

**Report of Review of Copyright  
Collecting Societies'  
Compliance with their Code of Conduct  
for the Year 1 July 2014 to  
30 June 2015**

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

**23 December 2015**

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

## **Compliance with their Code of Conduct for the Year 1 July 2014 to 30 June 2015**

### **INTRODUCTION AND SUMMARY CONCLUSIONS**

1. This report of the Code Reviewer, the Hon K E Lindgren, AM, QC, is the thirteenth annual report assessing the compliance with their voluntary Code of Conduct (Code) of the following eight collecting societies: Australasian Performing Right Association Limited ("**APRA**"), Australasian Mechanical Copyright Owners Society Limited ("**AMCOS**"), Phonographic Performance Company of Australia Limited ("**PPCA**"), Copyright Agency Limited ("**Copyright Agency**"), Audio-Visual Copyright Society Limited ("**Screenrights**"), Viscopy Limited ("**Viscopy**"), Australian Writers' Guild Authorship Collecting Society Limited ("**AWGACS**") and Australian Screen Directors Authorship Collecting Society Limited ("**ASDACS**"). This "Compliance Report" assesses that compliance during the period 1 July 2014 to 30 June 2015 (the Review Period).
2. AMCOS is administered by APRA. Therefore, the practice is adopted of referring to APRA and AMCOS collectively as "APRA/AMCOS" except where it is necessary to distinguish between them.
3. Viscopy is administered by Copyright Agency. Therefore, the practice is adopted of referring to Copyright Agency and Viscopy

collectively as "Copyright Agency/Viscopy", except where it is necessary to distinguish between them.

4. For the purposes of the review, each society reported to the Code Reviewer in respect of its activities covered by the Code during the Review Period. In some cases, their reports were accompanied by documents (in the cases of APRA/AMCOS and PPCA, voluminous documents) which provided the evidence for the statements made in the text of the report (Accompanying Underlying Documents).
5. The review and the opportunity to make submissions relevant to it were widely advertised: see the Appendix to this Report for the notice of the review and for details of the publication of the notice.
6. Certain organisations and individuals were individually notified by the Code Review Secretariat. The Secretariat has prepared and holds an alphabetical list of them. It is available for inspection on request, but is so voluminous that, in the interests of convenience, it is not attached to this Report.
7. In the Report for 2013-2014 reference was made at [7] – [9] to the grant by the Australian Competition and Consumer Commission (ACCC) of a conditional authorisation to APRA to continue its arrangements for the acquisition and licensing of performing rights in music. The conditional authorisation was stated to be until 28 June 2019. It was expressed to be subject to conditions requiring APRA to revise its Alternative Dispute Resolution (ADR) Scheme and to publish plain English guides relating to its licensing regime, and its members' right to opt out and to obtain licences back from APRA.

8. An account is given later in this Report of APRA's responses to these conditions.
9. Reference was also made in the Report for 2013-2014 at [10] – [15] to the Final Report of the Australian Law Reform Commission (ALRC) entitled *Copyright and the Digital Economy* (ALRC Report 122) which was issued in November 2013. The Commonwealth Government has not yet made known its position in relation to the recommendations made in that Report.
10. During the Review Period, while there were some failures to comply with the Code, on the evidence before me, in the terms of Clause 5.2(f) of the Code, I am satisfied that the collecting societies generally complied with the requirements of the Code.
11. I again record my thanks to Kylie Toombs who constitutes the Code Review Secretariat for her considerable help to me in bringing this Report to a conclusion.

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

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12. This section of the Report, structured society by society, addresses significant events, changes and developments during the Review Period by reference to the relevant clauses of the Code.

# **Australasian Performing Right Association Limited ("APRA") and Australasian Mechanical Copyright Owners Society Limited ("AMCOS")**

## **General**

13. As noted at [2] above, APRA administers AMCOS. The two societies jointly occupy the same premises, and provided a joint report to the Code Reviewer. Accordingly, generally speaking, this report deals with them together.
14. As at 30 June 2015, APRA had 85,987 (Australian and New Zealand) members, comprising composers and authors (together, "writers") and publishers. Of these, 84,325 were local writer members, and 643 were local publisher members. In addition, APRA had 1,007 overseas resident writer members and 12 overseas resident publisher members. Most Australian and New Zealand composers and publishers are members. The requirements for membership of APRA are set out in its Constitution.
15. As at 30 June 2015, AMCOS had 15,148 (Australian or New Zealand) members, of whom 14,356 were writers and 532 were publishers. In addition, AMCOS had 255 overseas resident writer members and five overseas resident publisher members. The requirements for membership of AMCOS are set out in its Constitution.
16. As at 30 June 2015, APRA/AMCOS had 1,148 Aboriginal and Torres Strait Islander (ATSI) members, which represented an increase of 8.7% during the Review Period. APRA/AMCOS report that although its indigenous membership is still low, they are committed to increasing awareness through their National

Indigenous Membership Strategy, which is overseen by their ATSI National Representative. More detail was given in the Accompanying Underlying Documents.

17. Neither APRA nor AMCOS is a declared collecting society under the Act in respect of any of the statutory licences. Accordingly, neither is required to comply with the requirements of the Attorney-General's Guidelines for Declaration of Collecting Societies. In practice, however, they say that they satisfy many of those requirements.

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

18. APRA/AMCOS have not changed any of the principal characteristics of their membership structures during the Review Period.
19. The APRA Board has six writer directors, elected by the writer members, and six publisher directors, elected by the publisher members. The AMCOS Board is elected by the members of AMCOS. As at 30 June 2015, APRA/AMCOS had 313 employees (including compliance staff) in Australian, and a further 29 employees in the APRA/AMCOS New Zealand office.
20. During the Review Period, a new "Business Change" Division was created to facilitate APRA/AMCOS's strategic business change, technology and systems development, which is discussed further below.
21. APRA/AMCOS, in particular, provided in support of their Report to the Code Reviewer three substantial volumes of Accompanying Underlying Documents.

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

22. Statistics as to the membership of APRA and AMCOS as at 30 June 2015 were given under "General" above.
23. In their Report to the Code Reviewer, APRA/AMCOS claim (their report, para 2,4) that their relationships with their members are at the core of their operations, and that communications with members are frequent; that "Member Services" staff are expert in advising members on their relationship with APRA/AMCOS and on the music business generally; and that members interact freely with APRA/AMCOS and have direct access to all levels of management.
24. During the Review Period, the Writer Services Department engaged in email correspondence with Writer Members on 53,554 separate occasions, in addition to sending 8,348 generic emails relating to song ownership. The Publisher Services Department sent approximately 24,167 emails to publisher members. In addition, over 2,155,989 emails were sent to members containing information such as event notices, payment advices and details of APRA/AMCOS publications.
25. In respect of the quarterly distributions during the Review Period, APRA paid royalties to an average of approximately 14,000 members per quarterly distribution. During the Review Period, "Writer Services" staff logged 1,840 phone queries following APRA distributions and four phone queries following AMCOS distributions. Writer Services staff log members' phone calls eight weeks per year; one week for APRA distribution related calls after each APRA distribution, and one week for AMCOS distribution related calls after each AMCOS distribution.



26. Further statistics relating to the number of contacts with members are included in the APRA/AMCOS Report to the Code Reviewer,
27. APRA/AMCOS have an "International Department" that is responsible for the reciprocal representation arrangements with collecting societies that administer performing and mechanical rights around the world. The International Department undertakes royalty distributions for performing rights to members. In the Review Period, APRA distributed over \$25.4m to members in 12 monthly distributions.
28. In the Review Period APRA collected a record amount of over AUD\$34m from the use of Australian and New Zealand repertoire overseas, while AMCOS collected over AUD\$658,000.
29. In the Review Period, the International Department was involved in several regional and international activities, details of which are included in the APRA/AMCOS Report to the Code Reviewer.
30. The International Department also acts as the conduit for communications between APRA/AMCOS and their respective affiliated societies overseas, the umbrella representative bodies, Confédération Internationale des Sociétés d'Auteurs et Compositeurs (CISAC) and Bureau Internationale des Sociétés Gérant les Droits d'Enregistrement et de Reproduction Mécanique (BIEM), as well as dealing with the World Intellectual Property Organisation (WIPO).
31. As noted in the Compliance Report for 2013-2014, APRA provides to members the opportunity to "opt out" and to request that their entire repertoire be assigned to them for all territories in respect of all or particular usages, or to "license back" specific works for specific uses in Australia and/or New Zealand. During the Review

Period, APRA received and approved of 15 “licence back” applications. No “opt out” applications were received during the Review Period.

32. APRA/AMCOS claim that they have developed an extensive program of benefits for their members. Information of the members’ program is provided on the website and a copy was provided in the Underlying Documents.

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

33. APRA/AMCOS has licensing departments that are dedicated to liaising with licensees and potential licensees. The three main areas of licensing operations are: Public Performance Licensing, Media Licensing, and Digital & Recorded Licensing. Collectively, these three licensing departments administer approximately 65,600 annual licences representing approximately 97,900 businesses.
34. The fees payable to APRA/AMCOS by licensees vary according to the licence scheme applicable to the particular circumstances of use.
35. Details of all major APRA/AMCOS licence scheme tariffs have been provided previously to the Code Reviewer, together with details of the value of each licence scheme as a whole.
36. The **Public Performance Licensing Department** administers most licences, with 62,763 annual licensees, representing approximately 95,000 businesses. During the Review Period, this Department executed 9,292 new annual licences and 4,732 one-off event licences, which included licences for dance parties, festivals and music used in theatrical performances.

37. As a response to the ACCC's conditions of authorisation, APRA/AMCOS's new website was launched in late June 2014. It gives licensees access to "plain English" Licence Information Guides tailored to their industry type. They are able to complete licence applications online and submit them for processing by the APRA Licensing Department.
38. During the Review Period, the Public Performance Licensing Department engaged in approximately 650,000 contacts with licensees, including by letter, email and telephone calls. A breakdown of the statistics is included in the Accompanying Underlying Documents.
39. The **Media Licensing Department** administers APRA/AMCOS's commercial and community radio and television broadcaster clients, along with cinema and airline licensees. In total, approximately 950 broadcast licensees were administered by this Department during the Review Period. The Department also administers production music (AMCOS controlled Production Music is music specifically written and recorded for inclusion in all forms of audio and audiovisual productions). There were 879 Australian production music clients licensed during the Review Period.
40. The **Digital and Recorded Licensing Department** issues licences relating to the reproduction of musical works in a wide variety of contexts including CD sales, digital download sales, video on-demand services, digital subscription music services, ringtones, business-to-business applications, dance schools, and videographers. During the Review Period this Department administered 781 annual licences and issued an additional 733 one-off licences.

41. The Digital and Recorded Licensing Department also licenses various online services including user-generated content sites, online portals, on-demand streaming sites, webcasters, podcasters, online simulcasters and online production music usage. There were 250 online services clients administered by the Department during the Review Period.
42. The information made available to licensees and potential licensees differs according to the nature of the relevant licence. For example, sophisticated national broadcasters and telecommunications companies generally require less information than do small business operators who have less exposure to copyright law and limited access to specialist legal advice. APRA/AMCOS state that they take this into account when providing information.
43. APRA/AMCOS' new website contains a licensee section containing information relating to the various licences and with contact details for the relevant licensing department within APRA/AMCOS.
44. APRA/AMCOS state in their report that they work hard at maintaining relationships with various bodies representing major licensee groups, including television and radio broadcasters, record companies, internet service providers, small business, hotels, restaurants, fitness centres and educational institutions, and that during the Review Period they have supported the activities of several of those bodies (including the Australian Hotels Associations and Clubs Australia) by way of sponsorships.
45. In their report, APRA/AMCOS state that they consult regularly with relevant trade associations in relation to the introduction of new licence schemes or variations to existing licence schemes. This was demonstrated during the Review Period with the

successful negotiation of new licence schemes with relevant industry bodies in connection with the introduction of new licence schemes relating to Public Performance Licensing, Promoted Concerts and various digital services.

