

## APRA RESPONSE TO ADDITIONAL THIRD PARTY SUBMISSIONS

23 MAY 2019

1. Since APRA responded in April 2019 to the submissions made by interested parties, the ACCC has received two further submissions – one from the Australian Small Business and Family Enterprise Ombudsman, and one representing Eisteddfod Organisers Australia and A Group of Dance Schools Organisations/Individuals that conduct Eisteddfods & Dance Businesses, Australia wide (*sic*).
2. APRA appreciates the opportunity to respond to these submissions.

### Australian Small Business and Family Enterprise Ombudsman

3. APRA notes that the Ombudsman made a submission in connection with this authorisation application on 15 February 2019, raising general concerns about transparency and complexity of APRA's operations. This new submission appears therefore to have been influenced by new information, the source of which has not been disclosed.
4. Unfortunately, the new submission of the Ombudsman contains several significant inaccuracies, perhaps because it has been based on unsubstantiated information. APRA believes it is regrettable that an office such as that of the Ombudsman appears not to have attempted to verify the veracity of its sources, or at least make enquiries of APRA, before making a submission such as this.
5. In order to try and correct the misapprehensions arising from the information she has received, APRA has invited the Ombudsman to meet and observe first-hand the nature of APRA's operations. In the meantime, APRA feels obliged to correct the public record by way of this response.
6. First, the comprehensive music use reporting that is provided by commercial radio broadcasters is not a facility that can be "extended by APRA" to community radio stations and "other relevant broadcasters". The type of reporting provided by commercial broadcasters requires complex programming and reporting systems that are not available to community radio broadcasters because of their lack of resources. Contrary to the Ombudsman's assertion, APRA does not provide these systems to the commercial broadcasters – the systems are part of the broadcasters' own operations and are acquired at their own expense. As set out in detail in APRA's primary submissions and submissions in response, the amount of licence fees paid by community radio does not justify the imposition of a complex and expensive reporting system. APRA uses appropriate proxies for the distribution of community radio licence fees. The Ombudsman appears to have been influenced by submissions made by individual songwriters who seem to believe that their non receipt of APRA distributions is due to the fact that APRA does not collect detailed music use logs from community radio. These submissions are misconceived.
7. Secondly, the Ombudsman is concerned about the use of capacity as a multiplier. APRA's experience is that licensees differ widely in their views on whether attendance or capacity is the better multiplier. Attendance is a

more unreliable measure, requiring a higher level of resources to report and assess than the objective figure of capacity. In licence schemes where there is a high level of music use that is central to the licensed business, such as where music is used for dancing, APRA applies attendance to calculate licence fees (even though the Copyright Tribunal determined, in the PPCA decision, that capacity was a reasonable multiplier). This makes the licence schemes significantly more administratively complex for APRA to administer. However, the reality is that for some APRA licence schemes to be affordable and administered efficiently, it is not practicable for APRA to require actual music usage reporting. Further, to do so would be too onerous for the licensee. This is why APRA tries to offer small businesses simple blanket licences, with licence fees calculated on transparent and easily identifiable variables, and can do so at a lower price than is warranted under the more sophisticated schemes for high music use businesses. Relevantly to the Ombudsman's apparent area of concern, the licence fee for halls and function centres is based on capacity, but the multiplier is *per hundred* head of capacity. That is the licence fee is the annual number of functions at which music is performed multiplied by the licence fee (currently \$3.68) multiplied by the capacity of the centre to the nearest hundred. There is a minimum annual fee of \$73.17.

8. Third, the APRA grants program is a program whereby APRA receives applications for a share of revenue that has been set aside by APRA, with the consent of its members, to grant to successful applicants. The grants program is administered by a subcommittee of the Board, and all grants are approved by the Board. The process is rigorous, and has received the tacit approval of the Federal Government by its support of various APRA initiatives administered under the grants program. Full details of the terms of each type of grant are available on the APRA website. The administration of the grants program is audited by KPMG as part of APRA's annual audit. The grants awarded benefit the music industry, including APRA members who may not receive regular or significant distributions. APRA regards its grants program as an act of extraordinary generosity on the part of those of its members who receive income from APRA, and rejects any suggestion that the programs should be administered by a third party, or that the members would continue to make funds available were this to be required.
9. Fourth, in relation to licence coverage for "airplay", APRA assumes that this submission is based on information provided by background music services that are anxious regarding the competitive environment created by streaming services. APRA has already provided a comprehensive answer to these submissions. The Ombudsman's submission on this point is, with respect, confused. The APRA licence is to perform APRA Works, by whatever means are described in the relevant licence. APRA is not aware of a single instance in the history of its operations where a business performing background music has been approached by a copyright owner claiming that the APRA licence did not cover the public performance of his or her work. That is precisely the benefit of the APRA blanket licence. In any event, to the extent that a background music service provider must obtain its rights from APRA, its licences are subject to the same alleged deficiency.

