



15 March 2018

Copyright Code Review
Director, Economic Branch
Bureau of Communications and Arts Research
Department of Communications and the Arts
GPO Box 2154
Canberra ACT 2601

By email: codereview@communications.gov.au

Dear Sir/Madam,

Review of Code of Conduct for Australian Copyright Collecting Societies

Thank you for the opportunity to make a submission regarding the Review of the Code of Conduct for Australian Copyright Collecting Societies draft report issued February 2018.

The AHA

The Australian Hotels Association (AHA) is a Registered Organisation under the *Fair Work (Registered Organisations) Act 2009*. Its diverse membership of more than 5,000 licensed hotel businesses includes pub-style hotels plus three, four and five-star international accommodation hotels located in each state and territory.

Music copyright

Many AHA members are users of music copyright and hold licences with APRA AMCOS and PCCA. As you are aware, APRA AMCOS and PCCA have established a joint venture OneMusic Australia to act as a one stop shop for music licensing in Australia. The AHA and OneMusic are in negotiations regarding the structure of the new scheme. OneMusic has issued various consultation papers and the AHA has provided its first response (attached)

Encouraging greater transparency

The AHA supports the findings and recommendations in the draft report, i.e.

- The Code should require sufficient transparency around licences and fee calculations to support negotiations between collecting societies and licences
- Amend Clause 2.3 to require collecting societies to make available to members, licensees, and potential licensees the methodology for calculating licence fees, including any modelling¹

¹ Review of the Code of Conduct for Australian Copyright Collecting Societies draft report February 2018, p10

Case study - OneMusic Australia

The AHA has **attached** to this submission its first response to the OneMusic Australia first consultation paper for hotels. The transparency issues raised in that response can be simply summarised in the following extract.

“... your consultation paper refers on numerous occasions to OneMusic Australia’s “modelling, in depth research, analysis and testing across the data collected from APRA AMCOS and PPCA licensees in order to develop the proposed licensing model and fees”.² The data we require to make a decision is the same data that you used to make your decision. There are a lot of assumptions you have made about the OneMusic Australia analysis that we are not privy to. Your interpretation is all we have to go on, which leaves us at a disadvantage.”

Further to the above, the AHA asked could OneMusic Australia “please provide all the data, modelling, research, analysis and testing you used to make your assumptions and decisions so that so that the AHA is as well informed as OneMusic Australia to conduct analysis and make decisions and we are able to proceed?”

The response from OneMusic Australia so far has been, “Much of the information requested by the AHA is confidential and we are not in a position to share.” Ordinarily, this confidentiality statement may seem a legitimate constraint in OneMusic Australia providing more detailed information. However, this constraint seems not to have applied to APRA AMCOS and PPCA when they shared detailed information to which the other party was ordinarily not entitled.

Conclusion

Copyright Collecting Societies are afforded special privileges to act in a way that may otherwise be deemed uncompetitive or cartel like behaviour. With that privilege comes a greater onus to act transparently. The revised Code needs to better specify the transparency required, as the current code seems insufficient.

Thank you for the opportunity of making this submission. Please call with any questions.



STEPHEN FERGUSON
NATIONAL CEO

² OneMusic Australia - *Hotels, Pubs, Bars and Taverns Music Licensing Consultation*, 13 October 2017, p7



AUSTRALIAN HOTELS ASSOCIATION

27 Murray Crescent, Griffith ACT 2603
PO Box 4286, Manuka ACT 2603

T 02 6273 4007
E aha@aha.org.au
W aha.org.au

Date:	22 February 2018	
To:	Richard Mallett APRA AMCOS 16 Mountain St, Ultimo, NSW	Lynne Small PPCA Buckingham Street, Surry Hills, NSW
Subject:	OneMusic Australia Consultation Paper One http://www.onemusic.com.au/consultations/ AHA response	
From:	Stephen Ferguson AHA National CEO	

Contents

1	Introduction	2
2	Principles.....	2
3	No “one size fits all”	4
4	Accommodation hotels	5
5	Understanding the scheme	5
6	Context	7
7	Partial Rights	9
8	Revenue	10
9	Double dipping.....	14
10	AHA Members Only Licence.....	16
11	Dining.....	20
12	General Music	23
13	Copying	27
14	Capacity v. Attendance	28
15	Featured Music	31
16	Nightclubs	34
17	Conclusion.....	35

1 Introduction

Thank you for the opportunity for the Australian Hotels Association (AHA) to provide observations on the proposal to create OneMusic Australia. As you know, the AHA represents over 5,000 hotels throughout Australia. Hotels continue to be one of the main “providers” of live music (e.g. SA 80% of live music is played in hotels). Therefore, as “providers” of live music, and not just “users” of music we are not shy in saying that hotels deserve special consideration in comparison to many other types of licensee. The AHA has examined consultation papers relating to the following schemes:

- Hotels, pubs, bars and taverns
- Dining
- Recorded music for dance use
- Telephone on hold
- Karaoke

We note that the following have not yet been circulated for comment:

- Bottle Shops and Liquor Outlets
- Music in the Workplace
- Music on the Website
- Fitness centres (accommodation hotels)

Set out below are observations and questions that we wish to progress with you. These questions and observations have been developed by the AHA Branches and AHA members. Please note that as in the OneMusic Australia consultation paper, “hotels, pubs, bars and taverns” will be referred to using the general term “hotel”.

2 Principles

The AHA will base its decision making on the principles set out below

2.1 Structure v. Price

At this stage, the AHA prefers to generally focus on the “structure” of the schemes rather than “price”. This is in part caused by the AHA not having all the financial information relating to its members that has been shared between APRA AMCOS and PPCA. Having said that there are obvious concerns relating to price that we intend to address in this paper and during the process.

2.2 Affordability

OneMusic Australia states, “... this new licensing structure will be of great value to ... venues”.¹ It goes without saying that for there to be “great value”, the price must be affordable. Too much cost will simply lower music use by venues and inevitably hurt the music industry rather than support it. If the price does not provide commercial value, venues will be very scant on every area of usage in order to avoid excessive fees. This would not be a positive outcome for the scheme or either industry.

¹ OneMusic Australia - *Hotels, Pubs, Bars and Taverns Music Licensing Consultation*, 13 October 2017, p1

The aspect of affordability is even more important when understood within the 'live & performance' aspect of music. Sourcing venue costs and compliance have seen dramatic reductions in live music in hotels. A lot has changed since the 1979-80's. Hotels that can't return a dividend from music have withdrawn from the marketplace and sought other commercial opportunities within their floor space. The scheme needs to recognise the value that hotels play in the actual promotion of live music.

2.3 Simplicity and equity

The AHA supports any system which simplifies music licensing for our members provided it is equitable. The AHA understands that simplicity and equity are often competing objectives. Having to understand and comply with current PPCA and APRA AMCOS is universally seen as a huge burden for our members and many have trouble navigating the complex current requirements. Equally though, they don't want to pay more than they are obliged to. In previous schemes, "oversubscribing" was a huge issue resulting in numerous disputes and many hotels paying more than they should. A simple and equitable scheme will have the following benefits:

- Decrease over subscribing by licensees
- Decrease angst and confusion suffered by licensees
- Decrease OneMusic Australia compliance and dispute resolution costs
- Fair pay for fair play

2.4 Transparency

Thank you for having provided to us a spreadsheet of data from 77 hotels that compares the current licence scheme with the proposed scheme. (N.B. it did not include Music in the Workplace and Music on the website). This data has been useful at a very high level, but unfortunately is insufficient for us to make decisions given the number and diversity of the over 5,000 hotels that are our members.

We note that your consultation paper refers on numerous occasions to OneMusic Australia's "modelling, in depth research, analysis and testing across the data collected from APRA AMCOS and PPCA licensees in order to develop the proposed licensing model and fees".² The data we require to make a decision is the same data that you used to make your decision. There are a lot of assumptions you have made about the OneMusic Australia analysis that we are not privy to. Your interpretation is all we have to go on, which leaves us at a disadvantage.

2.4.1 Could you please provide all the data, modelling, research, analysis and testing you used to make your assumptions and decisions so that so that the AHA is as well informed as OneMusic Australia to conduct analysis and make decisions and we are able to proceed?

The AHA notes that the Code of Conduct for Collecting Societies states each collecting society will ensure that its dealings with Licensees are transparent.³

² OneMusic Australia - *Hotels, Pubs, Bars and Taverns Music Licensing Consultation*, 13 October 2017, p7

³ Code of Conduct for Collecting Societies, Clause 2.3(b)

2.5 Better off / worse off

Thank you for supplying the data for 77 hotels comparing current APRA AMCOS and PPCA schemes with the proposed OneMusic Australia scheme. An average decline in total proposed tariff revenue of -6% is indicated. However, other observations of the variations include, e.g.:

- 45 of the venues decrease in tariffs and 33 go up in tariffs
- The highest proposed total tariff is \$84,496
- The average tariff is \$8,453 and the lowest tariff is \$200
- The highest increase is from \$9,100 to \$24,628 (up \$15,528 or 171%)
- The highest decrease is from \$44,552 to \$22,735 (down \$21,817 or 49%)

The wild variations are of immense concern and require further discussion. The AHA will struggle to commit to any new scheme where its members are worse off and cannot make reasonable adjustments to their music offering to be no worse off.

3 No “one size fits all”

3.1 Each hotel is unique

Each hotel is generally unique, e.g. the variances are significant, customer habits are consistently evolving, and change is consistent, e.g.