46. During the Review Period, APRA/AMCOS introduced, re-negotiated or phased in tariffs in the licensing categories of Promoted Concerts, Fitness Centres, Restaurants & Cafes, the Pan Asian Licensing Project and continued negotiations for the simplification of the Hotels licence and tariff structure.
47. In addition, during the Review Period, APRA/AMCOS continued their policy regarding Disaster affected licensees. This policy is intended to alleviate financial pressure on disaster-affected businesses, including deferring licence fee renewals, extended payment periods, and donations to relief appeals.
48. During the Review Period, discussions between APRA/AMCOS and Live Performance Australia continued. Previously agreed rates were applied to the event sector from 1 January 2015 and the parties agreed terms that will see a new licence scheme apply from 1 January 2016. The new scheme will see all types of featured music use at events included under the one licence scheme and an expanded Festival licence which will apply to both metropolitan and regional festivals of either single or multi-day duration. Simpler reporting and licence administration are key features of the new scheme.
49. Also during the Review Period, APRA/AMCOS and Fitness Australia held discussions on the Fitness Centre licence scheme and agreed upon a small number of changes, the better to reflect the evolving needs of the fitness industry, including specific reference to fitness instructors who use music in locations other than

traditional fitness centres (for example, boot camps that take place in a park or on a beach) and new technologies, such as virtual fitness classes.

50. In addition, a minimum annual licence fee of \$192.50 (including GST) has been introduced for the use of background music in Fitness Centres. The new minimum tariff will have an impact only on those fitness centres and instructors who are paying licence fees less than this amount for background music with a licence anniversary date of 1 August 2014 onwards.
51. In May 2014, agreement was reached on a new licence scheme for Restaurants and Cafes (excluding take away cafes) for background music and featured music use. The new terms were agreed to take effect from 1 November 2014. The restaurant industry acknowledged that in an increasingly digital marketplace, businesses needed to be provided with a greater flexibility in the way music is played in their establishments. The Restaurants and Cafes Licence scheme is a technology and device neutral licence scheme that sees a flat fee of \$275 applied to a range of music media, including radio, television, CDs, smartphones and streaming devices (licensees are advised to check the terms and conditions of streaming services).
52. Restaurants and cafes also have access to other music licences from APRA/AMCOS including live, featured recorded music, karaoke and website use at bundle rates, and receive a complimentary licence for one night of live music provided they hold a background music tariff.
53. APRA/AMCOS state that the licence scheme is administratively simple and allows restaurant and café owners to meet their copyright obligations with ease. Introduction of the scheme was

staggered to allow licensees to use one radio or television only and time to adjust to the new licence structure. At 30 June 2015, of the 6,176 clients contacted, 4,906 had responded or entered into the new licence agreement, a response rate of 73%.

APRA/AMCOS report this as an indication that the licence scheme has significant market acceptance.

54. During the Review Period, APRA/AMCOS continued discussions with the Hotel industry on a simplified licence and tariff structure for Hotels. Negotiations commenced in August 2013 and are progressing positively, although slowly. APRA/AMCOS are hopeful that terms will be agreed in the coming months with a commencement date shortly afterwards.
55. APRA/AMCOS report that the Pan-Asian licensing project, launched in July 2013, has continued to grow with Peermusic joining the initiative in July 2014 and Hillsong Music Publishing joining in June 2015. The initiative aims to cooperate with publishers in order to establish a simple one-stop-shop multiple territory licensing scheme for online usage, covering the largest number of Asian territories for the largest possible repertoire of musical works.
56. In February 2015, regular Pan-Asian Licensing distributions commenced and during the Review Period, APRA/AMCOS entered into five new licence agreements, covering 15 countries.

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

57. APRA/AMCOS's financial accounts for the year ended 30 June 2015, which remained unaudited at the time of preparation of their Report to the Code Reviewer, show that their total combined

net distributable revenue for the year was \$268.7m, representing a year on year increase of approximately 6.3%.

58. During the Review Period, APRA/AMCOS continued to distribute royalties on a quarterly basis, the only exception being Live Performance Return distributions, which have continued to be done annually.
59. APRA/AMCOS maintain, and make available on their website, comprehensive Distribution Rules and Practices, including their International Distribution Practices.
60. The APRA Distribution Rules and Practices were most recently updated in January 2015 and April 2015 respectively, to reflect Board approved amendments to APRA's free-to-air TV distributions, live performance distributions and digital services distributions.
61. The AMCOS Distribution Rules and Practices were updated in April 2015, to reflect Board approved amendments to AMCOS's distribution of digital service licence fees.
62. APRA/AMCOS's large Membership Department comprise staff who are trained to deal with enquiries by members and others, including enquiries in relation to distributions. The Boards of both APRA and AMCOS have membership and distribution committees which deal with, among other things, requests by members for distributions in relation to "unlogged performances". These committees also deal with complaints from and disputes between members. Members are strongly encouraged to resolve disputes between them using a new Alternative Dispute Resolution (ADR) facility, "Resolution Pathways".



63. During the Review Period, APRA/AMCOS commenced a “core system replacement project” (Report to Code Reviewer, para 4.9) to ensure that they are able to offer a “best-in-industry” service in the years ahead. In August 2014 they engaged Accenture Avanade was engaged to design and implement a new “copyright licensing enterprise facility” (CLEF). The project was initially due to be completed in November 2015, however the timeline has been shifted to June 2016 to allow time to develop testing regimes, undertake user acceptance testing, carry out training and perform data migration.
64. Also during the Review Period, a new and improved writer member portal was developed and implemented to bring new functionality and streamlined processes to writer members, including the ability to register jingles; the ability to register remixes; improved notification for publishers and co-writers for newly registered works; the ability to create a set list; one process for Performance Reports; and improved access to royalty and financial data. On 24 March 2015, the writer portal and the Online Portal for Uploading Songs (OPUS) went live, with further enhancements continuing to be made. Overall, members have expressed a very favourable reaction.
65. APRA/AMCOS’s publisher members continue to transact with APRA/AMCOS via a direct connection to their current system. A new interface is required in the move to CLEF. APRA/AMCOS have engaged Accenture Avanade to undertake the work of creating a new web-based interface, the publisher portal, which is currently in development. The development of the publisher portal is a critical element of CLEF and the timeline has been structured to follow the implementation schedule of the CLEF project.

66. As previously reported, in 2013, APRA/AMCOS introduced Music Recognition Technology (MRT) to help identify music being played in nightclubs.
67. In 2014, APRA AMCOS investigated additional technical solutions for gathering music use information from nightclubs, specifically technology which extracts metadata directly from the sound equipment being used. Pioneer has developed a networking device called "KUVO" which provides a way in which metadata performed via Pioneer's DJ Decks can be captured directly and may provide substantial cost efficiencies in comparison with other forms of MRT. In October 2014, APRA/AMCOS entered into an agreement with Pioneer to obtain metadata extracted via the KUVO networking device of music played in Nightclubs in order to capture and distribute royalties based on the music metadata reported through KUVO.

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

68. APRA's accounts show that its operating expenses are deducted from total gross revenue. Commission on revenue pays AMCOS's expenses. The commission rate depends on the source of the revenue.
69. The most recent audited financial statements are those for the year ended 30 June 2014. According to them, APRA achieved an expense to revenue ratio of 13.34%. APRA's unaudited financial accounts for the year ended 30 June 2015 show that APRA has achieved a slightly improved expense to revenue ratio of 13.15%.

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

70. The Annual Report of each of APRA and AMCOS contains the matters set out in clause 2.6(e) of the Code.
71. The relationship between APRA and AMCOS and their respective Boards of Directors is governed by each company's Constitution and "Charter of Corporate Governance". The Boards have both established Audit and Governance sub-committees, which continue to meet at least five times a year and concentrate on issues relating to Corporate Governance.
72. The APRA/AMCOS management also has an internal Governance Committee which meets regularly to discuss matters relating to the day to day operation and management of the societies. This Governance Committee deals with policy setting and other matters relating to Human Resources and Industrial Relations, risk management, infrastructure, general administration, and regulatory compliance
73. In 2013, APRA/AMCOS introduced a "Staff Code of Conduct", which continues to complement the Code.
74. APRA/AMCOS maintain financial records which are audited each year, and a statement by each company's auditors is included in its Annual Report.
75. APRA's membership, licensing, distribution and international arrangements are all the subject of an "authorisation" by the ACCC. APRA's current conditional authorisation was granted for a period of five years, expiring on 28 June 2019. In granting this and past authorisations, the ACCC confirmed that the conduct and

arrangements for which APRA sought re-authorisation are likely to result in a public benefit which would outweigh the public detriment involved.

76. The conditions of authorisation require APRA to do the following:
- (a) publish a comprehensive plain English guide that outlines all of the licence categories individually and includes other specified information;
  - (b) take certain steps to increase awareness of the licence back and opt out provisions made available by APRA, including publication of a plain English guide and launching an education campaign; and
  - (c) implement a revised ADR scheme to be managed by an independent facilitator. The scheme must offer informal resolution, mediation, expert opinion and binding determination to licensees and members. The ADR scheme must incorporate a consultative committee to provide feedback and other advisory input to APRA and to the facilitator.
77. APRA says that it has complied with all of the conditions of authorisation (including consultation with interested parties).
78. The plain English guides outlining of the licence categories individually were published on the APRA/AMCOS website on 5 September 2014.
79. The plain English guides outlining the licence back and opt out provisions were also published on the APRA/AMCOS website on 5 September 2014. In addition, APRA made an educational video which provides members and licensees with information about opt out and licence back facilities.

80. In relation to the revised ADR Scheme, APRA appointed Shirli Kirschner of Resolve Advisors as the Independent Dispute Facilitator to administer its new ADR scheme. Ms Kirschner worked with APRA's management and the ACCC to establish a prescribed governance framework for the new independent ADR facility. A fundamental feature of it is the appointment of a Consultative Committee, made up of an equal number of member and licensee representatives, with whom the Independent Dispute Facilitator must consult on matters such as the monitoring of the operation of the Scheme, including the costs of the Scheme; receiving feedback on the Scheme; and in consultation with the Facilitator, making recommendations about the budget for the operation of the Scheme.
81. The design, implementation and trialling of the Licensee and Member ADR schemes was carried out and approved by the Consultative Committee. The ADR scheme was launched on 1 April 2015.

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

82. APRA/AMCOS report that their staff at management level continue to be trained regarding the Code.
83. Divisional Heads meet on a weekly basis and discuss matters relating to policy and strategy development and assessment. At these meetings issues relating to service and staff performance and training are regularly tabled.
84. In addition, the wider senior management team meets in the week following each scheduled Board Meeting to discuss interaction with stakeholders and wider communities and the

opportunity of reviewing company policies. At these meetings, the Code of Conduct is regularly discussed.

85. Manager and Team Leader forums are held at which the Chief Executive and Divisional Heads address the middle and front line management teams. They are an opportunity for the latter to raise any concerns, suggestions or initiatives directly with the senior leadership, and for the Chief Executive to share information about business and membership trends and concerns, and to set performance expectations. In addition, other members of the senior management team are invited to address these groups.
86. The Public Performance Licensing Department and Member Services Department continue to hold staff training conferences at least once (usually twice) a year.
87. Additionally, all departments in APRA/AMCOS also conduct regular departmental staff meetings which provide opportunities to discuss topics relevant to the Code, including: client service, conflict management, time management, and the procedures for identifying and dealing with complaints.
88. In their report to the Code Reviewer, APRA/AMCOS give fairly detailed descriptions of the induction and training sessions that they provide for staff. The mission and values statement and the Code of Conduct are central components of the induction program that all new staff attend when they become employed. As well as the induction sessions conducted by Human Resources (more detail is provided in the Accompanying Underlying Documents), roles with a high level of client and/or member contact also receive additional training within the relevant Department in relation to handling complaints and the complaints procedure.

