 in licence fees were "cost prohibitive".
554. On the same day, Copyright Agency replied to the effect that the writer would discuss the position with his colleagues at Copyright Agency and respond after that.
555. On 25 June 2018 Copyright Agency wrote outlining an option at \$1,103.92 plus GST per annum.
556. As at the date of Copyright Agency's report to me, there has been no response from the complainant.

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

557. 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.

***Copyright Agency/Viscopy Complaint 7***

558. On 12 April 2018 Copyright Agency wrote to the complainant about recovery of licence fees. The email pointed out there is a six-month cancellation period and that the requested cancellation must be in writing.

559. On 12 April 2018 the complainant replied "Cancelled. In writing."

560. On the same day (12 April) Copyright Agency replied expressing disappointment that there was "no opportunity to discuss further or present". Copyright Agency pointed out that the six month cancellation period would take the licensee close to the end of the full licensing year. A credit note would be raised for the original invoice and a new invoice issued for the cancellation period.

561. On 15 April 2018 the complainant complained about the six-month cancellation period. The complaint was expressed in strong terms.

562. On 16 April 2018 Copyright Agency forwarded to the complainant a copy of the Licence Agreement which apparently showed a "42-month mandatory licensing period".

563. On 16 April 2018, the complainant replied:

"To be frank, I'd rather not spend more time than I already have on this. I put this issue to bed many years ago and it's clearly still a sore spot.

Let's close this out and move on."

564. On 18 April 2018 the complainant again wrote complaining about the six-month cancellation period.

565. On 18 April 2018, Copyright Agency replied referring again to the terms of the Licence Agreement which apparently was for 42 months which had elapsed. Apparently the agreement provided that if after that the licensee wished not to continue, a six-month cancellation period was required. Copyright Agency's email stated:

"The mandatory period ends in June of this year and with the 6 month cancellation period (which we have received) that takes you to the end of December 2018, this is the same period on the outstanding invoice ... "

566. On 27 April 2018, Copyright Agency wrote to the complainant pointing out that the terms of the Licence Agreement had been negotiated as part of the settlement of the infringement proceeding that had been brought against the complainant, by, I assume, Copyright Agency. Copyright Agency's letter also offered to roll over the licence for 2019.

567. On 27 April 2018, the complainant again complained about the notice period and requested that Copyright Agency consider its position.

568. Finally, on 7 May 2018, Copyright Agency wrote confirming that the matter had been discussed within the collecting society, that its Legal Department confirmed that the complainant had received independent legal advice, and that the complainant's own legal team would have explained the mandatory licensing period followed by a six-month cancellation period. The email concluded by requesting prompt payment of the outstanding invoice. The accompanying underlying documents do not reveal anything further so it is

difficult to understand why CAL, in the table set out earlier, refers to the matter as “resolved”.

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

569. 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.

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

### **General**

570. In my report for the last review period (2016 – 2017) I noted that on 3 March 2016, the Australian Writers’ Guild (AWG) and the Australian Writers’ Guild Authorship Collecting Society (AWGACS) commenced litigation in the Federal Court of Australia on 3 March 2016 against Screenrights and that Screenrights’ defence was filed on 1 June 2016.

571. I noted at [210] above that the dispute was settled.

572. During the Review Period, Screenrights received one formal complaint and one informal complaint, both of which have been reported in a “Complaints Table”, which was attached to Screenrights’ report to me.