- Size, location and population density – city to the bush
- Different uses of music – a radio on the bar to live performance
- Different focuses and mixes on diverse offerings – e.g. food, beverage, accommodation, retail, wagering, gaming, live entertainment, functions
- Different scales of investment in music systems
- Different uses on different days of the week and times of the year
- Different opening hours, e.g. 11pm regular close v. 3am regular close
- Shrinking versus expanding populations and community wealth
- Profitability and capacity to pay
- Venues in seasonal tourist locations
- Larger legacy footprints in rural and remote locations

3.2 Regional and Seasonal traders

Venues located in places with high seasonality of trade, e.g. in Northern Australia or at some of the snowfield settlements, near universities, face a real problem when capacity (and not attendance) is used to assess their fees.

These venues often thrive on three months of trade to tide them over for the rest of the year, as such they are geared to having capacities as big as possible which may only be used 25% of the year and the rest of the time, their attendance can be as low as 10% of the peak season trade.

For these venues, we would argue for a strong discount framework to be developed at the forefront of any system redesign. Any proposed solution that would have these venues having to regularly fill in forms and provide updates to OneMusic could provide overly complex and bureaucratic.

3.2.1 Will OneMusic Australia consider any mechanisms or discounts to take into account seasonable patronage?

3.3 Indicators of music use and worth are proxies at best

The consultation papers do not provide the answer to the critical question of “How can we actually measure music use and worth”? For example, vexed metrics used to measure music include televisions and capacity. The depth of detail in the consultation papers is proof that there are many nuances and scenarios all justifying that the schemes proposed may not be “fit for purpose” for each venue. The proposed indicators of music use within each scheme are at best proxies, e.g.

- Television screens (increasing in number as the quality goes up and the prices come down)
- Capacity of a venue
- Number of telephones
- Price of a meal
- Having a drink at the bar or eating a meal at the table

APPRA’s website make reference to charging those “that use music to attract and return customers”. In setting each metric or tariff, the scheme should assess the music value by assessing the capacity to “attract and return” customers. For example, the capacity for music in an accommodation hotel fitness centre has far less capacity to “attract and return” customers than in a nightclub. Hotels should only have to pay for those patrons that derive value from the music”. There is no “one size fits all” mechanism that anyone can come up with that accurately allows the use and worth of music in a venue to be measured. This is not a criticism, just a fact.

4 Accommodation hotels

We understand that OneMusic Australia has sent consultation papers directly to accommodation hotel licensees separately. The majority of accommodation specific hotels are members of the AHA and are also members of our specialty accommodation division with the AHA known as Tourism Accommodation Australia (TAA).

Many of the licence schemes are common. On that basis, there is very little different between music use within pubs, bars and taverns as compared to accommodation hotels. It would be beneficial if accommodation hotels were included in this AHA scheme and process.

4.1.1 Will OneMusic Australia agree to accommodation hotels being included in the “Hotels, pubs, taverns and bars scheme” on a no worse off basis?

We note that accommodation hotels only require music licences in common areas, and that music and televisions in guest rooms do not need music licences.

5 Understanding the scheme

5.1 Code of Conduct for Copyright Collecting Societies

We note the obligations of Collecting Societies to make available to Licensees and potential licensees Information about the licences or licence schemes offered by the Collecting Society, including the

terms and conditions applying to them, and about the manner in which the Collecting Society collects remuneration and/or licence fees for the use of copyright material. ⁴

5.2 Plain English

The current OneMusic Australia discussion papers are very text heavy and not easy to understand, especially given that up to ten different schemes can apply to hotels. Some OneMusic Australia schemes are still to be distributed. Given that most hotels require more than one licence, that is inconsistent with the Plain English provisions set out in the ACCC APRA AMCOS authorisation. If the current complexity remains, the scheme is set up for failure.

- | | |
|-------|---|
| 5.2.1 | Can OneMusic Australia please provide the actual licence form to be used? |
| 5.2.2 | When will a Plain English Guide be made available? |

5.3 Title of licence schemes

We note that some of the licence schemes use interchangeable names. For example:

- General Music licence is also known as Background or Foundation
- Featured Music licence is also referred to as Foreground music
- Nightclub licence is also referred to as Recorded Music for the Purpose of Dancing
- Copying is also referred to as Reproduction
- Dining is also referred to as Restaurant

The AHA would prefer that a simple agreed name be used as standard definitions up front would help (e.g. featured and foreground are the same thing – choose one).

- | | |
|-------|--|
| 5.3.1 | Will OneMusic Australia agree to using the following simple terms: <ul style="list-style-type: none">○ General Music○ Featured Music○ Nightclub○ Copying○ Dining |
|-------|--|

5.4 Definitions

The consultation papers do not provide a definitions section as per the current licence schemes.

- | | |
|-------|---|
| 5.4.1 | Can you please provide a list of all definitions? |
|-------|---|

The AHA would like to discuss the following:

- | | |
|-------|--|
| 5.4.2 | Clarify the definition of “physically separate” ⁵ |
| 5.4.3 | Clarify the definition of “TV Screens – receiving broadcast only” ⁶ |
| 5.4.4 | Clarify Definition “TV screens – showing music videos” ⁷ |

⁴ Code of Conduct for Copyright Collecting Societies clause 2.3(c)(i)

⁵ OneMusic Australia – *Recorded Music for the Purpose of Dancing Music Licensing Consultation* 13 October 2017, p3

⁶ OneMusic Australia - *Hotels, Pubs, Bars and Taverns Music Licensing Consultation*, 13 October 2017, p5

⁷ OneMusic Australia - *Hotels, Pubs, Bars and Taverns Music Licensing Consultation*, 13 October 2017, p5

5.5 Number of schemes

OneMusic Australia also states “hotels can require up to 10 different licences from each of the two organisations”.⁸

5.5.1 For the avoidance of doubt, please advise the names of all the licences that might be required for hotels under the OneMusic Australia proposal (including accommodation hotels), especially those not yet set out in the consultation papers listed in the introduction.

5.6 On line calculator

Many AHA members are advising the draft scheme in its word heavy format is hard to digest and understand. They are particularly concerned with perhaps being worse off, but have no easy way of making such determinations. They are also aware that OneMusic Australia has itself conducted “modelling, in depth research, analysis and testing across the data collected from APRA AMCOS and PPCA licensees in order to develop the proposed licensing model and fees”.⁹

5.6.1 Will an online calculator be offered for AHA members to better understand the changes as will be felt by their hotel?

6 Context

6.1 Legal structures and rights

The AHA understands that APRA AMCOS and PPCA are “copyright collecting societies” and copyright between both is owned as follows:

- APRA AMCOS - the copyright in the song (lyrics, composition etc.) APRA AMCOS has 95,000+ members who are songwriters, composers and music publishers.
- PPCA - the copyright in the recording and/or music video of the song. PPCA represents the interest of record companies and Australian recording artists. PPCA offers a blanket licence, but individual licences are also available from the copyright holders

Both organisations adhere to the “Code of Conduct for Copyright Collecting Societies”.

6.2 OneMusic Australia governance

Can you please advise?

6.2.1 What is the legal structure of OneMusic Australia?
6.2.2 How will the directors of OneMusic Australia be appointed?
6.2.3 Who will be the initial chair and directors of OneMusic Australia?
6.2.4 Will a seat be provided on the OneMusic Australia board for a “licensee director”?

⁸ OneMusic Australia - *Hotels, Pubs, Bars and Taverns Music Licensing Consultation*, 13 October 2017, p1

⁹ OneMusic Australia - *Hotels, Pubs, Bars and Taverns Music Licensing Consultation*, 13 October 2017, p7

6.3 Revenue to the right people

Hoteliers are keen to know that the fees they pay are passed on to the owner of the copyright, e.g. songwriter, artist, record label. They are keen to know how OneMusic Australia will measure the use of each piece of music used in their venues and ensure each copyright owner is paid their correct proportion.

- | | |
|-------|---|
| 6.3.1 | What is the mechanism for determining payments to artists/members and how do hoteliers know if you have this right? |
| 6.3.2 | How can OneMusic Australia assure the AHA that PPCA is not sharing in revenue for which it has no right under the <i>Copyright Act 1968</i> ? |

6.4 Australian Consumer and Competition Commission (ACCC)

The AHA understands that whereas PPCA does not have any ACCC authorisation, APRA AMCOS has a collecting society authorisation that expires 28 June 2019.

- | | |
|-------|---|
| 6.4.1 | Does OneMusic Australia need ACCC approval? |
|-------|---|

6.5 Dispute resolution

Can you please advise:

- | | |
|-------|---|
| 6.5.1 | How are disputes between hotels and OneMusic Australia to be settled? |
| 6.5.2 | Will the current APRA AMCOS Dispute Resolution Process be used? |
| 6.5.3 | If so, how will OneMusic Australia be bound, e.g. ACCC authorisation? |

6.6 Process

Can you please advise:

- | | |
|-------|---|
| 6.6.1 | Will OneMusic Australia agree to giving licensees the option of (1) maintaining separate licenses with APRA AMCOS and PPCA, or (2) migrating to OneMusic Australia? |
| 6.6.2 | What happens if the AHA, PPCA and APRA AMCOS can't reach agreement with OneMusic Australia? |
| 6.6.3 | How will better off / worse off be addressed? |
| 6.6.4 | Will OneMusic Australia offer "group discounts" to the larger hotel groups? |
| 6.6.5 | How will OneMusic Australia deal with single hotels that may not fit the one size fits all licence scheme? |
| 6.6.6 | Is there a lifetime for the scheme? |

6.7 Privacy

Can you please advise:

- | | |
|-------|--|
| 6.7.1 | Has PPCA shared any of its licensee's information with APRA? If so, which information? |
| 6.7.2 | Has APRA AMCOS shared any of its licensee's information with APRA? If so, which information? |

- | | |
|-------|--|
| 6.7.3 | If licensee information has been shared between APRA/AMCOS and PPCA, can you please advise what permission was granted by the licensee to do so? |
| 6.7.4 | Can you please provide the Privacy Statements for APRA AMCOS, PPCA and OneMusic Australia? |
| 6.7.5 | How is it justified that in order to get a licence, a licensee must now share its information with both APRA AMCOS and PPCA? |

6.8 Commencement date

AHA notes that in its second consultation paper regarding the fitness industry it advised, “OneMusic Australia ... intends to implement the new exercise (fitness) scheme as varied and set out above subject to any new and substantive arguments received by 17 November 2018”.