89. During the Review Period, staff who responded to the more pressing queries on the “live chat” facility on the APRA/AMCOS website participated in two, two hour training sessions to define the live chat service guidelines and to ensure the highest level of customer satisfaction through this channel (again, more detail is provided in the Accompanying Underlying Documents).
90. Following a restructure during the previous review period of the Client Services function, that is to say, the call centre team who handle telephone and email enquiries from music customers, those staff members attended a full-day training program in August 2014. The program was centred on conflict resolution and provided tools required to respond promptly, respectfully, positively and effectively to concerns raised by “music customers” or members.
91. APRA/AMCOS have several internal staff development and wellbeing programs, including an “Employee Wellbeing Program” that was introduced in the previous review period. Other initiatives include:
- Higher Education Assistance Program
  - Leadership Development Program
  - Mentoring Program
  - Buddy Program
  - In-house Training Programs
  - Employee Assistance Program
  - Purchased Leave Scheme
  - Seminars on resilience, stress management, work-life balance and dealing with change
  - Lunchtime yoga for staff members twice a week on the premises

92. Under the *Workplace Gender Equality Act 2012*, APRA/AMCOS continue to submit their annual report to the Workplace Gender Equality Agency (WGEA) outlining their performance against a set of six standardised gender equality indicators. A copy of that report is available on the APRA/AMCOS website.
93. APRA/AMCOS operate a “wiki” facility and internal social networking tool named “YAMMER”, which form the basis of staff training and are a key information source for all APRA/AMCOS staff. All new APRA/AMCOS staff are trained in accessing and using this resource. Policies relating to Client Service, Human Resources, Work, Health and Safety and Departmental Organisation & Function are housed on this facility.

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

94. APRA/AMCOS say that they devote “considerable resources” to the education of members, licensees, industry associations and members of the public, regarding the matters set out at Cl 2.8 (a) of the Code. A list of the organisations and associations with which they have an ongoing relationship was provided to the Code Reviewer in the Accompanying Underlying Documents.
95. In the report, APRA claims that as Australia’s oldest and largest collecting society (incorporated in 1926), it is in a position to have developed extensive materials and expertise in relation to education of the kind described. Among the education and awareness initiatives in which APRA/AMCOS participate are the following:
- Various Grant Programs, Sponsorships, Competitions and Promotions
  - Indigenous Member Strategy



- Aboriginal and Torres Strait Islander (ATSI) Music Office
- Ambassador Program
- Events
- Member Advisory Group Development
- Sounds Australia & Live Music Office; and
- Various industry related organisations and programs
- Seminars and public forums and working groups

96. In their report, APRA/AMCOS describe their educational activities in detail under the headings “Member Education”, “Licensee Education”, “International Relations”, “Government Relations”, “APRA/AMCOS Website & Social Media”.

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

97. This subject is dealt with in a separate section, “Complaints and Disputes”, below.

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

98. APRA/AMCOS claim to have kept their members and licensees updated with information regarding the Code, in particular by maintaining relevant information including a copy of the Code on their website.

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

100. Of course, APRA/AMCOS’s annual report to the Code Reviewer is itself directed to the issue of their compliance with the Code.

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

101. With effect on and from 2 July 2012, Viscopy has retained Copyright Agency to manage its services. As in recent review periods, a joint Copyright Agency/Viscopy report was provided to the Code Reviewer in respect of the Review Period. Accordingly, this report by the Code Reviewer deals with both collecting societies together. As noted at [3] above, reference is made to “Copyright Agency/Viscopy” except where it is necessary to distinguish between the two societies. In fact I have found it necessary to do so often in what follows.

### **General**

#### **Copyright Agency**

102. Copyright Agency is a company limited by guarantee that has more than 28,000 members. They include writers, artists, surveyors, publishers and other collecting societies.

103. In its report to the Code Reviewer, Copyright Agency has categorised its operations as follows:

- in accordance with its appointments by the Australian Government:
  - management of the statutory licences for educational and government use of text, images and print music, including negotiation, collection and distribution of fair compensation for content creators;
  - management of the statutory licences for people with disabilities (no compensation is paid under these licences);
- and

- management of the artists' resale royalty scheme;
- in accordance with the authority of its members and foreign affiliates, and with the oversight of the Copyright Tribunal, formulation and management of 'voluntary' licensing arrangements, principally for the corporate sector; and
- in accordance with its agreement with Viscopy, management of Viscopy's services to its members and licensees.

104. Copyright Agency is declared by the Attorney-General as the collecting society appointed to collect and distribute equitable remuneration under the statutory licence in Part VB of the Act for "each owner of copyright in a work, other than a work included in a sound recording or in a cinematograph film". The Part VB statutory licence is for educational use of text, images and print music, and for assisting people with a print or intellectual disability.

105. Copyright Agency is also declared by the Copyright Tribunal of Australia as the collecting society appointed to collect and distribute equitable remuneration under the statutory licence provided for by Div 2 of Part VII in relation to the government copying of published works (other than those embodied in sound recordings, films and television and sound broadcasts).

106. As distinct from the statutory licences, Copyright Agency was engaged by the Minister for the Arts, following an open tender process, to manage the scheme for the payment of royalties to visual artists under the Resale Royalty for Visual Artists Act 2009 (Cth) ("Resale Royalty Scheme").

107. In addition, Copyright Agency formulates and manages voluntary licensing arrangements in accordance with the authority of its members and foreign affiliates.

108. Copyright Agency reports annually to the Attorney General and to the Minister for the Arts in accordance with statutory obligations in the Copyright Act and the Resale Royalty for Visual Artists Act. Annual reports are tabled in Parliament and are available from the Copyright Agency website.
109. Copyright Agency operates in accordance with the Attorney General's Department guidelines for 'declared' collecting societies.

### **Viscopy**

110. Viscopy is also a company limited by guarantee. It represents more than 10,000 artists and artists' estates and beneficiaries from Australia and New Zealand. Viscopy also represents more than 40,000 international artists and their estates and beneficiaries in the Australasian territory through reciprocal agreements with more than 40 visual arts rights management agencies round the world.
111. Copyright Agency provides services to Viscopy under the arrangement that has operated since 2 July 2012. Those services include management of the Viscopy licences for Australia and New Zealand, which are primarily licences for the reproduction and communication of art works by auction houses and public galleries. However, Viscopy remains a separate legal entity, with a separate board and membership.
112. Copyright Agency has established a visual arts unit with staff dedicated to managing relationships in the visual arts sector, including those with licensees, artists and people affected by the Artists' Resale Royalty Scheme.

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

### **Copyright Agency**

113. Copyright Agency states that during the Review Period it complied with its obligations under the legislation and other documents referred to in clause 2.1 of the Code.
114. On its website, Copyright Agency publishes its Constitution; Corporate Governance Statement; Customer Services Charter; Privacy Policy; Dispute Management Procedures; and Complaints Management Procedures.
115. Other documents accessible from the website include the Code; the Attorney-General's Guidelines for Declared Collecting Societies; the Attorney-General's Declaration of Copyright Agency for Part VB of the Act; and the Copyright Tribunal's declaration of Copyright Agency for Div 2 of Part VII of the Act.
116. Copyright Agency's in-house lawyers oversee compliance issues and monitor relevant legal and regulatory developments and oversee implementation of any necessary or desirable changes to its policies or practices.
117. In the Review Period, Copyright Agency updated its Privacy Policy and its privacy practices in the light of amendments made to the Privacy Act.

### **Viscopy**

118. Viscopy also claims that during the Review Period it complied with its obligations under the legislation and other instruments referred to in clause 2.1 of the Code.

119. There was no change in Viscopy's legal status or compliance status with regard to relevant laws since last year's Compliance Report by me.

120. Compliance by Viscopy is also overseen by Copyright Agency's in-house lawyers, and the update of privacy policies and practices also applies to Viscopy activities.

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

### **Copyright Agency**

121. Membership of Copyright Agency is open to owners of copyright in works and their licensees and agents, as well as the holders of a resale royalty right. Membership is free. Applications for membership can be made online and are approved by the Board.

122. Visual artists are invited to become members of both Copyright Agency and Viscopy.

123. Copyright Agency states that it continues to adopt a range of policies and processes aimed at ensuring that its members are treated fairly, honestly, impartially, courteously, and in accordance with its Constitution and membership agreements. It has a "Service Charter", induction training for new staff and annual training for all staff on the requirements of the Code.

124. In its report to the Code Reviewer, Copyright Agency gives details of its modes of communication with its members and potential members, including:

- information on the Copyright Agency website about membership, distributions of licence fees and payments;
- broadcast and one-on-one communications about changes to membership, distribution or payment arrangements;
- responding to enquiries in accordance with the Service Charter; and
- secure online member accounts that enable members to review their membership, distribution and payment details.

## **Viscopy**

125. Membership of Viscopy is open to all artists and other owners of copyright in artistic works, including the estates of artists. Membership of Viscopy is also free of charge.
126. Information on the Copyright Agency and Viscopy websites invites artists to join both societies.
127. In February 2015, 11,000 members were contacted and surveyed on a range of issues, including satisfaction with Copyright Agency/Viscopy's services.
128. There were 2,718 responses, in the following categories: educators (23%), writers (20%), artists (19%), publishers (14%), journalists 14%, others (10%).
129. Of the 11,000 members contacted:
- 2,640 members responded to the question 'Over the last 12 months, how satisfied in general have you been with Copyright Agency|Viscopy and the overall level of service we have provided you?'

The responses were:

Very satisfied	40%
Quite satisfied	36%
Neither satisfied nor dissatisfied	22%
Quite dissatisfied	2%
Very dissatisfied	1%

- 583 of the respondents said they had contacted Copyright Agency within the last 12 months, and responded to the question 'Thinking about the interaction with Copyright Agency staff, please rank your satisfaction with the experience'. The results were:

Very satisfied	63%
Quite satisfied	25%
Neither satisfied nor dissatisfied	8%
Quite dissatisfied	3%
Very dissatisfied	2%

- 55 respondents provided reasons for dissatisfaction with Copyright Agency. In summary, the reasons were:
  - inadequate information for members about how Copyright Agency operates;
  - lack of awareness about Copyright Agency by the media and general public;
  - newsletters are unappealing;
  - inadequate information about payments;
  - payments have diminished;
  - inadequate payments having regard to book sales;
  - copying of works not picked up in surveys;
  - inadequate responses to enquiries;
  - difficulties with online member account;



- payments not shared by recipients with others who are entitled;
- too many 'broadcast' emails;
- inadequate assistance with licensing uses in the education sector that are not covered by the statutory licence;
- Copyright Agency's infringement actions against potential licensees;
- the entire copyright system requires overhaul;
- requirements for claiming an allocated amount too onerous;
- requirements for sharing payments with others can be onerous;
- errors with 2013 distribution;
- group with funding from the Cultural Fund used a poem without permission or attribution and abridged it;
- insufficient access to the Cultural Fund for performance writers;
- staff salaries too high;
- funds allocated to cultural purposes should instead be paid to members;
- Copyright Agency does not deal with video content;
- insufficient transparency; and
- too much focus on non-core issues

Copyright Agency reports that it is taking the issues raised by the survey respondents, including those that have given rise to dissatisfaction, into account in ongoing programs for improving services and communications.

- 1,619 members gave reasons for their satisfaction with Copyright Agency's services, which are summarised as follow:

Efficient/prompt/quick/proactive	30%
Positive about payments	25%
Positive about communications	19%
Answered/responded/dealt with my query	14%
Friendly/polite/helpful/informative	13%
Good service/job	9%
Competent/professional	3%
No problems/issues/complaints	3%
Met my needs/expectations	2%
Trustworthy/reliable	1%
Protects/fights for rights	1%
Other	23%

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

#### **Copyright Agency**

130. Copyright Agency claims to have adopted a range of policies and processes aimed at ensuring that its licensees are treated fairly, honestly, impartially, courteously and in accordance with its Constitution and licence agreements. These include: a "Service Charter", induction training for new staff, and annual training for all staff on the requirements of the Code.

131. In the case of the statutory licences for education and government copying, Copyright Agency deals mostly with bodies or departments representing a class of licensees, such as Universities Australia, the Copyright Advisory Group for most schools and TAFEs, and the Commonwealth Attorney-General's Department for the Commonwealth, rather than with individual licensees. A major exception is the independent colleges which are licensed individually and which number more than 1,000.