## **Screenrights Complaint 1**

573. On 7 August 2017, the complainant issued a letter of demand for payment of all past and available royalties held by Screenrights for a particular film. The film was the subject of a competing claim made by another member of Screenrights.
574. During the Review Period, on 12 November 2017, the complainant wrote complaining that Screenrights was in breach of its agreement with him as a member and of its Articles of Association. The complainant's letter also alleged that a former Chair of the Board of Directors had been guilty of misconduct during her time as Chair.
575. On 30 November 2017, the complainant wrote a further letter which included a threat to have Screenrights de-registered (presumably under Chapter 5A of the *Corporations Act 2001*) and to report it to the ACCC.
576. On 14 May 2018, Screenrights received a letter from the NSW Office of the Small Business Commissioner informing it that the complainant had applied to that Office for mediation of his dispute with Screenrights. The Office explained to Screenrights that mediation was voluntary.
577. The summary which I have set out above is only of the events which have occurred during the Review Period, but in fact the dispute between the complainant and his rival extends back to 28 March 1996.
578. Back on 8 April 2003, a legal practitioner provided a determination (without the need to provide reasons for the determination) in relation to which party, the complainant or his antagonist, was entitled to a sum of \$978.81 that was in dispute and was held by

Screenrights for the "off-air copying of the feature film". The determination was that the rival company was entitled to a 96% stake in the royalties and that material had not been provided suggesting that the remaining 4% should be distributed to the complainant. The determination was, therefore, that the whole of the disputed sum should be paid to the complainant's rival.

579. On 20 January 2017 the complainant applied for an Expert Determination.
580. On 19 May 2017 the Chief Operating Officer of Screenrights determined that the better position was that the complainant's rival had demonstrated a 100% beneficial interest in the feature film and it was therefore the sole proper claimant to the royalties.
581. The complainant requested that the decision be made by an independent expert, and a senior counsel very experienced in copyright law and practice was appointed as that independent expert by Resolution Institute. The two competing industry participants made written submissions. The Independent Expert considered the contractual documents and concluded that the complainant's competitor was the legal owner of the copyright in the film and held a 96% beneficial interest in it. In addition, the Independent Expert concluded that since there was no other claimant, the complainant's rival's claim to 100% of the royalties succeeded.
582. The Independent Expert's determination was dated 9 October 2017.
583. In response to the Expert Determination, the complainant wrote to Screenrights on 15 October 2017 rejecting Screenrights' decision to pay the current royalties to the rival company.

584. On 12 November 2017 the complainant wrote to the Chair of Screenrights' Board of Directors making a range of allegations.
585. Apparently, the complainant issued an invoice to Screenrights on 21 November 2017 and on 30 November 2017 the complainant wrote threatening to have Screenrights de-registered and to have it deprived of its "not for profit" status as well as to report it to the ACCC.
586. On 30 November 2017 the Chief Executive of Screenrights wrote to the complainant expressing uncertainty as to whether he required Screenrights to treat his letter of 12 November 2017 as a complaint, in which case Screenrights would apply its *Complaints Handling Procedure*, a copy of which was supplied to the complainant.
587. On 7 December 2017, the Acting Chief Executive of Screenrights wrote to the complainant responding to allegations made in the complainant's various items of correspondence. The letter reminded the complainant that his claim had been considered three times, once internally by Screenrights and twice by independent experts, on both of those occasions at Screenrights' expense. Each of the determinations had found against the complainant's claim, and nothing in the complainant's correspondence had led Screenrights to question the determinations.
588. It should be noted that by the "invoice" dated 21 November 2017, the complainant claimed that Screenrights owed him \$53,700 for a range of activities including a recapture of monies allegedly paid by Screenrights to the rival company, research, administration, interest, and copying of documents.
589. On 11 May 2018 the complainant applied to the Small Business Commissioner for mediation on a "small business dispute". The Small

Business Commissioner invited Screenrights to participate in a mediation with the complainant but Screenrights declined. Apparently Screenrights explained its reasons for its unwillingness to participate and apparently the NSW Office of the Small Business Commissioner forwarded Screenrights' letter to the complainant.

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

590. I have not, of course, delved into the underlying dispute – that is not the role of the Code Reviewer. Rather, my role is, relevantly, to determine whether the collecting society has handled a complaint in a courteous and expeditious and otherwise satisfactory manner.

591. On the basis of all the documents presented to me, I do not see any reason to reach a conclusion adverse to Screenrights in these respects. Screenrights has conducted itself as one would expect of an intermediary caught up in a dispute between others over a fund held by the intermediary.