- | |
|---|
| <ul style="list-style-type: none">• Has OneMusic Australia resolved a date that it will implement the schemes related to hotels?• Will such schemes be implemented before (1) application is made, or (2) approval is given for the reauthorisation of the APRA AMCOS by the ACCC? |
|---|

6.9 AHA Member Benefits

The AHA believes that the whole AHA membership should benefit from the work being done by the AHA to negotiate this amended scheme. Unfortunately, non-AHA members are “getting a free ride” off the efforts of the AHA. That is unfair and non-AHA members should not benefit from the work being done by the AHA. AHA member only benefits might include for example

- The removal of the separate restaurant tariff
- The inclusion of additional rights such as music on hold, music on your website, music in the workplace
- Five nights of free music per year that allows hotels to add any number of additional TV screens for no extra cost e.g. Grand Final Day
- CPI frozen for the first three years
- A Glide path for worse off venues

Can you please advise:

- | | |
|-------|--|
| 6.9.1 | Are there any “AHA member only” benefits or offerings? |
| 6.9.2 | Will OneMusic Australia consider providing an “AHA Members Only” Scheme? |
| 6.9.3 | Will OneMusic Australia consider providing “AHA member only benefits”? |

7 Partial Rights

7.1 Copyright Act 1968

The *Copyright Act 1968* – Sect 199(2) (Reception of Broadcasts) provides as follows:

(2) A person who, by the reception of a television broadcast or sound broadcast, causes a sound recording to be heard in public does not, by doing so, infringe the copyright, if any, in that recording under Part IV.

7.2 PPCA not entitled to charge a tariff in certain circumstances

Our understanding is that whilst an APRA AMCOS licence is required at all times:

- PPCA has no right to charge for radio, free to air television and pay television (e.g. Foxtel)
- PPCA has no right to charge for live music
- PPCA's rights are limited to recorded music, e.g. CD's, records, digital downloads, or music videos

7.2.1 Are the above assumptions correct? If not, please advise the circumstances in which PPCA is not entitled to charge a tariff.
--

7.3 APRA AMCOS licence only

OneMusic Australia must cater for an OneMusic license which is for:

- A licence that is for both APRA AMCOS and PPCA, and
- A license that is just for APRA AMCOS

7.3.1 Will an "APRA AMCOS only" scheme be offered to hotels for venues that only use either live music, radio, free to air television, and pay television?
--

7.3.2 Can you please confirm the circumstances in which a PPCA licence is not required?

7.3.3 Can those circumstances please be contained in the Plain English Guide?

7.3.4 Will an APRA AMCOS only licence be offered?

7.3.5 If so, please provide the rates and terms for an APRA AMCOS only licence?

7.4 Discount

In the Dining Licence consultation paper, OneMusic Australia proposes "that those venues that ... have non-requirement to access sound recordings under One Music Australia's licence ... a discount of 42.5% would be applied to relevant components of the proposed scheme".¹⁰ However that same discount appears absent from the General Music licence.

7.4.1 Is it intended that a Partial Rights discount be offered under all licence categories, not just Dining?

7.4.2 How was the proposed discount of 42.5% decided?

7.4.3 What right does OneMusic Australia have to charge a tariff of 57.5%?
--

7.4.4 Why is the discount not 100%?

8 Revenue

8.1 New Zealand

The OneMusic Australia documents makes comparisons with OneMusic New Zealand.

- The biggest venue (300m2+) in NZ (OneMusic NZ) with a DJ performing every single day of the year would cost the venue NZ\$9,168.80 (AU\$8,191).

¹⁰ OneMusic Australia – Dining Music Licensing Consultation, 13 October 2018, p7

- The same venue in Australia with the same DJ performing every single day of the year would cost the venue AU\$1,178,950 (365*1.90*1700).

- 8.1.1 Can you please explain the justification for the disparity between Australia and New Zealand?
- 8.1.2 If OneMusic Australia is based on OneMusic New Zealand, why can't Australia have the New Zealand rate structure

8.2 Other markets

We also understand that in comparison to other international markets, Australia pricing of music is considered to be the “high-water mark”.

- 8.2.1 What are the price comparisons with other large markets, e.g. Europe?

8.3 Goals of the proposed scheme

OneMusic Australia states “the goals of the proposed scheme and OneMusic Australia in general are:

- a) To simplify licensees initial and ongoing reporting and administrative requirements
- b) To develop future proofed schemes in preparation for the evolution of audio and audio visual delivery platforms, and
- c) To develop simple and industry relevant structures that are fair and equitable across venue types and locations”¹¹

We note also that the Code of Conduct for Copyright Collecting Societies states that by administering copyright, collecting societies “reduce the transaction costs for both members and licensees associated with the use and exploitation of copyright material.”¹²

The AHA notes that there is no mention of commercial JV benefits to APRA AMCOS and PCCA such as driving economies of scale, increasing compliance, more beneficial tariff structures, all with consequences in uplift of revenue.

- 8.3.1 What are the financial and non-financial benefits for APRA AMCOS and PCCA as a result of the joint venture initiative, e.g. economies of scale, saved costs, sharing of licensee information?
- 8.3.2 Has APRA AMCOS and PCCA prepared any estimates on cost savings factored in due to economies of scale, e.g. head count, back room, systems, uplift in “under licensing”? If so, please provide those estimates?
- 8.3.3 How will “efficiency dividends” be shared with copyright owners?
- 8.3.4 Is it intended that the benefit of any economies of scale be shared with Licensees by the way of reduced tariffs?
- 8.3.5 Can you please advise the total budgeted savings and revenue increases?

The AHA believes that with scale, comes discount. Australia is the highest charging music licensing regime in the world, and has already factored in a level of non-compliance to its current charging. Therefore, if revenues are to increase, a discount should apply.

¹¹ OneMusic Australia - *Hotels, Pubs, Bars and Taverns Music Licensing Consultation*, 13 October 2017, p2

¹² Code of Copyright Collecting Societies, Clause 1.1(a)(v)

8.3.6 Does OneMusic Australia commit to reducing its fees as a result of increased revenue from areas of non-compliance (if any)?

8.4 Revenue and Costs

Can you please advise:

- 8.4.1 Will OneMusic Australia please provide its full budget to the AHA?
- 8.4.2 What is the total amount of revenue currently collected by APRA AMCOS and PPCA from hotels, pubs, taverns and bars?
- 8.4.3 What is the budgeted amount of revenue to be collected from hotels, pubs, taverns and bars by OneMusic Australia?
- 8.4.4 How will revenues collected by OneMusic Australia be allocated between APRA AMCOS and PPCA?
- 8.4.5 What is the current distribution of revenue between APRA AMCOS and PPCA in dollar terms?
- 8.4.6 What is the budgeted distribution of revenue under OneMusic Australia between APRA AMCOS and PPCA in dollar terms?
- 8.4.7 Will licensees such as hotels share in any cost saving or economies of scale as a result of OneMusic Australia?
- 8.4.8 What is the budgeted proportion of revenue from hotels as compared to total revenue from all other tariffs?
- 8.4.9 What is the anticipated percentage of total revenue to be returned to OneMusic Australia members?

8.5 Unintentional infringement / under reporting

OneMusic Australia states one of its aims is to “harmonise existing tariffs, simplify music licensing, reduce administrative burden for our customers and counter market confusion around the difference between APRA AMCOS and PPCA”.¹³

- Is reducing any alleged “under reporting” considered as one of the aims of OneMusic Australia?
- Are APRA AMCOS or PPCA licences currently structured to take account of under reporting?

OneMusic Australia states, “The impact of moving to the proposed structure is a decrease in licence fees of approximately 10% across the industry.”¹⁴

- 8.5.1 Can you please provide the data proving that statement?
- 8.5.2 Please provide the analysis relating to the estimated 10% reduction in licence fees.
- 8.5.3 What is the number and names of venues which you say should hold APRA AMCOS rights, but don’t?
- 8.5.4 What is the estimated uplift in revenue for OneMusic Australia if those venues you say are not properly licensed become properly licensed?

¹³ OneMusic Australia - *Hotels, Pubs, Bars and Taverns Music Licensing Consultation*, 13 October 2017, p1

¹⁴ OneMusic Australia - *Hotels, Pubs, Bars and Taverns Music Licensing Consultation*, 13 October 2017, p7

OneMusic Australia states “our analysis shows there are a number of venues that are currently licensed only by APRA AMCOS or PPCA but actually require licences for both organisations rights”.¹⁵

8.5.5 Can you please provide the data proving that statement?

8.6 Increased revenue from improved compliance

We understand that APRA AMCOS is considered to have a more comprehensive compliance regime than PPCA. We imagine that a key benefit for APRA AMCOS and PPCA from One Music Australia will be increased compliance.