132. Most aspects of the statutory licences are governed by the Act and the regulations under it. The major areas for negotiation are the amount of equitable remuneration, the manner of collecting information about usage of content under the licence, and the processing of that information to estimate correctly the “volume” of usage. Licensees participating in surveys of usage receive special training in order to complete the surveys.
133. Copyright Agency publishes information about its “voluntary” licences (“blanket” and pay-per-use) on its website and on the RightsPortal website ([rightsportal.com.au](http://rightsportal.com.au)). As well, it provides information about its licences through, for example, seminars, trade shows and in response to specific enquiries.
134. Copyright Agency claims that it continues to review regularly the terms of its voluntary licence agreements to ensure that they are expressed in plain language and correspond to its mandate from its members and reflect feedback from licensees.
135. New industry licence schemes are usually designed by Copyright Agency with the input of the relevant industry association.
136. In 2014, in the course of the Code Reviewer’s triennial review of the text and operation of the Code, the NSW Department of Justice (the State) and the Copyright Advisory Group to the COAG Education Council (CAG) proposed that the Code be amended regarding reporting and disclosure by those collecting societies that are declared by the Attorney General or the Copyright Tribunal of Australia for the purpose of the statutory licences under the Copyright Act. These are Copyright Agency and Screenrights.

137. The State and CAG sought an amendment to require greater transparency and disclosure by Copyright Agency and Screenrights.
138. In the event, I did not make that recommendation. The matter was referred to at [55] – [65] of my Triennial Report dated 30 April 2014 on the operation of the Code, and resulted in a Supplementary Report by me dated 28 October 2015. Nothing further need be said of the matter here.

## **Viscopy**

139. Licences issued by Viscopy cover the reproduction, publication and communication of artistic works in such contexts as the print media, internet, merchandise, advertising, film and television. The licences cover “one off” uses as well as uses under “blanket” annual licences. Licensees include those in the government and corporate sectors as well as individuals.
140. Viscopy also claims that its licences and agreements are drafted so as to be plainly understood by licensees. Copyright Agency staff provide additional information where required.
141. Viscopy claims that its licence fees and other licence terms are regularly reviewed and updated to reflect changing kinds of reproduction and customer needs.
142. The Viscopy website includes information for licensees and prospective licensees, including a searchable database of Viscopy members, information about licences and licence fees, and information about the circumstances in which a licence is not required.

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

### **Copyright Agency**

143. On its website, Copyright Agency publishes its "Distribution Policy", a schedule of forthcoming distributions, and its deductions for its administrative expenses. It distributes in accordance with the Distribution Policy and its Constitution.

144. Copyright Agency has a Distribution Quality Management System (QMS) for checking the quality of the end-to-end distribution process, identifying areas for improvement, and implementing improvements.

145. In addition to quality control testing which is run and documented throughout the distribution process, internal and external audits are conducted as part of the Quality Assurance process, as follows:

- key process phases of a distribution are audited internally for compliance against Copyright Agency policies by an independent Quality Assurance Team, focusing on areas of greatest risk: audited processes include data entry of copying records, distribution pool calculations, and allocations to works and payees;
- internal auditors perform record tracings through the distribution process;
- some Copyright Agency licence agreements provide that the external survey supplier be required to audit Copyright Agency's processed data before providing volume estimates: under some schemes the data is either audited by licensees or they are provided with a data file, setting out the works used;

- external audits are also conducted for all statutory and a large number of voluntary-licence distributions: Copyright Agency's external auditors (who are currently its financial auditors) evaluate quality control and internal audit evidence.

## **Viscopy**

146. Viscopy's "Payments Policy" sets out the basis for calculation of entitlements to payments from remuneration and licence fees, the manner and frequency of payments to members, and the amounts deducted by Viscopy. The Payments Policy is available on the Viscopy website and also in hard copy form upon request. As in the case of Copyright Agency, there is also information on the relevant page of the Viscopy website about when distributions are scheduled to be made.

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

### **Copyright Agency**

147. Copyright Agency reports that its administrative costs associated with managing the statutory and voluntary licence schemes are met from its revenue. In a few cases, the deduction is a fixed percentage (eg for distribution of licence fees collected from overseas), but in most cases it represents the deduction represents the actual cost relevant to the particular licence scheme. So, for example, the actual cost of administering the government copying scheme under Part VII Div 2 of the Act is deducted from the revenue received from governments under that scheme.

148. Copyright Agency's Board of Directors approves the society's annual operating budget and reviews it at each meeting of the Board.
149. Copyright Agency's Constitution allows it to deduct up to 1.5% of revenue for cultural or benevolent purposes. Its Board approves the amount to be deducted and allocated for these purposes. Copyright Agency publicly invites applications for cultural support. The Board approves of the successful applications following a recommendation process by a committee of the Board.
150. Copyright Agency publishes information about deductions in its "Distribution Policy" and on its website ([www.copyright.com.au/admin-fees](http://www.copyright.com.au/admin-fees)). In addition, it publishes information about expenses, including the expense to revenue ratio for each financial year, in its Annual Report.

## **Viscopy**

151. Under the Services Agreement between Copyright Agency and Viscopy, Copyright Agency receives agreed deductions from Viscopy's licensing revenue. In the Review Period this was:
- 25% of fees from Viscopy's voluntary licence agreements and Screenrights;
  - 10% of statutory licensing remuneration collected by Copyright Agency and Screenrights for Viscopy members who are not Copyright Agency members; and
  - 10% of royalties collected from overseas via Viscopy's international partner organisations.
152. The deduction for statutory licence income collected by Copyright Agency has decreased in accordance with the services agreement

from an initial 25% to 17% to the present 10% (second bullet point above).

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

### **Copyright Agency**

153. Under Copyright Agency's Constitution, its Board comprises a director elected by author members, a director elected by publisher members, two directors appointed by the Australian Society of Authors, two directors appointed by the Australian Publishers Association, and up to four directors appointed by the Board. The current directors and the capacity in which they were elected or appointed appears on Copyright Agency's website.
154. The society's financial statements are audited annually. Information about revenue, expenses and distribution of licence fees is included in each year's Annual Report, which includes the auditor's report and is made available to the public on Copyright Agency's website, as well as to members and to the Attorney-General and Minister for the Arts. In addition, the Annual Report is tabled in Parliament.
155. Copyright Agency provides, on request, information to members about entitlement to payment, in accordance with privacy and confidentiality obligations.

### **Viscopy**

156. Viscopy is governed by a non-executive Board of Directors which includes artist members and business experts from various professions. The Directors may serve a maximum of three two-year terms. Viscopy's Directors are unpaid but are reimbursed



out of pocket expenses incurred in connection with their attendance at meetings.

157. Viscopy's Constitution provides for its Board to have a minimum of seven directors. There is information about Viscopy's current Directors on its website.
158. Viscopy claims to maintain proper and complete financial records, including records relating to the collection and distribution of royalties and payments of expenses.
159. Viscopy's financial statements are audited annually by external auditors, the results being published in its Annual Report. The Annual Report and the auditor's report are available on Viscopy's website.

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

#### **Copyright Agency**

160. Copyright Agency's procedures for making its staff aware of the Code include:
  - induction training for new staff members on the requirements of the Code;
  - policy documents implementing those requirements on the society's intranet; and
  - annual training for all staff on the requirements of the Code.

## **Viscopy**

161. The staff training for Copyright Agency staff on the Code includes training in relation to Viscopy's obligations under the Code.

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

### **Copyright Agency**

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

- information on the corporate website and other websites managed by Copyright Agency;
- monthly eNews ('Creative Licence');
- Canvas eNews to visual arts stakeholders;
- social media channels, including Copyright Agency's Facebook pages and Twitter account;
- presentations at Copyright Agency events and other events;
- training for licensees participating in surveys of usage;
- engagement with industry and professional associations who represent members and licensees; and
- mainstream and specialist media (such as industry magazines and newsletters).

163. Copyright Agency has also provided funding to other organisations to conduct copyright education and awareness activities, including:

- the Australian Copyright Council;
- the National Association for the Visual Arts; and
- the Australian Society of Authors.

## **Viscopy**

164. Copyright Agency's education and awareness activities referred to above cover issues relevant to Viscopy's members and licensees. In addition, information specific to those members and licensees is provided on the Viscopy website.

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

### **Copyright Agency**

165. This subject is dealt with in a separate section, "Complaints and Disputes", below.

## **Viscopy**

166. This subject is dealt with in a separate section, "Complaints and Disputes", below.

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

### **Copyright Agency**

167. The Code is available on the Copyright Agency website as is information about the Annual Compliance Review of its compliance with the Code, the Code Reviewer's annual Compliance Reviews and his triennial review of the Code itself.

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

### **Viscopy**

170. The Code and information about how to participate in reviews of Viscopy's compliance with the Code are also available on the Viscopy website.
171. Of course, Viscopy's annual report to the Code Reviewer is itself directed to its compliance with the Code.

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

### **General**

172. Audio-Visual Copyright Society Ltd, operating under the name "Screenrights", was established in 1990 to be the declared collecting society for purposes of the statutory licence for the copying and communication of broadcasts by educational and other institutions under Part VA of the Act ("Copying and Communication of Broadcasts by Educational and Other Institutions")(see s135P of the Act).
173. Screenrights also represents the owners of the copyright in sound recordings and cinematograph films (and works included in sound recordings and cinematograph films) for the purposes of the statutory licence in favour of educational institutions and institutions assisting persons with an intellectual disability under

Pt VB Div 4 of the Act (“Reproduction and Communication of Works etc by Institutions Assisting Persons with an Intellectual Disability”)(see s135ZZB of the Act).

174. In addition, Screenrights is the sole collecting society for the collection of equitable remuneration for the retransmission of free-to-air broadcasts under Pt VC of the Act. (see s135ZZT of the Act).
175. Finally, Screenrights is the declared collecting society in respect of television and radio broadcasts under the government copying scheme in Div 2 of Pt VII of the Act (Copyright Agency is also declared for that purpose) (see s153E of the Act).
176. As at 30 June 2015, Screenrights had 3,821 members and 1,211 licensees. It collects royalty payments from schools, universities, vocational training bodies, government agencies, TAFEs, resource centres, retransmitters, and New Zealand schools and tertiary institutions, as shown in the following table (page 2 of Screenrights’ report to the Code Reviewer):

<b>Type of Entity</b>	<b>Number</b>
Screenrights Members	3,821
Licensees	1,211
<i>Schools -- Govt, Catholic Systemic, Independent -- Peak Bodies</i>	26
<i>Higher education including universities</i>	73
<i>Private Vocational Education/Training Organisation (inc ELICOS)</i>	42
<i>Government Agency</i>	275
<i>TAFE (including individual institutions and Departments representing multiple institutions)</i>	27
<i>Resource Centre</i>	9
<i>Retransmitter</i>	8

<i>NZ -- Tertiary</i>	27
<i>NZ – Schools</i>	722
<i>NZ – Resource Centre</i>	2

177. According to its Annual Report for the year 2014-2015 (also the Review Period), in that year Screenrights collected \$45.9 million in licence revenue and other income; made 3,284 individual payments to members with a total distribution of \$38.6 million; entered into a new 5 1/2 year deal with Australian schools; entered into a 4-year deal with the New Zealand tertiary sector; and increased the reach of “Enhance T V Direct”, Screenrights’ streaming service.

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

178. No changes or other developments relevant to Screenrights’ legal framework happened during the Review Period.

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

179. Statistics in relation to the membership of Screenrights were set out under “General” above.

180. During the Review Period, several updates to policies and processes were implemented.

181. Screenrights’ Privacy Policy, which forms part of its Membership forms, was updated in October 2014. The update extended the paragraph on Google Analytics to include reference to Google Analytics Advertising Features and how members can opt-out.

182. During the Review Period, the “Confirmation by Principal” form, the “Artistic Works Registration” form and the “Withdrawal and

Variation of Registration” form were all updated and reformatted.