***Screenrights Complaint 2***

592. The complainant is the legal representative of a person who was a member of Screenrights. The complaint relates to alleged delay in the registration of the member's membership and registrations and the "tedious" processes involved.

593. The complainant, who is the daughter and attorney of the member, complained (by email dated 6 June 2017 – outside the Review Period) over how her mother's registrations had been handled.

594. On 7 June 2017, the Member Relations Manager of Screenrights apologised that receipt of certain registrations had not been confirmed as to date.

595. By her letter dated 8 December 2017, the Member Relations Manager dealt with the various works in an apparently thorough manner in order to update the complainant's records at Screenrights.
596. Screenrights explained to the complainant the formal complaint process but the complainant did not avail herself of that.

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

### **General**

597. PPCA reports that it is committed to equitably handling and resolving complaints, and that all employees are provided with information on PPCA's established policy, and are encouraged to ask questions and to review related processes regularly. The Complaints Policy is available on PPCA's public website and its internal intranet site, and is also provided to new employees as a hard copy document as part of their induction package.
598. PPCA has a complaints officer who oversee the complaints process and who has access to all other PPCA staff in order to address properly any issues raised.
599. Of the twelve complaints received during the Review Period, ten related to public performances licences; one was from a musician who was having difficulties registering over the website; and one related to a dispute between copyright owners.
600. The Accompanying Underlying Documents relating to complaints are contained under Tab 38 of the second volume of material provided by PPCA.

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

601. The complainant was a football club. The complaint was over receipt of an outstanding invoice. The club secretary stated that the club thought that it may have been a scam.
602. PPCA's Head of Licensing wrote an informative email on 4 August 2017 enclosing a copy of the original licence for the public performance of protected sound recordings. The email explained various options available to the club, and the Head of Licensing followed the matter up in September 2017 asking that the complainant advise how the club would like to proceed.
603. The club secretary followed up the matter and caused the invoice to be paid on 13 September 2017.

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

604. This was another complaint about an outstanding licence fee. It related to a dancing school. The complainant asserted that she had advised PPCA in December 2016 that the school had closed so that there was no legal requirement for her to hold a licence from PPCA.
605. Promptly (four days later) PPCA's Head of Licensing replied enclosing an email from the complainant dated 13 October 2016 advising that the school "did not participate in any public performances outside of dance classes".
606. The Head of Licensing made the point that the licence automatically renews every year on the anniversary of the original application but that the PPCA records had now been amended to note that the

business was closed and that the outstanding amount had been credited in full.

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

607. The complaint was made on 27 July 2017 and resolved on 31 July 2017 – admirable alacrity.

### ***PPCA Complaint 3***

608. This was another issue concerning the closure of a business. A hotel gave notice on 26 July 2017 that the hotel would not be operating as from 30 July 2017.

609. On 28 July 2017, PPCA replied asking for more information so that the request for cancellation could be correctly processed.

610. The licence was cancelled and an invoice issued to cover the period down to closure of the business. PPCA justifiably regards the issue as having been resolved.

### ***PPCA Complaint 4***

611. This complaint related to the use of music in the complainant's hire vehicles. The complainant's argument was that this did not constitute a "public performance". The email was dated 28 July 2017 and asked PPCA to "clarify a situation that exists between the PPCA and my business".

612. PPCA's Head of Licensing wrote a detailed response on 7 August 2017 after consulting internal legal counsel. PPCA's email explained the relevant principles and the meaning of "in public".

613. The complainant replied on 7 August 2017 arguing that the music was not performed “in public”. PPCA responded on 10 August making the point that the clients are drawn from the general public and that the activity of hiring out the vehicle was a commercial activity.
614. The complaint was handled promptly and courteously although it does not appear to have been resolved.