- 8.6.1 How many hotel licensees does APRA AMCOS currently have?
- 8.6.2 How many hotel licensees does PPCA currently have?
- 8.6.3 How many hotel licensees are common between APRA AMCOS and PPCA?
- 8.6.4 What is the total revenue from hotels for APRA AMCOS?
- 8.6.5 What is the total revenue from hotels for PPCA?
- 8.6.6 What is the average revenue from an APRA AMCOS hotel licensee?
- 8.6.7 What is the average revenue from a PPCA hotel licensee?
- 8.6.8 What is the budgeted average revenue from a OneMusic Australia hotel licensee?
- 8.6.9 What is the estimated total revenue as a result of OneMusic Australia for hotels?

8.7 Financial impact – Better off / Worse off

OneMusic Australia states it “has tested the implementation of this scheme across a sample of current APRA AMCOS and PPCA licensees ... in order to deliver as close to a revenue-neutral result as possible. The average licence fee fluctuation ... is a decrease of 3.8%”.¹⁶

- 8.7.1 Was the statement above based on the same sample as the 77 hotels provided to the AHA, or was it based on other data?
- 8.7.2 What was the sample size of that test?
- 8.7.3 Which licensees were included in that test?
- 8.7.4 What was the total revenue?
- 8.7.5 Which tariff revenues increased, and by how much?
- 8.7.6 Which tariff revenues decreased, and by how much?
- 8.7.7 Will APRA provide the testing to the AHA?

That statement may hold true when looked wholly from the OneMusic Australia side. Unfortunately though, when assessed against the data for the 77 hotels provided (see below table¹⁷), the variations can be immense.

¹⁵ OneMusic Australia – *Recorded Music for the Purpose of Dancing Music Licensing Consultation* 13 October 2017, p5

¹⁶ OneMusic Australia – *Recorded Music for the Purpose of Dancing Music Licensing Consultation* 13 October 2017, p5

¹⁷ N.B. some of the percentages supplied seem inaccurate

Better off				Worse off			
Current Total	1MA Total	Difference	%	Current Total	1MA Total	Difference	%
35,643	2,616	- 33,027	-93%	16,640	16,896	256	2%
1,332	200	- 1,132	-85%	82,737	84,496	1,759	2%
3,370	1,224	- 2,146	-64%	4,055	4,215	160	4%
5,764	2,100	- 3,664	-64%	27,660	28,934	1,274	5%
9,280	3,439	- 5,841	-63%	3,034	3,374	340	11%
44,552	22,735	- 21,817	-49%	1,613	1,824	211	13%
4,778	2,549	- 2,229	-47%	2,147	2,448	301	14%
4,557	2,448	- 2,109	-46%	2,608	3,021	413	16%
2,170	1,200	- 970	-45%	502	600	98	20%
930	525	- 405	-44%	5,286	6,440	1,154	22%
4,150	2,397	- 1,753	-42%	4,612	5,844	1,232	27%
14,409	8,938	- 5,471	-38%	7,377	9,588	2,211	30%
5,286	3,350	- 1,936	-37%	15,774	21,940	6,166	39%
3,328	2,136	- 1,192	-36%	5,293	7,388	2,095	40%
7,560	4,950	- 2,610	-35%	2,600	3,815	1,215	47%
8,927	5,876	- 3,051	-34%	18,436	28,772	10,336	56%
4,512	3,090	- 1,422	-32%	6,369	9,945	3,576	56%
4,398	3,072	- 1,326	-30%	1,118	1,773	655	59%
2,604	1,824	- 780	-30%	14,520	24,390	9,870	68%
21,413	15,040	- 6,373	-30%	2,864	4,944	2,080	73%
11,578	8,342	- 3,236	-28%	393	680	287	73%
17,028	12,688	- 4,340	-25%	1,293	2,397	1,104	85%
3,514	2,700	- 814	-23%	470	925	455	97%
2,750	2,136	- 614	-22%	709	1,453	744	105%
16,637	13,332	- 3,305	-20%	752	1,800	1,048	139%
50,610	40,656	- 9,954	-20%	2,778	7,094	4,316	155%
1,481	1,200	- 281	-19%	9,100	24,628	15,528	171%
7,211	5,844	- 1,367	-19%	3,397	10,800	7,403	218%
22,848	18,645	- 4,203	-18%	994	4,024	3,030	305%
16,516	13,504	- 3,012	-18%	1,750	8,688	6,938	396%
1,447	1,200	- 247	-17%	924	10,509	9,585	1038%
237	200	- 37	-16%				
8,175	6,920	- 1,255	-15%				
22,462	19,178	- 3,284	-15%				
7,381	6,440	- 941	-13%				
1,097	973	- 124	-11%				
1,335	1,224	- 111	-8%				
5,684	5,287	- 397	-7%				
23,754	22,278	- 1,476	-6%				
558	525	- 33	-6%				
11,941	11,432	- 509	-4%				
6,439	6,190	- 249	-4%				
1,244	1,200	- 44	-4%				
6,048	5,846	- 202	-3%				
9,384	9,082	- 302	-3%				
558	549	- 9	-2%				

9 Double dipping

The AHA is very concerned at the “double dipping” or multiple licence coverage by OneMusic Australia. For example, hotels are required to hold a General Music licence fee across the whole venue, plus a Dining Licence across part of the venue that is already covered by the General Music licence.

9.1 Dining double dip example

In addition to paying for a General Music licence, OneMusic Australia requires hotels to pay for a Dining Licence. This Dining Licence “overlays” the General Music licence. This is a double dip and a fundamental issue to the AHA. In support of this proposition, we note:

- The use of background music is no different for a hotel patron just because they are sitting down eating a meal instead of standing at the bar.
- Unlike featured music or music recorded for dance use, the music in a dining area is likely the same soundtrack played at the same volume as across the general areas of the hotel.
- Whether you are standing or sitting, drinking or eating, background music sounds the same.
- Restaurants, which pay a Dining Licence, do not have to also pay a Hotel Licence. Conversely, hotels should not have to pay a dining licence.

- 9.1.1 Why is dining in hotels not included in the Background Music fee?
- 9.1.2 If there was to be a dining licence paid by hotels (which there should not), should there not be a consequent reduction offset against the General Music licence paid?
- 9.1.3 How is double dipping justified?
- 9.1.4 If a hotel (that holds a General Music licence) must also pay a Dining tariff, does a restaurant (that holds a dining licence) also have to pay a General Music tariff? If not, why not?
- 9.1.5 How will different types of dining areas in accommodation hotels be distinguished? E.g.
- 9.1.6 A five star restaurant open and promoted to the general public, or
- 9.1.7 A breakfast dining room not promoted to the general public and utilised only by hotel guests?¹⁸

9.2 Nightclub and Featured Music example

If a hotel is paying for a nightclub tariff (based on capacity), it follows that night club areas of a venue should not require a General Music or Featured Music licence for at least that same period.

9.3 Multiple tariffs on the same day/night

Hotels may be subject to multiple tariffs on the same day/night as the purpose of music changes. 'Dining music' while there are tables, 'dance music' when the tables are cleared and 'background music' in the last portion of the night. 'Screens' may also be added during the same period.

9.4 OneMusic NZ avoids double dipping

OneMusic NZ avoids "double dipping" by stating, "Where a business has a restaurant and a bar in the same area, only one licence is required and should be calculated based on applying the pub/bar tariff."

9.5 Single dip principle

Following the NZ model, the AHA asserts a general principle that only one licence should be required to cover a venue for its music licensing obligations. The AHA suggest the general principle being "Where a premium tariff is paid, the other tariffs are waived".

- 9.5.1 Will OneMusic Australia agree that when a venue that pays a nightclub licence, it is not required to pay for a General Music licence or Featured Music licence?
- 9.5.2 Will OneMusic Australia agree that when a venue pays a Featured Music licence, it is not required to pay for a General Music licence

¹⁸ Please note that the AHA believes that any form of dining tariff is illegitimate in the first place and seeks to have the dining tariff removed

9.5.3 Where a venue pays for a Dining licence, it is not required to pay for a General Music licence?

10 AHA Members Only Licence

The AHA agrees with simplifying the scheme.

10.1 One stop shop – AHA members only

The AHA proposes that the number of licences be simplified to a “one stop shop” for hotels by reducing the number of applicable licences from ten (10) to one (1) AHA Member Only OneMusic Australia licence” as set out below. The single licence for AHA members only would have four (4) categories. The licence would be available for all hotels (including accommodation hotels), pubs, bars and taverns that are AHA members.

Current Proposal “Separate licences required”	AHA proposal “AHA Members Only One Stop Shop Scheme”
General Music - includes: <ul style="list-style-type: none"> • Background Music • Racing TV Screens • TV Screens • Radio • Digital Music Systems • TV screens with music videos 	General Music - includes: <ul style="list-style-type: none"> • Background Music • Racing TV Screens • TV Screens • Radio • Digital Music Systems • TV screens with music videos • Dining¹⁹ • Copying • Telephone on hold • Function Centre/Room • Music in the Workplace • Music on the Website • Fitness centres (accommodation hotels) Featured Music Recorded Music for the purpose of dancing Function Rooms (accommodation hotels)
Featured Music	
Recorded Music for Purpose of Dancing	
Function rooms	
Fitness centres	
Dining	
Copying	
Telephone on hold	
Music in the Workplace	
Music on the Website	

¹⁹ As stated elsewhere, the AHA believes the Dining tariff is illegitimate double dipping and will therefore not agree to the General Music Licence being “rounded up” to include revenue from it.