183. As part of a regular review of its procedures, Screenrights sought members’ and stakeholders’ views on a proposed change to its procedures to improve efficiency and fairness in resolving multiple claims to royalties.
184. The proposed change recognises that in the case of certain multiple claims, it can be presumed that a particular claimant is likely to be the relevant rightsholder and therefore entitled to the royalties. The presumption would apply unless the other claimant has sufficient evidence to supplant the presumption or to bring it into question.
185. The presumptions are contained in the Express Dispute Resolution (EDR) Process and are proposed to operate as part of the ADR Procedure for Multiple Claims between Screenrights Members. The proposed EDR Process creates presumptions to recognise:
  - Industry agreed contracts,
  - Industry common practice,
  - Primacy of a principal’s view about representation, and
  - Precedents established by ADR outcomes.
186. The presumptions will assist in the resolution of multiple claims between members in the context of a growing number of multiple claim matters each year.
187. In accordance with Screenrights’ authority and obligations under the Code to ensure that its members have access to efficient, fair and low cost procedures for the resolution of disputes, Screenrights’ management undertook two extensive consultations (one in 2014 and the other in 2015) as well as roundtables held in Melbourne and Sydney. A number of submissions were received.

AWGACS and ASDACS have been unsupportive of the proposed EDR Process.

188. The following is a summary of the EDR process of consultation:

- On 10 October 2014 Screenrights sent a copy of the draft EDR Process to the Australian Writers' Guild and AWGACS, the Australian Directors Guild and ASDACS, the Screen Producers Australia (SPA), the New Zealand Screen Producers Association (SPADA), the Attorney-General's adviser, Screen Australia, and the Motion Picture Association of America (MPAA), to give them all advance notice of the proposal.
- On 16 October 2014 Screenrights published the draft EDR Process on its website. Screenrights asked for feedback from its members through its *Off The Air* newsletter which was sent to all Screenrights members. In addition, it wrote to 530 members who had been a party to a multiple claim within the twelve (12) months prior to October 2014. Screenrights also wrote to all State film agencies, the New Zealand Writers Guild, and writers' and directors' agents, collecting societies and film and television lawyers.
- Screenrights also offered to meet with interested stakeholders and held meetings with writers' agents and lawyers in the film and television industry.
- Screenrights revised the draft EDR Process in response to the first round submissions in early 2015.
- Screenrights provided AWGACS, ASDACS, SPA and Free TV with advance notice of the revised EDR Process on 11 May



2015. The letters specifically addressed changes made to the EDR Process in response to their submissions and requested further comment on the revised EDR Process.

- On 15 May 2015, Screenrights published the revised draft EDR Process on its website. Screenrights asked for feedback from its members through its *Off The Air* newsletter.
- Screenrights also invited members and interested stakeholders to EDR Process roundtables held on 17 June 2015 in Melbourne and 19 June 2015 in Sydney.
- Responses were sought by 15 July 2015.

189. The Screenrights Board is considering all submissions received and Screenrights will report next year as to whether the EDR Process has been implemented.

190. Also during the Review Period, the ADR Procedure was updated to provide greater clarity and to assist claims to be resolved in a more cost effective and timely manner. The changes took effect from 1 January 2015 and are explained in more detail under the section "Complaints and Disputes" of this report.

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

191. During the Review Period, Screenrights updated application forms for licensees to reflect CPI based changes in rates.

192. Screenrights reports that it consulted extensively with industry associations regarding a proposed amendment to its declaration to collect for government copies of broadcasts. Consultations also

included key members and representatives of government jurisdictions. On 2 July 2015, following these consultations, Screenrights filed with the Copyright Tribunal of Australia an application for amendment of its declaration. Screenrights has undertaken to report next year as to the outcome of the application.

193. As noted at [136] – [138] above in the context of Copyright Agency, as part of the triennial review of the text and operation of Code, the State and CAG asked me to recommend amendment of the Code. Regard should be had to those paragraphs and nothing further need be said on the matter here.

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

194. There were two updates to Screenrights' Distribution Policy during the Review Period: first, in October 2014 the requirement of a minimum duration of five minutes to qualify for an allocation of retransmission royalties was removed; and, second, in December 2014 non-substantive changes were made to provide clarity to several sections of the Distribution Policy.

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

195. Screenrights' audited expenses to collections ratio for 2014-2015 was 14.2 %, which was an improvement on the ratio of 14.9% for 2013-2014.

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

196. Screenrights' Annual Report for 2014-2015 became available in September 2015, including the audited accounts as at 30 June 2015.

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

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

198. Screenrights has also arranged training sessions to familiarise staff with its ADR procedures and complaints handling procedures. The relevant information is available on Screenrights' website.

199. In addition to such formal staff training, relevant matters are raised in regular staff meetings and other staff training meetings, such as training in relation to data privacy issues.

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

200. Screenrights continues to promote and provide information about Screenrights on its website.

201. Further, Screenrights has promoted its role and functions as a collecting society by sponsoring and participating either through a speaking engagement, a market stall or providing attendees with hardcopy marketing material about Screenrights at the following events:

- Screen Producers Australia Business Class (Melbourne and Sydney) 24 - 25 September 2013<sup>4</sup>
- Big Screen Symposium (NZ) 27/28 September 2014
- Screen Forever (run by Screen Producers Australia) 16 - 19 November 2014
- Screen Production and Development Association Summit (NZ) 28 November 2014
- Net-Work-Play Australian International Documentary Conference 23 - 25 February 2015-07-28 St Kilda Film Festival 23 May 2015-07-28 Screen Edge Forum (Auckland, NZ) 29 May 2015

202. Also, through the *Off the Air* newsletter that is distributed to members and interested stakeholders via a subscription based email system, Screenrights promotes the importance of copyright through such items as - "Copyright Reform" article dated 11 September 2014; the role and functions of other collecting societies - "Australian Copyright Council Report on the Economic Contribution of Copyright Industries" article dated 27 April 2015; as well as its role and functions of Screenrights "Welcoming in 2015 with Royalty Payments" article dated 11 February 2015.

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

203. This subject is dealt with in a separate section "Complaints and Disputes" below.

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

204. Screenrights publicises the Code and its undertaking to be bound by it, by referring to that fact, and making the Code available, on its website for downloading by members and licensees and other

interested persons ([www.screenrights.org/about-us/governance/code-of-conduct](http://www.screenrights.org/about-us/governance/code-of-conduct)) (see clauses 4(a)(i) and (ii) of the Code).

205. Screenrights includes a statement in its Annual Report (under "Governance") on its compliance with the Code (see Clause 4 (b) of the Code).

206. Of course, Screenrights' annual report to the Code Reviewer is itself directed to its compliance with the Code.

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

### **General**

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

208. PPCA was established in 1969 by the owners of copyright in sound recordings, with the object of issuing blanket licences for the broadcast and public performance of copyright-protected sound recordings and music videos.

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

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

210. PPCA reports that neither its Constitution nor its Privacy Policy were changed during the Review Period.

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

211. PPCA is a company limited by shares, the shares being held equally by the remaining three of the six founding members. The three members are ineligible for any dividend, and receive remuneration only on the same basis as all other licensors, in line with PPCA's "Distribution Policy", a copy of which has been supplied to the Code Reviewer.

212. As a result, whereas other collecting societies represent the interests of their "members", PPCA represents the interests of "licensors" (ie the owners or exclusive licensees in respect of copyright in sound recordings), only three of which are in fact members of PPCA.

213. PPCA's relationship with licensors is governed by the terms of its standard "Input Agreement", a copy of which has been supplied to the Code Reviewer, rather than by PPCA's Constitution. The Input Agreement allows PPCA to sub-license on a non-exclusive basis, and to create blanket public performance and broadcast licensing schemes used by the users of sound recordings (particularly, small businesses).

214. In the same way, PPCA has "registered artists" rather than "artist members". The payments made available to Australian featured artists under the PPCA Distribution Policy is on an ex gratia basis and does not arise from any copyright held by the artists.

215. As at 30 June 2015, PPCA had 1,842 licensors representing major record companies and independent copyright owners. The number of registered artists was approximately 3,494.
216. Neither the Input Agreement nor the Distribution Policy was amended during the Review Period.
217. PPCA reports that it mainly receives queries relating to registering as a licensor by telephone or email. PPCA generally refers the enquirer to the relevant section of the website and the related on-line registration form (<http://www.pcca.com.au/labels/register-as-a-licensor/>).
218. Similarly, enquiries from artists about registering with PPCA are mostly received by email, in which case again they are directed to the relevant area of the website (<http://www.pcca.com.au/artists-at-home/register-as-an-artist/>) and the on-line registration forms.
219. The PPCA website includes “FAQ” sections for both licensors and artists, in order to explain the services that PPCA provides. During the Review Period, PPCA emailed its registered artists and licensors a number of times, keeping them informed of the Government’s reforms regarding online copyright infringement.

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

220. As at 30 June 2015 PPCA had over 53,000 businesses licensed for the public performance of protected sound recordings and music videos. By volume, this is the largest sector of PPCA’s licensing activity and is managed by its Public Performance Licensing Department. PPCA also has in place communication licences with

those offering other services (including broadcasters and linear and customer-influenced streaming services).

221. During the Review Period, PPCA continued its discussions with the ABC in relation to the implementation of new licensing arrangements. In addition, it continued its consultation with the Community Broadcasting Association of Australia (CBAA) in relation to the roll out of new licences for its members. A representative from PPCA also participated in a “webinar” on 24 February 2015 with CBAA members in relation to this and various other copyright related issues.
222. In conjunction with APRA, PPCA has also commenced a consultation with the local government sector regarding the implementation of a joint licensing scheme for this sector. Information regarding the consultation was posted on the PPCA website at: <http://www.pzca.com.au/music-users-/local-council-licensing/>. A representative from PPCA, together with a representative from APRA, met with a local government association to progress discussions. The consultation period is ongoing.
223. The PPCA website contains extensive information on its standard public performance licence schemes, including descriptions of tariff categories and the cost of the relevant licences (tariff sheets). Licence applications, incorporating Licence Terms, may be submitted (a) online, (b) via a downloadable application form, (c) using PPCA’s hard copy application form, or (d) by phone.
224. The licence application form was recently updated to reflect changes to the *Privacy Act 1988*, and to enable licensees to specify the requirement for a purchase order form. The website also contains information on the range of broadcasting and digital



licences available (including the application process) and a range of FAQs covering matters both specific to PPCA and on copyright more generally.

225. PPCA's Public Performance tariffs generally increase on 1 July every year by an amount equivalent to the CPI increase. By 1 April each year PPCA writes to relevant key industry associations that it has been able to identify, advising them of the proposed increase and inviting them to contact PPCA if they wish to consult about the proposal or to discuss it.

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

226. PPCA maintains and makes available on its website its Distribution Policy, which sets out how it collects licence fees for the use of sound recordings and music videos, and allocates and distributes payments to licensors who have authorised PPCA to issue licences on their behalf. The Distribution Policy also incorporates details of the Direct Artist Distribution Scheme. As indicated above, this is an *ex gratia* arrangement under which featured Australian artists may register to receive payments directly from PPCA, regardless of whether they have retained copyright in the sound recordings on which they feature.

227. PPCA's Distribution Policy was unchanged during the Review Period.

228. In addition to being available on the website, the Distribution Policy is also provided to each new licensor with the Input Agreement. An information sheet on the Direct Artist Distribution Scheme is provided to each registering artist as part of the artist registration pack. The information sheet describes the overall

scheme as outlined in the Distribution Policy, and advises that that Policy (and all other policies) can be viewed on the PPCA website, or supplied on request.

229. PPCA undertakes an annual distribution for the financial year ended 30 June, which is made prior to 31 December in each calendar year.

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

230. PPCA's operating expenses are deducted from total gross revenue, yielding a surplus available for allocation and distribution in line with PPCA's Distribution Policy.

231. PPCA's Annual Report for the year ended 30 June 2014 (published during the Review Period) showed that the expense to revenue ratio was 23.0%.

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

232. PPCA's financial statements are audited annually. The audited financial statements for the year ended 30 June 2014 have been provided to the Code Reviewer as part of the Accompanying Underlying Documents.
233. Reports of the Board of Directors and of the external auditors are published in the Annual Report which is available on the PPCA website, and which contains the information specified in the Clause 2.6(e) of the Code.
234. In addition, a Finance Committee appointed by the Board meets regularly to review interim financial accounts, and the outgoings and expenses contained in them.

235. The PPCA Board, committees and relevant managers are also provided with PPCA's "Trade Practices Compliance Guidelines" and "refresher" presentations are held periodically.
236. In line with PPCA's Constitution (rules 6.2(b) and 6.2(c)) PPCA conducts regular elections to fill the positions for both licensor and artist representative directors. At each meeting of the PPCA Board, directors are reminded of their obligations and duties.
237. The PPCA Management Team meets each week to discuss operational and strategic matters.