### ***PPCA Complaint 5***

615. On 29 July 2017, the complainant received a letter from PPCA’s credit and collections department about an overdue invoice. The complaint arose out of the fact that the complainant had allegedly advised PPCA over the telephone that he did not wish to go ahead with the music licence. He asked that the invoice be cancelled.
616. PPCA’s Licensing Department contacted the complainant. After having his obligations explained, the complainant agreed to pay for the licence and did so on the same day.
617. Again, PPCA’s handling of the complaint was a model of promptitude – the complaint was made on 29 July 2017 and resolved by 31 July 2017, when the complainant wrote:

“Just wanted to apologise in writing for my abrupt behaviour in the earlier phone call this morning. ... I would like to thank you for the information you provided. ... I would like to thank you for the information you provided and answer [*sic* – answers to] some of the questions I have regarding the licence.

If you could forward me the invoice, I’ll have this sorted today, better safe than sorry.”

### **PPCA Complaint 6**

618. This complaint made by email dated 1 August 2017 was to the effect that PPCA's tariffs were unrealistically high. The complainant sought to know what fees were applicable based on the information provided, before he discussed payment options.
619. The Head of Licensing replied on 4 August 2017. Her email enclosed "Invoice Notifications" confirming the levels of the applicable tariffs for both of the complainant's fitness locations.
620. There was a flow of correspondence in the course of which the complainant's tone became more moderate.
621. Ultimately, and although he paid the amounts required, he remained dissatisfied at the level of charge.

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

622. I do not see anything untoward in PPCA's handling of the complaint. It was made on 1 August 2017 and, although not resolved, the correspondence from the complainant was dealt with speedily and courteously and the matter concluded by 8 August 2017.

### **PPCA Complaint 7**

623. On 12 October 2017 the complainant asked that he not be forced to use the word "complain" because he was really seeking a clearer document/excel spreadsheet than the one provided to "update a new works release".

624. Promptly (on 13 October 2017) PPCA replied providing a modified version of the "PPCA Registrations" spreadsheet which enabled the complainant to register tracks successfully.

### ***PPCA Complaint 8***

625. The complainant asserted (on 6 December 2017) that her business was not carried on at the address that PPCA had on file, and that in any event music was not played in her store and so she had no idea why she had been paying PPCA's fees for many years. She said that her bookkeeper had been making the payments in error.

626. PPCA replied promptly on 8 December 2017. It's Complaints Officer said that she would expect that a licence would have been originally established on the basis of an application for it.

627. On 14 December 2017, the General Manager of PPCA wrote to the effect that she had now had the opportunity of reviewing PPCA's records. She was able to supply to the complainant a copy of the original application for licence dated 20 October 2010. As well, the covering letter explained the basis on which PPCA grants licences.

628. PPCA advised that invoices had been sent and paid on renewal every year, and PPCA asked to be advised if music use had changed.

629. As the complainant had now advised in writing that she was no longer playing music, PPCA cancelled the licence and arranged a refund less the standard \$33 administration fee.

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

630. I regard the complaint as having been satisfactorily handled and resolved.

## ***PPCA Complaint 9***

631. This was a complaint that a new licence application form had been sent to the complainant's restaurant before the sale of the restaurant business had been finalised. The complaint was also that the address to which correspondence had been sent had never been provided to PPCA.

632. In my opinion, and apparently also that of PPCA, the complaint was justified.

633. Promptly the next day (12 January 2018) PPCA apologised for distress that the recent PPCA letter may have caused. The General Manager's letter stated:

"I completely accept that such correspondence should not have been forwarded before the change of ownership occurred. As a result we have now reviewed our procedures for dealing with these situations, and implemented some modifications to prevent a re-occurrence of this problem. We appreciate you bringing it to our attention, as such feedback helps us to improve our processes."

634. Nonetheless, the complainant on 14 January 2017 replied indicating that the original letter from PPCA had been seen by the manager and chef and who, in consequence, feared that they would lose their jobs. The complainant's email concluded:

"I am so disappointed in your company and practices that I feel like taking this further."

635. The General Manager of PPCA replied the following day, 15 January 2018. In that email, the General Manager of PPCA made the point that usually, when PPCA wishes to contact a business that does not yet have a licence, it is necessary to send the correspondence to the

business location, and that usually it is only after a licence has been issued that a postal address is obtained.