10.1.1 Will One Music Australia agree to an “AHA members only” single licence scheme as set out above?

10.2 2016 APRA AMCOS proposal

The AHA notes the 2016 APRA AMCOS proposal included dedicated dining areas, music on hold, music in the workplace and on the website included in the tiered packages.²⁰

10.2.1 Will OneMusic Australia agree to reinstating dining areas, music on hold, music in the workplace and on the website included in the tiered packages for General Music?

10.3 Breakdown of data provided for 77 venues

From the data provided so far, we note the proportions of the different licences required as below set out in order of total fees per type:

Based on data from the 77 venues provided				
Licence type	Number of venues that use the licence	Proportion of venues that use the licence	Amount of total fees	Proportion of total fees
Nightclub	16	21%	\$298,870	45.9%
Featured Music	61	79%	\$166,380	25.6%
General Music	77	100%	\$118,400	18.2%
Dining	18	23%	\$61,052	9.4%
Copying	10	13%	\$4,600	0.7%
Telephone on hold	5	6%	\$1,275	0.2%
Function Centre/Room	2	3%	\$348	0.1%
Music in the Workplace	?			?
Music on the Website	?			?
Fitness centres	?			
TOTAL			\$650,926	100.0%

The AHA notes the inconsistency with the 80/20 principle in that:

- The first three licences captures about 89% of OneMusic Australia revenue
- Whilst the last six licences capture only about 11% of OneMusic Australia revenue

10.3.1 Will One Music Australia consider rolling the dining, copying, telephone on hold, function, music in the workplace, music on the website, fitness centre licences into the General Music licence?

10.4 Featured music

The issues relating to Featured Music are set out elsewhere in this document.

²⁰ APRA AMCOS letter from Jennifer Gome to AHA branches “Proposed APRA AMCOS licence for hotels, taverns & bars” dated 27 July 2016

10.5 Nightclub

The issues relating to Nightclubs are set out elsewhere in this document.

10.6 Dining

The issues relating to the Dining licence and benefits of including Dining in the General Music licence are set out elsewhere in this document.

10.7 Copying

The issues relating to the Copying licence and benefits of including Dining in the General Music licence are set out elsewhere in this document.

10.8 Music in the workplace

The music in a hotel workplace is highly likely to be the same generated from the general music system. It is in the interests of OneMusic Australia that hotel staff are up to speed with current trends and what is being listened to by their customers. Music in a hotel office workplace is more a “tool of the trade” than for enjoyment.

10.8.1 Will OneMusic Australia agree to not charge hotels for music in the workplace (e.g. this can be easily achieved by rolling it into the General Music licence)?

10.9 Music on the Website

OneMusic Australia proposes charging a flat fee of \$550.00 for hotels that stream music on their website. Under this licence, the hotel must “use no less than 5 and no more than 15 tracks playing in a random linear, non-interactive loop” and “must not derive any revenue from the playing of music”.

Hotels use music on their websites as a means of driving attendance to their venues, where the hotels then pay fees to OneMusic Australia. Hotels cannot charge for people listening to music on their websites. In any case, such habits are considered highly unlikely. Music on the website does not generate direct revenue, is a secondary and not primary use, and as such hotels should not be charged a fee.

10.9.1 Will OneMusic Australia agree to include Music on the Website as part of the General Music Licence for pubs, bars and taverns?

10.10 Telephone on Hold

OneMusic Australia proposes charging between \$240 (1-2 lines) and \$390 (3-5 lines) to use music on a telephone on hold. (N.B. the table below excludes phone lines from 6 to 100)

SINGLE LOCATION CLIENTS ¹		
(A) CALLER CAPACITY LINES	(B) RATE PER CALLER CAPACITY LINE COMMUNICATION ONLY	(C) RATE PER CALLER CAPACITY LINE COMMUNICATION AND COPYING
1-2	\$240	\$300
3-5	\$315	\$390

At least as applies to pubs, bars and taverns, we understand the provision of Telephone on Hold is miniscule (5% of venues generating 0.2% of revenue).

10.10.1 Will OneMusic Australia agree to include Telephone on Hold as part of the General Licence for pubs, bars and taverns?

10.11 Function Rooms

At least as applies to pubs, bars and taverns, we understand the provision of function rooms is miniscule (e.g. 1% of pubs generating 0.2% of revenue). We are happy to discuss and better understand the function room tariff as it applies to accommodation hotels, which are more likely to host conferences, weddings, etc.

10.11.1 Will OneMusic Australia agree to include function rooms as part of the General Music Licence for pubs, bars and taverns?

10.12 Fitness Centres

The AHA understands that APRA AMCOS and PPCA currently charge accommodation hotels for fitness centres. Our view is that any fees are unwarranted and that fitness centres in accommodation hotels should be included in the General Music licence. Fitness centres in accommodation hotels provide a markedly different experience to those in professional fitness centres, especially in terms of music use. Hotels provide fitness centres just to meet the market and secure a higher “star rating”.

Hotel fitness centre	Professional fitness centre
<ul style="list-style-type: none"> • No entry or membership fee • Generates no direct revenue • Music not aligned to particular classes • Minimal instructors, if any, therefore not using music to set the speed of the class • Few classes, if any • Generally free entry for hotel guests • Very few attendees • Most patrons wear headphones and listen to their own music 	<ul style="list-style-type: none"> • Charges entry or membership fee • Generates direct revenue • Specific music aligned to the particular class, e.g. loud and fast for spin class (AC/DC), softer and quieter for yoga (Whale music) • Professional instructors often using music to set the “speed” of the class • Bookings required for classes • Scaled fees based on attendance and type of class • High volume attendance

10.13 Other schemes and licences

Hotels continue to be one of the main “providers” of live music (e.g. SA 80% of live music is played in hotels). Under the AHA Members Only Licence being proposed, we do not believe that tariffs in a hotel scheme necessarily have to “line up” with other non-hotel tariffs, e.g. featured, nightclub, fitness centres.

We believe the special nature and stature of hotels as often being music “providers”, that hotels should be a consideration that they are deserving of not being “assessed like the rest”. Therefore, as “providers” of live music, and not just “users” of music, we are not shy in saying that hotels deserve special treatment.

11 Dining

11.1 Statement

Please note there is very strong indication that the AHA cannot accept any tariff on dining for hotels that hold a General Music licence.

11.2 Dining definition

Under the new OneMusic Australia definition, every single hotel in the country is possibly liable for the dining tariff. The OneMusic definition for dining businesses or establishments is set out below.

“Dining Business or Establishment” means a business or a specific area within a multi-function establishment (e.g. a hotel, club or entertainment complex):

- a) that is open to the public; and*
- b) where the primary function is either:
 - (i) the sale of food, with or without beverages; or*
 - (ii) the sale of hot beverages (e.g. tea, coffee) alone or in conjunction with the sale of food and which is not licensed for the consumption of alcohol; and**
- c) that has a designated seating area available for patrons of that business or establishment to consume the food/hot beverages on the premises,*

but excluding any such business or area within a multi-function establishment where accommodation is its primary function (e.g. hotel, motel or guest house) and the sale of food/hot beverages is for the benefit only of residents and their guests (i.e. the Dining Business or Establishment is not promoted to the general public).²¹

11.2.1 Can the definition above be simplified or given greater clarity?

11.3 Definition of dining is too broad

The proposed definition of dining is extremely broad capturing a wide range of food service types and areas, e.g.

²¹ OneMusic Australia – Dining Music Licensing Consultation, 13 October 2018, p2

- A pie warmer
- A coffee machine in a bar
- Counter lunch in a country hotel
- Fast food versus five star
- A breakfast served in the lounge at a country hotel
- Bistro
- Dining areas open for all day dining versus e.g. dinner only
- Budget versus five star

This is a significant change. Of the 77 hotels provided in the data sample, 18 had dining licences (23%). Given hotels are required to serve at all times, hotels would also be captured 7 days a week, meaning the tariff paid would be the maximum per capacity. Under the definition above, probably 100% of venues would now require a dining licence. Please advise:

- 11.3.1 What is the meaning of “individual circumstances ... such as pubs”?
- 11.3.2 Will the scheme distinguish between different types of dining areas?
- 11.3.3 Given the changing nature of hotels, changing habits of customers and increasing demand from customers that food be served reliance of hotels serving food in all areas of the premises, how much growth in revenue is OneMusic Australia predicting in the dining licence fee?

11.4 Dining proposed fee structure

OneMusic Australia proposes the following tariff for dining:²²

	BACKGROUND MUSIC	FEATURED MUSIC	WEBSITE MUSIC
VENUE/ AREA CAPACITY ³	PER DAY/NIGHT RATE & MIN/MAX ANNUAL FEE	FEE PER DAY/ NIGHT OF USE	ANNUAL FEE
0 – 30	\$4.13 per day/night of operation Min. Annual Fee \$210 Max. Annual Fee \$1,280 (licensed to serve alcohol) Max. Annual Fee \$640 (not licensed to serve alcohol or BYO only)		
31 – 50	\$6.19 per day/night of operation Min. Annual Fee \$320 Max. Annual Fee \$1,930 (licensed to serve alcohol) Max. Annual Fee \$965 (not licensed to serve alcohol or BYO only)	\$12	\$550
51-100	\$9.29 per day/night of operation Min. Annual Fee \$480 Max. Annual Fee \$2,890 (licensed to serve alcohol) Max. Annual Fee \$1,445 (not licensed to serve alcohol or BYO only)		
100+	\$13.93 per day/night of operation Min. Annual Fee \$720 Max. Annual Fee \$4,340 (licensed to serve alcohol) Max. Annual Fee \$2,170 (not licensed to serve alcohol or BYO only)	\$24	

The AHA has immense concerns about the legitimacy and scale of fees proposed under the Dining licence as discussed further below.