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

238. PPCA's practice of providing staff at the commencement of their employment with a number of key documents, including the Code, the PPCA Privacy Policy and the PPCA Complaints Handling and Dispute Resolution Policy, continued to be followed during the Review Period.
239. Members of the Licensing Department meet at least once each month, and individual licensing teams meet more frequently. At these meetings, staff are reminded of PPCA's obligations under the Code and of the various other PPCA policies.
240. A document containing standard responses to frequently asked questions is provided as a resource to the Licensing Department. During the Review Period, Licensing staff attended training sessions in customer services, dealing with difficult customers and managing stress, as well as refresher courses in the accounts management system.

241. The Distribution Department also meets periodically for staff training and process review purposes.
242. Department managers are provided with copies of any complaints received so that they can be discussed and reviewed at team meetings.
243. Staff training sessions on the Code for the Licensing, Credit, Enforcement and Distribution departments are held regularly. PPCA maintains an intranet which serves as a repository for all key policy documents, including the Code. Staff are encouraged to review the intranet regularly. At the most recent 'Code of Conduct' refresher training meetings, a session was also held on the changes to the Privacy Policy.
244. During the Review Period, new staff were sent to external courses dealing with customer service / telephone skills.

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

245. PPCA reports that it meets regularly with licensees and key licensee representative bodies. It distributes explanatory materials (either by mail, distribution at specific industry events, placement in trade publications or publication on the website), and publishes a quarterly newsletter, "*In The Loop*", which is forwarded to each licensee with the periodic licence renewal documentation.
246. PPCA is itself also a member of several licensee representative bodies.
247. During the Review Period, PPCA wrote to approximately 5,411 businesses advising them of the licensing obligation relating to

the use of protected sound recordings, and the convenience of the PPCA licence. The information pack includes notification of the operation of the Code.

248. During the Review Period, PPCA met with artists and licensors to educate them on the role and function of PPCA, presented at seminars and panel discussions, and distributed explanatory materials.
249. PPCA regularly issues a newsletter, "On the Record", to artists and licensors.
250. PPCA uses Facebook and Twitter to communicate directly with registered and potential artists and licensors, keeping them informed of PPCA news, issues and initiatives, as well as providing the latest music industry information to help aspiring artists, managers and music industry professionals. PPCA posts 3-4 times per week on both Facebook and Twitter. PPCA currently has 1,704 likes on Facebook and 1,449 followers on Twitter.
251. Awareness of PPCA is enhanced through its sponsorship and support of various prizes and cultural organisations, including the Australia Music Prize (the AMP), Sounds Australia, the PPCA Performers' Trust Foundation, Music Matters, the Arts Law Centre of Australia, the Australian Copyright Council, the ATSI office, the Australian Independent Record Labels Association (AIR), Support Act Limited, and the Australia Songwriters Association Awards.
252. PPCA runs a 'Patron Program' in order to better educate artists, record labels and businesses on PPCA activities. PPCA remains in close contact with its patrons in order to keep them apprised of all issues impacting PPCA, in order to allow them to disseminate that information across their contacts in the artist community.

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

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

254. This subject is dealt with in a separate section, "Complaints and Disputes", below.

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

255. PPCA publishes notification of the process for the annual review of compliance with the Code on its website and in its newsletter, "In the Loop".

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

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

### **General**

257. The Australian Writers' Guild (AWG) was established some 50 years ago by radio writers who formed a guild to represent their professional interests as television started to take over from radio plays.

258. Today the AWG is the professional association representing Australian "writers for performance", including performance via film, television, theatre, radio and narrative games and digital media.

259. The Australian Writers' Guild Authorship Collecting Society (AWGACS) was born out of the AWG for the purpose of collecting secondary royalties within the internationally recognised framework of voluntary collecting societies.
260. The number of members of AWGACS at 30 June 2015 was 1,467, an increase of 157 during the Review Period.
261. AWGACS does not deal with licensees under either statutory or voluntary licences.
262. AWGACS collects and distributes secondary royalties only.
263. AWGACS is also a member of CISAC (the International Confederation of Societies of Authors and Composers). Therefore, AWGACS submits to the International Best Practice Guidelines. AWGACS is considered a "developing society" in CISAC terminology, reflecting the number of its members, level of collections, age and infrastructure. AWGACS reports to CISAC extensively on an annual basis.

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

264. There was no change to the legal framework of AWGACS during the Review Period. AWGACS asserts that it has met all of its relevant obligations under clause 2.1 of the Code.

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

265. As noted above, the number of members of AWGACS as at 30 June 2015 was 1,467, an increase of 157 during the Review Period.

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

267. Membership remains available to all scriptwriters.

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

268. Clause 2.3 of the Code does not apply to AWGACS because AWGACS is not a licensor of copyright material.

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

269. AWGACS does not grant licences and therefore does not receive licence fees for distribution.

270. AWGACS distributes to its members monies that it collects from other collecting societies on their behalf. It distributes in accordance with its Constitution and its Distribution Policy as determined by its Board of Directors. With its report to the Code Reviewer, AWGACS has supplied to the Code Reviewer copies of its Memorandum and Articles and Association and its Distribution Policy, as part of the Accompanying Underlying Documents.

271. The Distribution Policy is made available to members upon request and posted on the AWGACS section of the AWG website. That Policy deals with such matters as the registration of audio-visual works written in whole or in part by its members, "percentage splits", and the preference accorded to the credited writer, the deduction of the actual operating expenses, and the requirement that writers provide a Warranty and Indemnity in



favour of AWGACS in respect of each title in relation to which the writer claims an entitlement.

272. The AWGACS financial year is a calendar year. In the calendar year ended 31 December 2014, AWGACS:

- collected \$1,383,133 (distributable in the following calendar year, 2015); and
- distributed \$809,787 from prior years' collections.

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

273. AWGACS deducts from each calendar year's collection its "standard operating costs for that year" (page 2 of AWGACS's report to the Code Reviewer).

274. AWGACS deducts 5% of gross royalties received as a "cultural levy" to be directed towards appropriate activities in support of its members. It sponsors the Annual AWGIE Awards for scriptwriters.

275. AWGACS claims that it invests, to the extent that human and cash resources permit, in pursuing new sources of income for its constituents.

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

276. The Board of Directors of AWGACS comprises five directors, of whom two are AWGACS members who are appointed by the Board of the AWG, two are AWGACS members who are elected by the members, and one is the AWGACS/AWG Executive Director.

277. The audited annual accounts for calendar 2014 were supplied with AWGACS's report to the Code Reviewer as part of the Accompanying Underlying Documents.

278. AWGACS is also subject to the governance and reporting measures and reviews of CISAC.

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

279. During the Review Period, there were two noteworthy new appointments: one to the position of "Industrial Projects Manager" with the AWG, a position which incorporates considerable AWGACS duties, and the other to the position of "Collections and Distributions Officer". The appointees were advised of AWGACS's obligations under the Code.

280. AWGACS states that all employees are aware of the Code and of its requirements and of the society's Complaints Handling Procedure.

281. It states that all current employees contributed to the CISAC review and were questioned about governance and accountability by the Regional Director of CISAC.

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

282. In its report to the Code Reviewer, AWGACS again describes itself as a small "developing" society, and states that it relies on larger societies and the Australian Copyright Council to contribute to the promotion of the importance of copyright and the importance of collecting societies in general in Australia. Its membership of CISAC is directed to the same purposes internationally.

283. AWGACS states that it seeks to increase awareness among its members and the scriptwriting community by advertising and print, via "Storyline" (the journal for performance writers) with a print run of approximately 3,000, and via sponsorship of the two largest events for scriptwriters, the Annual AWGIE Awards and the National Screenwriters' Conference.
284. AWGACS has promoted awareness of moral rights to members and the industry via electronic bulletins and a website interview. The society provides an individual advice service to members and to the industry on copyright and related issues.
285. On 14 May 2015, AWGACS wrote to its members to inform them about their entitlements to secondary royalties, AWGACS's role in collecting secondary royalties for them, and, in particular, AWGACS's ongoing efforts in this respect in relation to Screenrights.
286. On 4 August 2015, AWG wrote to all full members encouraging them to participate in the tracking and collecting of royalties to which members of AWGACS are entitled.
287. All of AWGACS's foundation documents are available internationally to other collecting societies, via the CISAC portal, and domestically via the AWGACS website.
288. AWGACS responds individually to all telephone and email questions from members, potential members and the general public about the society's purposes and practices.

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

289. The subject of complaints and disputes is dealt with in a separate section of this report, "Complaints and Disputes", below.

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

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

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

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

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

### **General**

293. ASDACS was incorporated in 1995 in the interests of Australian and New Zealand directors of audio-visual works.

294. As at 1 July 2014, ASDACS had 881 members. By the end of the Review Period on 30 June 2015, membership had grown to 899 – an increase of 18 members.

295. As has been previously noted, ASDACS is not a declared collecting society under the Act.
296. The amount of royalty income during the Review Period was \$758,891. This represents statutory collecting society income from 11 international collection society partners. In addition to this, a small amount of domestic retransmission royalty revenue totalling \$721.17 was received from Screenrights. A major update of all ASDACS' members' and international partners' members' registrations was undertaken with a view to increasing the receipts from Screenrights in 2015.
297. ASDACS reports that it continues to work closely with the Australian Directors Guild (the ADG) with the aim of promoting fair remuneration for screen directors.
298. ASDACS continues to employ one full-time staff member (newly appointed) and one casual staff member. An external database technician and a legal adviser are employed one day a week on a consultancy basis.

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

299. There was no change during the Review Period.

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

300. There was no change during the Review Period.

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

301. Like AWGACS, ASDACS does not grant licences to use copyright works.

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

302. ASDACS' undertook its annual distribution to members in accordance with its Articles of Association, to which there was no change during the Review Period.

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

303. ASDACS' members received the full amount of gross royalties that ASDACS received from reciprocal collecting societies internationally for their works, less the following amounts:

1. **Administrative fee:** long-term average administrative fee of 25% which covers ASDACS' operational expenses.
2. **Membership fee:** membership fee of 10% applicable to working directors who are not members of the ADG or the Directors and Editors Guild of New Zealand (formerly called the "Screen Directors' Guild of New Zealand"). The membership fee is waived for members of the ADG and the "Directors and Editors Guild of New Zealand".
3. **Cultural Purposes Fund:** fund fee of no more than 4 percent that is set aside for strengthening the industry and directors' rights. In 2014-15 this amounted to \$24,000, which was granted to the ADG for the support and promotion of directors in accordance with the ASDACS Constitution. Among many ADG activities, this amount was put towards the annual ADG Awards for which ASDACS remains a gold sponsor. The full ADG cultural funding report was attached to ASDACS's report to the Code Reviewer. It shows that \$10,000 went to ADG Awards, \$4,000 to the Screen Directors' magazine, and \$10,000 to "Director Events".

304. No administrative fees are charged to members for any royalties received from Screenrights for their works under the Australian Retransmission Scheme.

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

305. ASDACS's Governance principles remained unchanged during the Review Period. At its Annual General Meeting on 22 May 2015, six members were elected by the membership to the ASDACS Board; all are members of the ADG. The newly elected directors appointed one non-member as a specialist director in finance.

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

306. During the Review Period, the newly appointed full-time staff member received training on the ASDACS procedures from the external database technician and a former staff member. In addition, further training was provided on the "IDA system" from the IDA Development Manager, the "IPI registration system" from the "SUISA-IPI" Representative, and the Screenrights registration and conflict resolution procedure from the Screenrights Member Relations Manager.

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

307. The ASDACS website and regular email Member Updates (News from the Chair) are used to keep members informed of its work and progress. The ASDACS website also continues to promote the importance of copyright and makes detailed reference to the nature of copyright as administered by collecting societies in Australia and overseas, addressing the functions and policies of ASDACS in particular. ASDACS's social media (twitter, facebook and linkedIn) and e-news have also been further developed and

will serve as another vehicle to keep ASDACS members and international partners updated.