636. PPCA explained that the existing licence had been cancelled and that an application form had been received from the new owner and that a new licence was in place.

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

637. The circumstances were unfortunate and apparently a system has been put in place which will make it more difficult for similar circumstances to be repeated.

### **PPCA Complaint 10**

638. The complaint was made by an email dated 4 January 2018. In substance the complaint was to the effect that the subject hotel was being charged, and was paying under, the wrong tariffs.
639. The following day, PPCA replied in detail explaining the tariff structure.
640. The next day the complainant replied advising that he had forwarded PPCA's explanatory email to the industry body for comment, as the email appeared to be contrary to the advice that the industry body had previously given to its stakeholders.
641. PPCA replied on 16 January 2018 advising that an investigation would be conducted and this happened and PPCA supplied an informative and detailed email on 21 March 2018.
642. The outcome was that PPCA's inspection of the premises showed that there were no clearly designated areas for dining but that there were

areas that did require a background music licence. PPCA therefore credited the outstanding invoices for tariff R1 and raised invoices for the background music use.

643. In the result, a licence for background music was put in place.

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

644. The investigation including physical inspection meant that the complaint took a little longer to resolve than most of PPCA complaints do, but that was unavoidable. Even still, the period from 16 January to 23 March 2018 was not very long.

### **PPCA Complaint 11**

645. As indicated earlier, a musician complained over the time it was taking to resolve disputes regarding registration on the PPCA's website.

646. The complainant was a director of a company who sought to register "an official complaint regarding unresolved disputes over a number of our contracted artists". He said that he had been going back and forth with PPCA for well over a year looking to resolve the disputes and in most cases had been unable to do so "largely due to inaction and stalling from the other party disputing our ownership".

647. PPCA reports that its Complaints Officer contacted the complainant by telephone when it was agreed that the Complaints Officer would try to progress the matter with the other licensor and would speak again with the complainant in a month's time.

648. The Complaints Officer liaised with the other licensor throughout April/May 2018.

649. The report by PPCA does not indicate the outcome.

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

650. I will take up with PPCA developments that may have occurred between the date of its report to me and the date of this Report.

### ***PPCA Complaint 12***

651. The complainant said that her company operated a restaurant which had a licence for background music from APRA/AMCOS. She wrote to PPCA complaining about an onslaught of letters from PPCA asking that she acquire a second licence to do something that she had assumed was already covered.

652. On 18 April 2018 PPCA's General Manager replied (three days after the making of the complaint). The General Manager apologised for having caused the feeling of harassment. The General Manager's email explained that the APRA/AMCOS licence covered the use of the song, being the composition and/or lyrics ("musical work" in copyright language), but not the rights in the recorded versions of musical works. The email explained that the complainant may need an additional licence to cover the performance of sound recordings at her restaurant, which she could obtain from PPCA on a blanket basis or from the individual rights holders in the various recordings (often the relevant record label). The General Manager continued:

"We appreciate that the need to obtain and hold two separate licences is burdensome, particularly for small business and, as you have identified, the joint APRA / PPCA initiative of "OneMusic" is intended to address this problem and simplify the process."

653. PPCA reports that the complainant's premises were added to the list to be inspected next time inspections are to take place in the State concerned.

654. I do not know whether a PPCA licence was taken out by the complainant.

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

655. I will take up with PPCA developments that may have occurred between the date of its report to me and the date of this Report.

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

656. AWGACS reports, as it did last year, that its Complaints Handling Procedure and Dispute Resolution Procedure were developed in line with the requirements of the Code, the requirements of CISAC, and the Australian Standard AS4269-1995 (Complaints Handling).

657. During the Review Period, AWGACS received no complaints from members or affiliates.

658. The ongoing dispute with Screenrights is addressed in the Screenrights section of this report above.

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

659. Any complaints received by ASDACS during the Review Period are identified in a specific Complaints Register, separate from recordings of other general interactions with members.