²² OneMusic Australia – Dining Music Licensing Consultation, 13 October 2018, p5

11.5 Defining the Dining area

Many hotels nowadays serve food at all areas within the hotel. The process of determining what constitutes a “dining area” within a hotel involves significant ambiguity. Many hotels have abandoned the “designated bistro” model in favour of a more relaxed dining model throughout the entire hotel.

- 11.5.1 How is it justified that a hotel that serves food within all areas of the hotel should pay for two licences, i.e. a General Licence and a Dining Licence?
- 11.5.2 If hotels are to pay a dining licence (which they should not), how will the “area of dining capacity” be determined?

11.6 Food service is required by liquor licensing and House Policies

Hotels in many states are required to make food available throughout their premises during their hours of operation. The requirement for hotels to provide food arises in a couple of different ways:

- By law, as part of the requirements of holding a liquor licence
- By best practice, as part of the requirements for Responsible Service of Alcohol (RSA)

The current APRA AMCOS dining licence indicates that at least APRA AMCOS view the availability and service of food in hotels is ancillary or just part of the primary purpose of a hotel.

- 11.6.1 Please explain why the APRA AMCOS component of the OneMusic Australia tariff benefits from such a large increase?

11.7 Music in dining is secondary use

Music in dining areas is definitely a secondary use and is used more for an ambient “genre of music that puts an emphasis on tone and atmosphere over traditional musical structure or rhythm. Ambient music is said to evoke an "atmospheric", "visual", or "unobtrusive" quality. As a dining area populates the content of the music becomes void, drowned out but social chatter, activity and the engagement of a dining experience. It certainly is not the primary use, nor would it determine if a customer frequents your venue for that experience.

11.8 Testing and analysis of sample venues

OneMusic Australia states in testing across this proposed model, it “found that across a sample of 336 existing APRA AMCOS and PPCA licensees, there is an average saving of 13% compared to current licence fees.”²³

- 11.8.1 Can you please provide the testing and analysis across the sample of 336 venues above?

11.9 Hotels have evolved

Under the OneMusic Australia proposal hotels with dedicated dining areas seating over 100 people will pay up to an additional \$4,340 per year just to listen to background music in their dining section.

²³ OneMusic Australia – Dining Music Licensing Consultation, 13 October 2018, p7

Venues have evolved away from the traditional hotel with a separate dining area which are often difficult to distinguish from bar areas due to RSA requirements to provide food at all times.

A hotel venue (with a dining area) hosts local bands some nights and DJ's who provide music to dance to other nights, they will still be applying (and paying) for up to five separate licenses. Dining areas, music on hold, in the workplace and on the website should be included in the background music package. Clarification is required on:

- 11.9.1 How does OneMusic plan to structure Restaurant fees?
- 11.9.2 How will OneMusic Australia determine a "dedicated dining area"?
- 11.9.3 How many licenses could a hotel be forced to hold?

11.10 Under reporting

OneMusic Australia states "Our analysis shows that there are a number of dining establishments that are currently licensed only by APRA AMCOS or PPCA but actually require licences for both organisations rights."²⁴

- 11.10.1 Can you please provide the data supporting the statement above?

11.11 Varied leasing & management models for dining rooms in hotels

We acknowledge that some dining areas within hotels (especially accommodation hotels) are separately leased, managed and licenced areas of the hotel. This aspect requires further understanding and discussion.

12 General Music

12.1 Statement

The AHA supports in principle a tiered General Music licence provided the inclusions recommended by the AHA and pricing can be agreed.

12.2 2016 APRA AMCOS proposal

The proposed General Music licence follows the "tiered package" structure developed in conjunction between APRA AMCOS and the AHA in 2016 (the "2016 APRA AMCOS proposal"²⁵). Whilst the AHA did not agree to implement the scheme due to "better off / worse off issues", it was agreed at the time that the structure was much simplified with benefits for all parties (unfortunately except price for some). The entire licence including application form, terms and conditions was contained in four pages, unlike the present consultation papers number into the dozens. Items proposed in that proposal but absent in this scheme include:

- The removal of the separate restaurant tariff
- The inclusion of additional rights such as music on hold, music on your website, music in the workplace

²⁴ OneMusic Australia – Dining Music Licensing Consultation, 13 October 2018, p7

²⁵ APRA AMCOS letter from Jennifer Gome to AHA branches "Proposed APRA AMCOS licence for hotels, taverns & bars" dated 27 July 2016

- Five nights of free music per year that allows hotels to add any number of additional TV screens for no extra cost e.g. Grand Final Day
- A reduction and early end to the phase in of APRA AMCOS Recorded Music for Dance Use tariff, such that only CPI will be applied each year
- A Glide path for worse off venues

12.2.1 Will OneMusic Australia agree to include the above in the General Music Licence? If not, on what basis?

The AHA notes that the Dining Licence was:

- formulated with the assistance of Restaurant and Catering Australia²⁶
- a restaurant open 7 days a week “receives at least a day free per week”²⁷

- Given that hotels are charged a dining tariff, why was the AHA not consulted?
- Given that restaurants will receive effectively 52 free days per year, are there any similar concessions being offered to hotels with the hotel’s General Music licence?

12.3 The AHA supports a tiered General Music licence in principle

The AHA supports a tiered package providing the foundation for the General Music licence. Various amendments to the tiered General Music licence aimed at increasing simplification and equity of the General Music scheme are put forward elsewhere in this document.

Further to the discussion of “structure versus price” earlier, the AHA will be concentrating on structure and not commenting on price at this stage. When the final structure and inclusions are known, the AHA will be in a position to examine price.

²⁶ OneMusic Australia – Dining Music Licensing Consultation, 13 October 2018, p3

²⁷ OneMusic Australia – Dining Music Licensing Consultation, 13 October 2018, p5

12.4 OneMusic Australia proposed General Music licence tiered package

Package	Racing TV Screens	Radio	TV Screens (receiving broadcasts only)	Background and Digital Music Systems** (including Audio Jukeboxes)	TV Screens Showing Music Videos (including Video Jukeboxes)	Total Licence Fee
Bronze	Any Number	Any Number	Single Screen Only	N/A	N/A	\$200
Silver	Any Number	Any Number	Single Screen Only	1 Only	N/A	\$525
Gold	Any Number	Any Number	2 – 6 Screens	Any Number	Any Number	\$1,200
Platinum	Any Number	Any Number	7 – 9 Screens	Any Number	Any Number	\$2,100
Diamond	Any Number	Any Number	10+ Screens	Any Number	Any Number	\$3,350

** Includes devices such as tablets, smartphones, computers and CD players.

12.5 AHA proposed OneMusic Australia General Music tiered package

Package	Bronze	Silver	Gold	Platinum	Diamond
Licence fee	For discussion	For discussion	For discussion	For discussion	For discussion
Racing TV Screens	Any number	Any number	Any number	Any number	Any number
Radio	Any number	Any number	Any number	Any number	Any number
TV screens (receiving broadcasts only)	Single (1) screen only	Single screen (1) only	2-6 screens	7-9 screens	10 + screens
Background and Digital Music Systems** (including audio jukeboxes)	N/A	One (1) only	Any number	Any number	Any number
TV screens showing music videos (including video jukeboxes)	N/A	N/A	Any number	Any number	Any number
Free nights	Five (5)	Five (5)	Five (5)	Five (5)	Five (5)
Dining	Included	Included	Included	Included	Included
Telephone on hold	Included	Included	Included	Included	Included
Music on the website	Included	Included	Included	Included	Included
Music in the workplace	Included	Included	Included	Included	Included
Fitness centre	Included	Included	Included	Included	Included
Copying	Included	Included	Included	Included	Included
Function rooms	Included	Included	Included	Included	Included

** Includes devices such as tablets, smartphones, computers and CD players

12.6 TV screens and matched audio

The 2016 APRA AMCOS proposal sought to ensure that TV screens will only be counted “where the matched audio content is regularly audible from the screen or from an external sound source”. On the other hand, the proposed OneMusic JV states that only TVs “which are either audible and/or used to screen music videos” are counted.

12.6.1 Can you please confirm the definition for TV screens and matched audio?

12.7 Function Centre/Rooms

One Music Australia proposes the following tariff for function centres or rooms.

<i>Function Centre/ Room</i>	
Minimum Annual Fee per space	Day Rate per 100 persons or part thereof of the Capacity of Venue
\$65	\$9.10

The AHA requests that function centre/room licence be included in the AHA member only licence. However, the AHA understands that often different hire or function types can create issues and uncertainty within function rooms, e.g. Whether the performer, DJ, karaoke, etc is provided by the hotel or hired by the client.

12.7.1 Please provide all relevant data in regards to function centres/rooms in accommodation hotels.

12.7.2 The AHA would like time to further review this category as it is still seeking further data and information on current usage, issues, etc.