308. ASDACS additionally used the regular newsletter of the ADG as a vehicle for broader awareness campaigns for screen directors. It provides sponsorship and cultural support through the ADG to enhance its visibility to the wider film and TV community, for example via the annual ADG Awards.
309. In early 2015, ASDACS contacted all its members and international reciprocal collection society partners via email, in order to commence the process of updating Screenrights' registrations for retransmission royalties. This process also served the purpose of raising awareness of Australian directors' retransmission rights, and promoted the use of the recommended contractual clause in screen directors' contracts to ensure the income stream for all screen directors.
310. ASDACS also contracted for the services of a legal adviser ("Director, Corporate Affairs & Legal") during the Review Period to assist in exploring a plan for a campaign for directors' copyright in Australia. It is expected that this campaign will involve further education and awareness for members in coming Review Periods.

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

311. This subject is dealt with in a separate section, "Complaints and Disputes", below.



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

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

313. The Code is posted on the ASDACS website in a comprehensive area called "Governance", where those interested can also find:

- the latest Report on Compliance;
- the Triennial Review of the Operations of the Code 2011; and
- the 2015 Call for Submissions.

314. Members can download those documents or obtain paper copies upon request to the ASDACS office.

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

## **COMPLAINTS AND DISPUTES**

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### **Australasian Performing Right Association Limited ("APRA") and Australasian Mechanical Copyright Owners Society Limited ("AMCOS")**

#### **General**

316. APRA/AMCOS deal with Complaints and Disputes in paragraphs 9.1 – 9.13 of the text of their Report to the Code Reviewer and in

a separate volume of Accompanying Underlying Documents. As I stated in last year's Compliance Report, "[a]llowing for the fact that no doubt a collecting society has an interest in the way in which it describes complaints and its dealings with them, it must nonetheless be said that APRA/AMCOS's report in both respects to the Code Reviewer is commendably detailed and, apparently, frank".

317. For the purposes of its report, APRA/AMCOS have applied the distinction between "Complaints" and "Disputes" to which I referred (at [28] – [38]) in my Report upon a Review of the Operation of the Code of Conduct, dated 30 April 2014.

318. The APRA/AMCOS Complaints Policy and Procedures document is in the "Complaints" volume of the Accompanying Underlying Documents ( the Complaints Volume).

319. APRA/AMCOS state that they have included in the Complaints Volume all documents and correspondence dealing with complaints made during the Review Period. They request that the names and any other means of identifying the complainants be kept confidential, and, as in previous years, they will be. APRA/AMCOS have offered to address the complaints in further detail in a meeting with me if I so require, but I do not.

320. In summary, there were three new licensee complaints received during the Review Period, and none carried over from the previous review period. The documentation relating to the three licensee complaints are documented in the Complaints Volume.

321. Member complaints are also documented in the Complaints Volume. There were eleven new member complaints made during

the Review Period and one carried over from the previous review period

322. APRA/AMCOS claim that they have adopted a broad approach to the definition of "complaint". However, where they have been unsuccessful in their attempts to grant a licence to a user of music and the matter is referred to the external solicitors of APRA/AMCOS, the matter is not treated as a complaint unless there is in fact a complaint regarding the conduct of APRA/AMCOS's employees or external solicitors.
323. As at 30 June 2015 there were 166 ongoing general infringement matters under the management of APRA/AMCOS's Public Performance Licensing Department. Of these, 41 were under the management of APRA/AMCOS's external solicitors. Both of these figures are a significant increase on last year's (94 and 15 respectively). In their report to me, APRA/AMCOS have offered to provide me with more information regarding the activities of the external solicitors, including information concerning litigation commenced during the Review Period, if I so require.
324. Where a licensee fails to pay invoices issued by APRA/AMCOS, the matter is pursued by their Finance Department, and, if necessary, is referred to external mercantile agents "to manage and, if necessary, pursue through debt recovery proceedings". As at 30 June 2015, 346 licensees were under the management of APRA/AMCOS's Australian external mercantile agent, and 139 were under the management of APRA/AMCOS's New Zealand external mercantile agent. APRA/AMCOS do not characterise these matters as "complaints" unless a complaint is made regarding the conduct of the Finance Department or the mercantile agent. No such complaints were made during the Review Period. APRA/AMCOS have offered to make available to

me further information regarding the activities of their external mercantile agents if I so require.

325. As foreshadowed in [314] of the Compliance Report on the previous review period (ended 30 June 2014), APRA/AMCOS launched a new independent ADR facility on 31 March 2015. It is called "Resolution Pathways". Details concerning it can be found at [www.resolutionpathways.com.au](http://www.resolutionpathways.com.au).
326. The new independent ADR facility is available to assist with the resolution disputes between APRA/AMCOS and licensees or potential licensees, between APRA/AMCOS and its members, and between members themselves.
327. The ADR facility is publicised on the APRA/AMCOS website and in materials released to the public and in legal correspondence. APRA/AMCOS's external solicitors have standing instructions to make the existence of the facility known to parties before commencing legal proceedings and negotiations.
328. APRA/AMCOS state that they strongly encourage their members to resolve disputes among themselves by way of ADR. Where there is a dispute among members, or involving members of an affiliated society, as to the proper allocation of shares in a work administered by them, APRA/AMCOS may, at their discretion, if satisfied that it is appropriate to do so in the circumstances, place all or any of the performance credits relating to the work in suspense until the dispute is resolved. APRA/AMCOS's policy in that respect is set out at Rule 13 and Rule 7 of APRA's and AMCOS's respective Distribution Rules.
329. Under the terms of APRA's authorisation from the ACCC, the ADR facility's Resolution Facilitator is obliged to submit an annual

report to the ACCC giving details of those disputes notified to her under the ADR facility. She has provided reports to the ACCC dated 31 October 2014 and 2 March 2015, the latter being contained in the Complaints Volume.

## **Complaints by Licensees**

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

330. A licensee who operated a café business complained about an increase in the licence fee. He asserted that in the previous year he paid APRA approximately \$130 and that the fee had increased to \$275 - an increase of 112%. He asserted that this was unreasonable and "a great injustice". APRA had informed him that the new licence terms had been agreed upon by "Restaurant & Catering Australia". However, the licensee said that he was not a member of that organisation.
331. APRA/AMCOS explained the background to the new licence terms and, in particular, that they now covered a wider range of uses for music in cafes and restaurants. APRA/AMCOS outlined three options that were available to the licensee, and he chose that of not using music in his café, and therefore of terminating the licensing arrangement.
332. No further correspondence was received and APRA considers the complaint to have been resolved.
333. I see no reason to disagree with this view.

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

334. This complaint was over the requirement of an APRA licence for the playing of radio music in a shop. The complainant wrote to APRA stating that he could not understand why he should be required to pay for a licence when the radio station already pays for one.

335. APRA replied explaining the difference between the right to communicate a musical work to the public for which the broadcaster pays, and the right to perform a musical work in public for which, in the present case, the shop owner pays.

336. That letter was written in February 2015 and no further communication has been received by APRA since.

337. APRA justifiably considers that the complaint has been resolved.

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

338. This complainant sought an explanation concerning the increase in APRA's restaurant licence fees. The complainant said that previously a sum of \$101.82 had been payable and now a sum of \$275.00 was claimed by APRA (see Licensee Complaint 1 above).

339. APRA/AMCOS explained that the Restaurant & Catering Australia organisation, the peak industry body for the restaurant and café sector, had been consulted, as had other peak industry bodies, before the new licence scheme for restaurants and cafes had been introduced.

340. APRA/AMCOS explained to the complainant various options that were available to him.

341. That letter was written in February 2015, since which time no further correspondence has been received from the complainant who in fact renewed his licence. APRA justifiably considers the complaint to have been resolved.

## **Complaints by Members**

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

342. The complainant was the manager of certain APRA writer members. The complaint related to the basis on which APRA had registered certain works that were co-written by his clients.

343. APRA investigated the matter and met with the publisher in question. The investigation revealed that in some cases the contractually agreed ownership shares in the works, both as between the individual writers and also as between the writers and the publisher, differed from the work registrations that had been lodged with APRA.

344. APRA notified the complainant of the result of its investigation, in response to which the complainant provided additional information.

345. This led to APRA's setting out amended work registrations to which the publisher had agreed, and APRA offered, in accordance with Distribution Rule 7, to adjust the members' royalty distributions for the previous three years, upon the complainant's confirming that his clients agreed to the amended work registrations.

346. There followed further correspondence which included a challenge by the complainant to the publisher's chain of title. APRA notified the publisher of this challenge which the publisher rejected in writing.
347. APRA's General Counsel met with the complainant and one of his clients – one of the writer members. It was agreed that APRA should not place earnings from the disputed works into suspense, but rather that an adjustment to the writer members' distributions could be made once the ownership shares were agreed to by all parties.
348. The complainant then alleged that APRA had, at the publisher's direction, amended the relevant work registrations without notifying the affected writers members – an allegation that APRA denied. APRA agreed, however, to come back to the complainant with an explanation, which APRA has not yet done for the reasons that follow.
349. APRA's General Counsel provided a report on the dispute to the APRA Board. The complainant had undertaken to notify APRA of what his clients considered to be the correct ownership shares within six weeks – something that the complainant has also not yet done.
350. APRA undertook upon receiving that notification from the complainant, to provide it to the publisher and to seek its agreement, and if it did not agree, to participate in APRA's ADR service to resolve the dispute. As part of the dispute, APRA would request the publisher to provide evidence of its chain of title on a confidential basis.



351. APRA undertook to adjust the affected members' royalty distributions on the basis of the new agreed ownership shares for distributions going back three years from the date when APRA was first notified of the dispute (June 2014).
352. Both parties reserved their rights in respect of any adjustment to royalty distributions for any period prior to 8 June 2011.
353. APRA considers this dispute to be ongoing.

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

354. A writer member complained about non-payment for alleged performances of her works on a particular radio station. After an investigation, APRA determined that the relevant performance occurred when the member telephoned a 2GB talkback program and sang over the phone uninvited.
355. APRA wrote to the member explaining that in these circumstances no royalties were payable. The writer member sought to speak with APRA's CEO. APRA's Director of Membership telephoned her explaining again why royalties were not payable in the circumstances but would be payable if the radio station performed her works.
356. No further correspondence was received from the member, and APRA justifiably considers the complaint to be resolved.

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

357. A publisher member contacted APRA to arrange a meeting to check work registrations and to obtain certain training. APRA requested a list of any questions the member might have ahead

of the meeting in order to ensure that relevant personnel were present, but no document was received from the member.

358. The member attended the scheduled meeting with a legal representative and raised a number of issues. APRA's Publisher Services representative considered that a complaint for the purposes of the Code was being made. The publisher's main concerns related to music usage reporting by broadcasters, and what legal recourse a member had if it considered that APRA/AMCOS had failed adequately to enforce the member's rights.
359. A subsequent meeting was arranged. This time APRA's General Counsel, Director of Media Licensing and Deputy Director of Publisher Services attended. Areas of concern were addressed. APRA's Deputy Director of Publisher Services also followed up several action items with the member in the following weeks.
360. APRA justifiably considers the complaint to have been resolved.

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

361. A writer member emailed APRA's CEO complaining about APRA's newly introduced self-reporting system for the logging of live performances. The member provided a document setting out the issues that he perceived to be of concern, and questioned the scope and effectiveness of APRA's consultation process with its members prior to the introduction of the new system.
362. APRA's CEO replied setting out the consultation process that had been followed and explaining the objectives of the new system. The letter acknowledged that the new reporting system would create additional work, at least initially, for some members, due

to backlogs, but stated that the new system should benefit everyone in the future. APRA's CEO also offered to arrange for an APRA staff member to "walk the member through the system on site".

363. The member replied the same day indicating that the response did not address all of the member's concerns, and politely declined the offer of a system walk through.

364. APRA's Director of Membership replied thanking the member for his feedback and offering to provide contact details if the member changed his mind about the walk through. The member responded now accepting the invitation. A meeting took place which the member of staff of APRA reported to be "positive". No further correspondence was received from the member.