10. Fifth, in relation to the Ombudsman's transparency concerns, APRA has already agreed to adopt all recommendations of the BCAR review, and expects that they will be implemented by 1 July 2019.
11. Sixth, APRA has clear guidelines and other information for opt out and licence back. The Ombudsman is mistaken in her belief that a songwriter who performs her own works must pay a licence fee to APRA and then receive a distribution. Licence back operates to prevent this from occurring, and is used regularly for this purpose.
12. APRA would be pleased to provide any further information that might be requested.

Sonya Walsh representing Eisteddfod Organisers Australia and A Group of Dance Schools Organisations/Individuals that conduct Eisteddfods & Dance Businesses, Australia wide (sic)

13. In its submissions in response to the interested party submissions, APRA referred to a number of submissions made by or on behalf of eisteddfod and dance school operators. It repeats those submissions in response to those made by Ms Walsh. Ms Walsh's submissions are lengthy, and contain a significant amount of redacted material (including, apparently, correspondence with APRA). APRA will not attempt to respond to the submissions in detail. APRA generally rejects the matters asserted in the submissions.
14. Without specific detail, APRA cannot respond to the allegations regarding Resolution Pathways. All APRA staff members are well aware of the existence of Resolution Pathways, and are trained to offer information regarding the process to any person who asks, or who appears to be aggrieved. APRA finds it difficult to believe that an APRA staff member could not answer questions regarding Resolution Pathways as alleged. Submissions regarding the independence and other aspects of Resolution Pathways have been made separately.
15. The matters raised by Ms Walsh in relation to the consistency and transparency of APRA's licence schemes, have been addressed elsewhere. Simply put, APRA believes that a flat fee for all businesses of a single type is reasonable. Under such a scenario, a large supermarket chain would pay the same amount for background music as a small corner shop. Although APRA believes the car registration analogy to be misconceived, it notes that if the analogy were valid, vehicles are charged a higher fee according to weight, at least in NSW.
16. APRA has made detailed submissions in relation to consultation and transparency. It does not introduce substantive changes to licence schemes, including licence fees, without a process of industry consultation. When licence fees are increased, the increase is regularly phased in.
17. APRA has previously been the subject of a Royal Commission, in 1932 - 1933. It believes that in the current regulatory environment, a Royal Commission into APRA's operations would be a gross misallocation of resources.

18. The suggestion that APRA receives money for remastered out of copyright works is false.
19. If the dance schools represented by Ms Walsh are performing music that is not controlled by APRA, or is the subject of a direct licence, APRA is not aware of it, but there are systems in place to adjust licence fees in such circumstances.
20. Probably the central complaint made by Ms Walsh is that APRA made an arrangement with the Association of Eisteddfod Societies of Australia Inc (**AESA**), whereby AESA acts as APRA's agent to grant its members a public performance licence for music controlled by APRA. APRA has addressed this earlier, however: it is APRA's understanding that when it first entered into discussions with AESA, the group that styles itself Eisteddfod Organisers Australia (**EOA**) did not exist. APRA believed that its arrangement with the AESA would be of benefit to eisteddfodau generally – the AESA claimed to be representative, it had a relationship with its members that meant it was in a better position to administer APRA licences, and the efficiencies of the arrangement meant that APRA could offer a discount on the licence fees that could be passed on to the members. As APRA understand it, the EOA is not an incorporated entity with identifiable members, with which APRA could make a similar arrangement. If it were, APRA would be happy to offer a similar benefit.
21. The suggestion that APRA charges venues a licence fee to hold eisteddfodau and also charges the eisteddfod organiser, is false.
22. APRA rejects Ms Walsh's account of the November 2017 meeting between it and "various dance schools". APRA has detailed records of that meeting, which can be provided on request.
23. The allegation that licensees are required to pay for licences that they do not require (for example, an "uber driver" being required to take out a live performance licence), is false.
24. The example screenshotted and attached to Ms Walsh's submission at about page 9, is not an "example on the OneMusic website regarding a small club with two function rooms". The example is a nightclub operating at full capacity on 104 nights per year, and at limited capacity on a further 52 nights per year. The OneMusic fee cited is cheaper than the combined APRA and PPCA licence fees for the same venue. That particular consultation document has been superseded. No club currently paying \$1000 would have its licence fee increased to \$55,000, unless it has been grossly misrepresenting its music use. APRA does not believe there is any club in Australia in this position.
25. APRA cannot respond meaningfully to the many other allegations regarding the APRA licence arrangements for eisteddfodau and dance schools as set out in Ms Walsh's submission. They appear to be based on a comprehensive misunderstanding of the law, the APRA licences, and APRA's operations generally. This is regrettable, and APRA would be happy to meet again with Ms Walsh if she wished to better understand the factual basis of APRA's operations.