12.8 Background Music Providers

Many hotels use background music providers to provide their music and playlists for them. Such companies include, e.g. Nightlife, QSIC, Mood Media, SMA, and Mustard. The AHA understands that in some circumstances, Background Music Providers may pay the APRA AMCOS or PPCA tariff on behalf of the hotel. The AHA is concerned to avoid double dipping of licence fees in the area of background music providers.

12.8.1 Can you please advise if there are any licence fees paid on behalf of hotels by their Background Music Provider?

12.8.2 If so, how will a discount or rebate be paid to the hotel be structured?

12.8.3 Can you please advise that where a Background Music Provider has already paid or is paying a tariff on behalf of a hotel, how will that amount be not charged, rebated, refunded or offset against the tariff paid by the hotel to OneMusic Australia?

12.8.4 What will be the treatment for AHA members who may have pre-existing arrangements in place for “partial fee payments/ partial fee terms” with their current music suppliers at

the time of transition to One Music aggregated fees? E.g. Will they remain on their current terms until the end of their existing supplier contract before transitioning to new rates.

12.8.5 How will OneMusic reflect in their new rate structures differentiated pricing for members whose content supplier agreements cover partial rates (eg current PPCA rates) as part of their monthly subscription fees?

12.9 New technology

The proposed scheme does not appear to cover new technology and the manner in which OneMusic Australia will assess it. The AA admits the difficulty of trying to devise solutions for ways of playing or choosing music that do not yet exist. For example, there is increasing use of personal devices (phones and tablets) to 'interact' with the music systems. Whilst not wanting to open up a new complication, this functionality will grow more popular and wide spread and it would be prudent to at least have a policy as to how new technology will be treated.

12.9.1 How will licence arrangements for new technology be introduced or assessed?

13 Copying

13.1 Statement

The type of service a hotel uses for background music should not impact the cost to the hotel owner of background music. The AHA will be recommending that hotels strongly consider not paying for a Copying license and that our hotels don't use domestic consumer digital music services unless they have a business licence, e.g. Spotify. The license is not appropriate and should be removed.

13.2 Fee structure

One Music Australia proposes either one of the licence fees below, depending on stakeholder feedback.

Fig.2

TRACKS COPIED PER YEAR PER LOCATION	RATE PER YEAR (INC GST)
1 – 500	\$400
501 – 1,000	\$800

Fig.3

MAXIMUM NUMBER OF TRACKS PER DEVICE AT ANY ONE TIME	RATE PER YEAR (INC GST)
2,000	\$600

13.3 Possibly misleading

We are concerned that the proposal by OneMusic to charge for copying is possibly misleading.

13.3.1 What is the legal basis for OneMusic Australia being able to charge a fee for copying?

13.3.2 Will OneMusic make an unambiguous statement in the licence forms and Plain English guide that it has no right to charge for streaming (e.g. Spotify) and that a streaming licence does not form part of any OneMusic licence?

13.4 Cap is unrealistic

The cap on storing 2,000 digital tracks on any device at any one time appears to be both arbitrary and unduly limiting. 2,000 songs is roughly 8GB – most devices can store far more. Based on a song being 3:30 on average, that tops out at approximately 116 hours of music. Standard trading hours for a hotel here are 5am-midnight, which means that the hotel would be limited to storing just 5.55 standard trading days’ worth of music at any time without being forced to play the same songs repeatedly. The two proposed options for discussion appear to be more restrictive than the current situation that allows for unlimited tracks to be downloaded with a payment pathway to keep music.

- 13.4.1 Why is there a move away from unlimited music?
- 13.4.2 How have the limits on numbers been selected?
- 13.4.3 What scenario/s is this based on?
- 13.4.4 What rights are held by OneMusic for streaming services, e.g. Spotify?

In the event that a copying fee is charged (which it shouldn’t), the AHA recommends a fee schedule allowing an unlimited number of track purchases.

14 Capacity v. Attendance

14.1 Statement

The AHA has significant concerns with capacity as a metric for determining tariffs for music use, especially in the Featured Music and Nightclub schemes.

14.2 Capacity metric is flawed and inequitable

OneMusic Australia intends to measure “capacity” rather than “attendance” as the key metric for determining licence fees for Featured Music and the Nightclub licences. The AHA simply cannot agree with using capacity rather than attendance. A capacity metric has the following flaws:

- Measures “possible use” but not “actual use”
- Assumes all venues are successful all the time
- The capacity metric fails to recognise that venues are hardly ever at capacity with even OneMusic Australia notes “evidence that some venues are not at capacity at every night of opening”²⁸
- The capacity metric penalises larger and older facilities and is a greater burden to older venues which are disproportionately in regional areas

There are a number of older large hotels which routinely have live music and indeed some of our best and most iconic live music venues are amongst them. They have capacities of 500-600 and

²⁸ OneMusic Australia – *Recorded Music for the Purpose of Dancing Music Licensing Consultation* 13 October 2017, p5

even 1000's however they rarely if ever have anywhere near that number of patrons on the premises, or coming specifically for live music.

OneMusic Australia appears to have chosen capacity as the metric because it is easier to enforce and a much greater source of revenue – it is flawed because it measures potential use rather than actual use.

- | |
|--|
| 14.2.1 Given that OneMusic Australia acknowledges that capacity is a flawed and inaccurate metric, what is the basis of using it 100% as the metric for determining Nightclub tariffs? |
| 14.2.2 Would OneMusic Australia consider a hybrid scheme that included capacity as a metric? |

14.3 Metrics used to measure capacity

OneMusic Australia states “capacity ... is the number of patrons licensed by the local government, liquor licensing body or fire department as applicable to that venue”²⁹. The AHA notes that the capacity numbers in the various regulatory approvals are often different.

- | |
|---|
| 14.3.1 In the event that capacity is used as a metric (which it shouldn't), will OneMusic Australia agree to use the “lower” number stipulated by any of the regulatory bodies? |
|---|

The AHA asserts that the area to be measured for dancing should be restricted to the percentage of the venue covered by the dance floor or where people are actually dancing.

- | |
|--|
| 14.3.2 In the event that capacity is used as a metric (which it shouldn't), will OneMusic Australia agree to cap the capacity of the area as percentage of the dance floor or area used for dancing? |
|--|

14.4 Advising variance to capacity

OneMusic Australia states, “Venues which restrict their premises to different capacities on different days will have the ability under this scheme to declare those variances. This ensures that venues are only paying for the capacities at which they are operating on any given night.”³⁰ However, the example given uses a multi-level venue example using “whole venue” and “ground bar only” as the variable areas.

- | |
|--|
| 14.4.1 Will OneMusic Australia agree to venues limiting capacity across the “whole venue” on given nights? For example a 200 person capacity venue being able to limit its capacity to 100 on a Tuesday night? |
|--|

14.5 Attendance figure data

OneMusic Australia states it:

“... analysed the data that APRA AMCOS and PPCA receives from existing licensees. It was clear from this data that attendance figures provided to APRA AMCOS in recent years were,

²⁹ OneMusic Australia – Hotels, Pubs, Taverns and bars Licensing Consultation, 13 October 2017, p8 and *Recorded Music for the Purpose of Dancing Music Licensing Consultation* 13 October 2017, p8

³⁰ OneMusic Australia – *Recorded Music for the Purpose of Dancing Music Licensing Consultation* 13 October 2017, p3

for the majority of clients, reported as constant. This differs from APRA AMCOS expectations that attendance numbers would change from year to year to reflect actual variations in the popularity of the venue. This has not occurred ... suggesting that the figure essentially acts a proxy for capacity, i.e. PPCA's current metric. Capacity ... is more easily measurable than attendance, we propose to use capacity as a basis for the new licence scheme"³¹

The AHA asserts the logic underpinning the equity of capacity as a proxy is false equivalence. The AHA respects the right of the Copyright Tribunal to have made its decision in regards to PPCA, but it disagrees that the attendance metric should be completely discarded.

- | |
|---|
| <p>14.5.1 Will OneMusic Australia please provide the data and analysis referred to above?</p> <p>14.5.2 Please explain on what basis did APRA AMCOS base its expectations that "attendance numbers would change"? (N.B. the AHA asserts that there is no evidence base to have made such assumptions and that such assumptions are guesswork, if it can be put that highly)</p> <p>14.5.3 If it is correct that attendance figures were relatively stable, and that capacity would also be stable, why the need for change?</p> <p>14.5.4 In regard to the assumption that "attendance is a proxy for capacity", please provide the data comparing attendance to capacity used to make such assumption.</p> |
|---|

14.6 Fair pay for fair play

Hotels should only have to pay for those patrons that derive value from the music. Capacity is an erroneous metric to use to determine royalties due. The metric should relate to "music use" not "music capacity". A glib example of why capacity is a poor metric is that "You don't have to pay for a full tank every time you buy petrol".

14.7 How to measure attendance

OneMusic Australia states it welcomes further comment from the industry on the inclusion of attendance as a metric including how such numbers could be easily verified.³²

- | |
|---|
| <p>14.7.1 The AHA is willing to discuss how to measure attendance this process.</p> |
|---|

14.8 Tiered packages for featured music and nightclubs

As discussed informally, once some basic principles and data are understood and agreed during this consultation, the AHA would still like to examine the possibility of tiered packages for the Featured Music and Nightclub parts of the hotel scheme. The aim would be to further simplify those schemes and provide more certainty to licensees.