660. During the Review Period, no formal complaints were lodged.

## **SUBMISSIONS MADE DIRECTLY TO THE CODE REVIEWER**

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661. Four submissions have been received that do not fit easily into the "COMPLAINTS AND DISPUTES" section of this Compliance Report.

662. They are all made by representative bodies.

663. The Code, in clause 3, refers to complaints by Members and Licensees. This is why my Compliance Reports always "anonymise" their accounts of complaints and disputes. But the present four submissions are made by "public" organisations which have a legitimate and well-known interest in the area of copyright law and practice.

### **Nightlife Music Pty Ltd (Nightlife)**

664. Nightlife is an Australian background music provider that was established 29 years ago.

665. The general nature of Nightlife's concern can be seen in the following opening paragraphs of its submission:

"Nightlife is a supporter of and advocate for the *Code of Conduct for Collecting Societies* and is of the view that Collecting Societies are broadly compliant with the particulars of the Code. However, issues of concern to Nightlife and the broader background music sector have developed as a consequence of technological development and inherent complexity in the public performance licensing landscape that:

- is to the detriment of the background music sector, creative communities and the broader Australian economy; and
- result in unnecessary (avoidable) risk exposure for both the associated Collecting Societies and Licensees.

The issues in question are caused when a business is licensed by APRA / AMCOS for public performance but uses a streaming service for playback that is licensed explicitly for personal use only. In such cases, third-party service agreements are knowingly being breached and the interests of creators and owners of copyright material are not being sufficiently represented (contrary to sl.I (a)(ii) of the Code). Accordingly, Nightlife is unable to reconcile the detriment this causes with the objectives of the Code, aspirations of Collecting Societies and behavioural expectations upon Licensees.

Nightlife is of the firm view that:

- prolific infringement in public performance cannot reasonably align to the objectives and spirit of the Code;
- Collecting Societies are exclusively positioned as custodians of rights' holder interests to provide a clear position on this matter for the benefit of all involved parties; and
- time is of the essence to remediate this deeply entrenched issue before infringing behaviour is further normalised."

666. Nightlife's complaint is a general one of non-enforcement by APRA AMCOS.

667. I will arrange for a dialogue between Nightlife and APRA AMCOS and, as appropriate, provide a Supplementary Compliance Report.

### **Australian Hotels Association (AHA)**

668. AHA makes a submission concerning the proposed introduction of *OneMusic Australia* (see [79 – [81] above). Therefore, it concerns APRA AMCOS and PPCA.

669. It is not easy to differentiate between a complaint about the consultation process that was followed and a complaint about the substance of the *OneMusic Australia* solution.

670. Again, the appropriate course is for me to initiate a dialogue between AHA on the one hand and APRA AMCOS and PPCA on the other hand, and, as appropriate, to issue a Supplementary Report.

### **Live Performance Australia (LPA)**

### **Universities Australia (UA)**

671. Both LPA and UA have provided to me copies of their submissions to the Bureau of Communications and the Arts (BCAR) in connection with its review of the Code.

672. As noted at [7] – [12] above, the Final Report of the result of that review is awaited.

673. The submissions of LPA and UA are pertinent to the Triennial Review of the operation of the Code, rather than to the annual report on the collecting societies' compliance with it. The latter accepts the Code and its operation as they are (contrast clause 5.3 of the Code with clause 5.2 of the Code).

674. Of course, I will keep the LPA and UA submissions on file to be taken up as part of the next Triennial Review which, no doubt, will take place after the BCAR report has issued.

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

Dated this 10th day of December 2018

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

The Hon K E Lindgren, AM, QC  
Code Reviewer

## APPENDIX A CALL FOR SUBMISSIONS 2018

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Notice of the Review, with an invitation to make submissions by mail to the Code Reviewer at a specified address or by email by 31 July 2017, 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 2 June 2018 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 2018**

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**”), Viscopy Limited (“**Viscopy**”), 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 2017 to 30 June 2018.

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 following address by no later than **31 July 2018**.

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.

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

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## **APPENDIX B CLAUSE 2.9**

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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

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## 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.