³¹ OneMusic Australia – *Recorded Music for the Purpose of Dancing Music Licensing Consultation* 13 October 2017, p2

³² OneMusic Australia - *Hotels, Pubs, Bars and Taverns Music Licensing Consultation*, 13 October 2017, p9

15 Featured Music

15.1 Statement

Please note that there is very strong indication that the AHA cannot accept any Featured Music tariff based on capacity. The AHA notes that OneMusic Australia needs to be particularly cautious with the tariff for Featured Music, as if the rate is too high (which it is), then the frequency of live music being offered will decrease.

15.2 Current APRA AMCOS and PPCA tariffs

	Current APRA AMCOS	Current PPCA
Live Artists	2.2% of gross expenditure on live artist performers appearing at Premises, PLUS 1.65% of gross sums paid for admission	N/A
Featured Recorded Music	<u>Whichever is greater</u> 1.859% of gross sums paid for admission OR \$0.16093 per person admitted to area where music is audible	<u>Whichever is greater</u> \$0.051 per person per night for each person of venue's capacity OR \$169.14 minimum annual fee Separate fee for each level/room where recordings are played.
Karaoke Machines	\$19.19 each day of karaoke performances	N/A

15.3 Featured Music – Per Day Rate where highest priced ticket (if any) is no more than \$40

OneMusic Australia proposes to scale fees on a per day rate according to the capacity of the area in which the featured music is used (capacity is the number of patrons determined by local government). The tariff is the same whether the venue is offering live, recorded or karaoke music.³³

CAPACITY OF AREA	RATE PER DAY/NIGHT (INC GST)
< 100	\$12
101 – 200	\$24
201 – 400	\$48
401 – 600	\$72
601 – 800	\$96
801 – 1,000	\$120
>1,000	\$180

The One Music Australia consultation papers states:

³³ OneMusic Australia - *Hotels, Pubs, Bars and Taverns Music Licensing Consultation*, 13 October 2017, p8

- The per day rate is the same whether the venue is offering live, recorded or karaoke featured music entertainment meaning a hotel can swap between different forms of featured music without impacting their licence fee.
- Licensees would have the capability to report different nights at different capacities, if only part of the venue is operating for the use of featured music³⁴

- 15.3.1 Please advise how “part of the venue” or “area being used” will be interpreted. E.g. line of sight? Earshot?
- 15.3.2 Will OneMusic Australia consider a per person rate for featured music, instead of capacity?

15.4 Single flat rate

It is the view of the AHA that the single flat rate based on capacity does not factor in the difference between peak days (e.g. Friday, Saturday) and off-peak days (e.g. Sunday to Thursday). The AHA notes that the current APRA AMCOS rate is based on attendance.

- 15.4.1 Will OneMusic Australia consider differential or weighted rates that take into account attendance?

15.5 Per person rate

The “featured music” where highest price ticket is <\$40 tariff element of hotels penalises the smaller operators in each band. The lowest rate is \$0.12 per person capacity, rising up to \$0.238 per person for a venue with a capacity of 101.

- 15.5.1 Will OneMusic Australia consider a flat per-person rate at the mid-point of \$0.18 per person?

15.6 Live v. recorded

The single flat rate does not take into account the fact that PPCA has no right to charge fees or receive revenue (even indirectly) from live music. If the single rate applies at the same rate between live and recorded music, it could very well be a breach of the *Trade Practices Act* and Code of Copyright for collecting societies and also attract the attention of the ACCC.

- 15.6.1 How will OneMusic Australia ensure that PPCA receive no direct or indirect revenue from live performances?
- 15.6.2 Will OneMusic Australia consider differential or weighted rates between live and recorded performances?

There is also no distinction between recorded music and the contribution of live music to the social and economic fabric of the Australian music scene and industry.

- 15.6.3 Will OneMusic Australia consider a discount or rebate for hotels that have live music played in them?

³⁴ OneMusic Australia - *Hotels, Pubs, Bars and Taverns Music Licensing Consultation*, 13 October 2017, p8

15.7 Choice of tariff – capacity v. attendance

The 2016 APRA AMCOS proposal provided a choice as to the licence calculation fee method where the annual number of attendees could be accurately counted.³⁵

15.7.1 Will OneMusic Australia consider including a choice or mix of capacity or attendance as the licence fee calculation method?

15.8 Featured Music – Rate where highest priced ticket is more than \$40

TYPE OF FEATURED MUSIC PERFORMANCE	% OF BOX OFFICE (INC GST)
FEATURED PERFORMANCES NOT USING RECORDED MUSIC	2.2%
FEATURED PERFORMANCES USING RECORDED MUSIC	4.4%

15.9 Increase higher than 2016 APRA AMCOS proposal

In the 2016 APRA AMCOS proposal regarding tickets of \$35 or greater, the Featured Music tariff was set at 1.925% of Gross sums paid for admission.

15.9.1 Given PPCA does not licence for live artists or karaoke machines, how is the increase justified?

15.10 Karaoke

OneMusic Australia proposes to phase in a Karaoke licence fee as follows:

VENUE CAPACITY	YEAR ONE 2017/2018	YEAR TWO** 2018/2019	YEAR THREE** 2019/2020
1 – 50	\$22.00	\$27.50	\$33.00
51 – 150	\$29.15	\$36.30	\$44.00
151 – 400	\$36.30	\$46.20	\$55.00
401 – 800	\$44.00	\$55.00	\$66.00
800+	\$51.70	\$64.35	\$77.00

The OneMusic Australia consultation paper states, “Hotels which are considered to be dedicated karaoke venues – that is, that the primary purpose of their business is to provide karaoke facilities to their patrons – are not covered by this proposed scheme.”

15.10.1 For the avoidance of doubt, does this mean that a venue that provides Karaoke on a secondary or casual basis (e.g. 1-2 nights per week) is covered in their Featured Music licence and does not require a separate Karaoke licence?

15.10.2 If a karaoke provider is hired by the client (and not the actual venue) is there a double dip?

³⁵ APRA AMCOS letter from Jennifer Gome to AHA branches “Proposed APRA AMCOS licence for hotels, taverns & bars” dated 27 July 2016 – see tables 2 & 3, page 2 of licence application form

15.11 Party Bar

Recently, the concept of “party bar” category has been raised. A Party Bar would be a designated area of a multi-purpose venue where there is music for dance (ie. Live DJ playing music for the purpose of dancing). A party bar is a common feature in a pub business model which appeals to small portion of those that attend the venue while not acting as the primary attraction. This new music tariff, Party Bar, would naturally fit under the featured music banner along with foreground music, live and karaoke.

15.11.1 The AHA would like to further develop the “party bar” concept and discuss it in due course.

16 Nightclubs

16.1 Statement

Please note that there is very strong indication that the AHA cannot accept any Nightclub tariff based wholly on capacity.³⁶ The AHA notes that of all the music licence categories, the Nightclub licence is the licence that causes the most allegations of inequity among licensees.

16.2 Hotels compared to Nightclubs

Hotels are not night clubs.

Hotel	Nightclub
<ul style="list-style-type: none">• Often no cover charge• Multi-dimensional• Hold a hotel liquor licence• Standard drink prices• Dining available• Less intention of dancing	<ul style="list-style-type: none">• Cover charge• One dimensional• Nightclub liquor licence• Inflated drinks prices• No dining• Intention of dancing

Can you please advise:

16.2.1 Why hotels should be treated as a Nightclub when the business profile and consumer offerings are so fundamentally different?

16.3 Fee structure

OneMusic Australia proposes to charge the following fees.

Recorded Music for the Purpose of Dancing

³⁶ AHA acknowledges the right of PCCA to charge on capacity as set out in the decision of the Copyright Tribunal “Phonographic Performance Company of Australia Ltd (CAN 000 680 704) under section 154(1) of the Copyright Act 1968 (Cth) CT2 of 2004, 10 July 2007”

	Number of nights operating per year (Per declared capacity dancing area)			Rate per head per night of operation	Minimum Fee per area per year
Tier 1	Up to		52	\$2.20	\$200
Tier 2	53	to	104	\$2.10	
Tier 3	105	to	156	\$2.00	
Tier 4	157	or more		\$1.90	

16.4 Definition

OneMusic Australia proposes to amalgamate existing APRA AMCOS and PPCA definitions so that a venue which uses music for the purpose of dancing is a licensed premises that:

*Provides music for the purpose of dancing by patrons;
 Has a dance floor or other area for dancing or charges an entry fee (even if the fee is not charged to all patrons); and Is not being used for*

- i. a private function;*
- ii. a dance or dance party;*
- iii. an event that features ballroom or similar traditional dancing; or*
- iv. a ticketed, multi-act music event.*

The AHA has trouble understanding this definition, particularly as it applies to areas “not being used for”, e.g. dance party.

16.4.1 Can you please provide examples as to how this is meant to be interpreted?

The AHA also notes the definition refers to “music for the purpose of dancing”, but does not note this tariff is to apply to recorded music only and not live music.

16.4.2 Will the word “recorded” be inserted in the definition?

16.5 Capacity metric

Therefore, can you please advise:

16.5.1 Is OneMusic Australia prepared to shift to the current APRA AMCOS style metric based on attendance?

16.5.2 How a tariff better related to the “actual” rather than “possible” use of music use can be implemented, e.g. a rate based on attendance as currently in place with APRA AMCOS?

17 Conclusion

Thank you for your time so far in discussing the OneMusic Australia proposal. We believe there is still a way to go, but that a solution is possible. There may also be other matters that we will raise as

they become evident later in the consultation process. The key decision making considerations for the AHA will be:

- Transparency
- Simplification
- Price and affordability “fair pay for fair play”
- Better off / worse off

STEPHEN FERGUSON
AHA NATIONAL CEO