365. APRA justifiably considers the complaint to have been resolved.

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

366. A writer member complained that a response had not been received to his emails. The member's first email was dated 17 September 2014 and a response was sent on 19 September 2014. The problem was that the 17 September email also contained an additional query, and due to an oversight by the Writer Services representative, this was not forwarded to APRA's International Department. In consequence, the member received no response relating to it.

367. On 13 January 2015 the member sent a follow up email regarding international royalties and on the same day an email to APRA's Complaints Officer about the lack of response to the query.

368. APRA investigated the matter and replied on 27 January 2015 advising the member of what had transpired, apologising for the oversight and confirming that the query was being investigated with the relevant overseas collecting societies.
369. The member objected to the tone of that email and sought clarification in relation to the international issues. He wrote: "Please escalate my complaint/situation to someone who can resolve this matter".
370. The relevant staff member replied apologising if APRA's earlier email had offended the member and advising that the matter had been escalated to the Head of Member Services. The member replied thanking the staff member for that email.
371. On 10 February 2015 APRA's Head of Member Services responded to the member addressing the further concerns. No further correspondence has been received and APRA justifiably considers the complaint now to have been resolved.

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

372. A member wrote to APRA on 14 October 2013 and made submissions to the ACCC in the context of APRA's application for authorisation. The member's submission expressed concerns relating to live music performers. The ACCC considered the member's submissions in the context of the grant of authorisation to APRA in 2014.
373. On 14 October 2014 the member again wrote to APRA raising concerns relating to the process for the election of directors and the administration of APRA's annual general meeting. APRA responded promptly addressing the concerns raised.

374. Over the course of 2014 and 2015 the member wrote to APRA several times revisiting the concerns raised in his letter of 14 October 2014. He posted messages on a certain Association Facebook page criticising APRA in several respects.
375. The member's primary complaint continues to be that APRA does not do enough to support live performers in a particular capital city.
376. APRA's Head of Member Services replied in writing on 8 December 2014, 4 March 2015 and 31 July 2015, and met with the member on 20 November 2014 to discuss his concerns.
377. In addition, a representative of APRA's Live Music Office wrote to the member on 7 April 2015 offering to meet with him but that invitation was not taken up.
378. APRA asserts that it has tried to demonstrate to the member the efforts that APRA takes in order to support live music performers in the particular capital city and around Australia.
379. APRA considers the complaint to be ongoing but has indicated that unless I direct otherwise, APRA does not intend to include the member's complaint in its future reports to the Code Reviewer on compliance with the Code.

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

380. The correspondence contained in the Accompanying Underlying Documents reveals the complaint to be wide ranging. In more ways than one, APRA is alleged to fall short in various respects in

terms of serving the interests of live performer members in pubs, clubs and other venues in the particular capital city in question.

381. It is, however, a serious step for a collecting society to cease reporting to the Code Reviewer all and any complaints made by a particular individual, regardless, for example, of whether they are on the same subject as those on which complaints have been made previously.

382. Since APRA has used the language of "direction", I direct APRA to continue to report the individual's complaints on the basis that the position can be reviewed next year if the member simply reiterates complaints that he has previously made.

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

383. A publisher member's membership of APRA was terminated at the member's request. Subsequently APRA wrote to the publisher in error advising that APRA proposed to terminate the publisher's membership on the basis that the company had been deregistered. The publisher was upset by that communication which had been sent in error, and telephoned APRA to complain.

384. APRA's Director of Membership spoke with the publisher and apologised, explaining that due to staffing changes and a consequent backlog of documentation, APRA's records had not been updated to reflect the earlier termination of the membership.

385. APRA updated its system to correct the termination date. APRA's Director of Membership wrote to the publisher confirming that this had occurred and apologising for the inconvenience caused by APRA's administrative error.

386. APRA justifiably considers the complaint now to have been resolved.

***APRA/AMCOS Member Complaint 8***

387. A writer member complained to the Complaints Officer on the basis that he was dissatisfied with the responses he had received from APRA's Publisher Services representative in connection with the member's sub-publishing arrangement.

388. The member had initially emailed "Publisher Services" requesting records of payments made by US collecting society ASCAP to his original publisher in the United States. On the same day APRA advised that it was unable to provide those records. The member then requested records of payments that may have been made by the US publisher to the Australian sub-publisher. APRA again replied that it could not provide that information and suggested that the member contact the sub-publisher directly.

389. The member then requested a copy of the relevant sub-publishing agreement from APRA which replied that it did not have a copy and suggested that the member request a copy from his Australian sub-publisher.

390. Subsequently, APRA's General Counsel email the member advising that the matter had been investigated and that APRA had provided all information that it was permitted to provide, but offered to arrange a meeting with the relevant Member Services senior management and the writer's Australian sub-publisher.

391. A meeting was set for 14 May 2015 of APRA's Head of Member Services, the member and an employee of the sub-publisher.

However, on 5 May 2015 APRA received an FOI request from the member demanding a copy of the sub-publishing agreement. Rather than replying immediately in writing, APRA's General Counsel thought that the request should be dealt with at the meeting scheduled for 14 May.

392. On 12 May the member emailed to re-schedule the meeting. The Head of Member Services' PA replied that she would wait for the member to advise his availability before she rescheduled the meeting. No further correspondence was received from the member.
393. On 17 May 2015 APRA's General Counsel responded to the FOI request advising that APRA did not have the requested agreement in its possession, and that in any event APRA was not subject to the Freedom of Information Act.
394. No further correspondence was received from the member and APRA justifiably considers the complaint not to be ongoing.

### ***APRA/AMCOS Member Complaint 9***

395. This writer member has a long history of disputes with APRA which have been the subject of report by my predecessor The Hon James Burchett, QC, in the course of his annual reviews of APRA's compliance with the Code.
396. At the heart of the member's complaints is the allegation that he was a co-owner of a number of songs recorded in the 1980's by a particular band. The member's claims are inconsistent with the work registrations that APRA has on file for the relevant works. The member alleges that alternative work registrations, accurately reflecting his claims as a co-writer, were lodged with



APRA in the early 1980's and that APRA must have misplaced them. APRA reports that it has no record of the alleged alternative work registrations and that the complainant has not been able to provide APRA with copies.

397. The member alleges that he originally notified APRA of his claims in 1985 and that APRA failed to take any action at that time. APRA states that it has no record of such a notification, and the complainant has not provided APRA with a copy.
398. APRA's records indicate that the member first notified APRA of his claims as a co-writer of the disputed works in 2005, shortly after the death of the songwriter who had been credited by APRA as the author of most of the disputed works on the original works registrations. Upon receipt of that notice in 2005, APRA placed the earnings arising from the uses of the disputed works into suspense, pending resolution of the dispute.
399. In 2008 the complainant expanded his claim to include a number of additional works. APRA placed the earnings from those additional works into suspense as well.
400. APRA has offered the use of its ADR facility to the disputing parties but not all of them were willing to use it.
401. Earnings from the disputed works, both original and additional, continue to remain in suspense.
402. In April 2015 the member met with APRA's General Counsel and Head of Member Services and sought to revisit the subject matter of his original complaint made in 2005. APRA's General Counsel explained that the disputed works remained in suspense, and again offered the use of APRA's new independent ADR facility.

403. Fourteen days later the member sent APRA a letter setting out a long list of allegations and the questions to which he requested a response. The allegations and questions revisited the subject matter that had been discussed with the member in 2005 and 2008.
404. On 10 May 2015, an independent dispute facilitator, apparently engaged by the member, contacted APRA's General Counsel and asked if he could meet with APRA on the member's behalf. APRA's General Counsel met with that person two days later and again in the following month to discuss the dispute and to provide as much background information as was in APRA's possession. At both meetings APRA offered the use of its new independent ADR facility.
405. A further month later the member posted a long message on the Facebook page of a certain association including a number of allegations (many of which APRA considers to be misleading and possibly defamatory) about APRA. APRA's CEO posted a response on the same Facebook page.
406. APRA considers the complaint to be ongoing but does not propose to include it in future annual reports by APRA of its compliance with the Code, unless I should direct it otherwise.

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

407. Some of my comments in relation to APRA/AMCOS Member Complaint 6 are apposite: it will be noted, though, that the present complaint is by a writer member rather than by a live performer.

408. I have read previous Compliance Reports insofar as they deal with this particular complainant. It seems clear that the member is repeating the same complaint. There is nothing that I can do to address the dispute. The complainant has refused APRA's offer of an ADR facility.
409. In the special circumstances of this case, I refrain from giving any direction of the kind described by APRA, to the intent that APRA need not report on a complaint by this member in future reports to the Code Reviewer, unless the complaint relates to a quite different subject from those on which the complaints to date have been made.

### **Copyright Agency Limited ("Copyright Agency") / Viscopy**

410. Copyright Agency has noted in its report to me that it has categorised seven matters as "complaints" during the Review Period within the meaning of Australian Standard ISO10002-2006 – Customer Satisfaction.
411. None involved a formal letter to Copyright Agency's Complaints Officer although the Complaints Officer was notified of all of them within Copyright Agency/Viscopy and was involved in resolving some of them.

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

412. Representatives of the Arts Law Centre of Australia (Arts Law) met with representatives of Copyright Agency to express the Centre's continued concern about deductions from the fees received by Copyright Agency in respect of statutory licences. Copyright Agency reports that it had previously amended its and

Viscopy's websites in order to explain more clearly the nature of the deductions to the satisfaction of Arts Law.

413. The remaining concern, however, relates to the deduction in respect of Viscopy members who are not Copyright Agency members – deductions that are in addition to those made by Copyright Agency for its operating costs. The deduction is set out in the Services Agreement between Copyright Agency and Viscopy approved by the ACCC and has been 10% since 1 July 2014.
414. In its compliance report Copyright Agency states that since the commencement of the Services Agreement on 2 July 2012, all new artist members have been encouraged to join both Viscopy and Copyright Agency. Following a meeting with the Arts Law representatives, Copyright Agency contacted indigenous arts centres that are members of Viscopy inviting them to join Copyright Agency as well. Copyright Agency also developed an ongoing communication plan for arts centres, focussed particularly on new managers, to inform them of the services provided by Copyright Agency and Viscopy. Copyright Agency states that its understanding is that the Arts Law is satisfied with this outcome.

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

415. A member complained about the lack of response to her enquiry about payments for her works, that had in fact been made to her publisher.
416. A senior member of staff contacted the member to apologise for the delay and to advise that Copyright Agency would make an ex gratia payment to the member in the amount allocated for the use of her work, and that the staff member responsible for

responding to her enquiry had been counselled by her manager regarding the delay in responding.

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

417. An artist was unhappy that her work was not displayed on the new Viscopy website as it had been on the previous website. She expressed the view that a display of her work on the website provides licensing opportunities for her. She complained that Viscopy was not taking steps to promote her work.

418. A member of staff called the artist and explained that in fact her works had not appeared on the previous website, although they had appeared in Viscopy's "Image Bank", and that Viscopy was looking to establish an enhanced Image Bank service.

419. The artist expressed satisfaction with the response.

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

420. A publisher member was unhappy about not having yet received a payment from licence fees for digital press clippings.

421. Copyright Agency reports that as the distribution had been delayed, it made an advance payment to the member.

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

422. A member asked to terminate his membership as he did not wish to receive any further communications from Copyright Agency. Copyright Agency terminated the membership and notified the member of this. However, unfortunately, he received further

communication from Copyright Agency as his email address had now been removed from all communications lists.

423. A staff member contacted the individual to apologise and to advise him that his email address had now been removed from all communications lists.

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

424. A Viscopy member raised a concern that payments due to her had been wrongly paid to another artist with a similar name. She expressed the desire to cease to be a member of Viscopy.

425. A member of staff reviewed all records of payment to the artist with the similar name and identified four payments that should have been made to the complainant.

426. Viscopy apologised and arranged for payment to the artist of the fees that had been wrongly paid to the other artist, and added a flag in the database to alert staff to double check in the future that payments were made to the correct artist.

427. The complainant has remained a member of Viscopy.

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

428. Following a settlement between an author and her former publisher, the author remained entitled to Copyright Agency allocations in respect of her works that had been included as components in a series of "teachers' guides".

429. One of Copyright Agency's researchers had manually identified those works and the author had been advised that allocations had been made in September 2014.

430. Unfortunately, however, payment was not made in accordance with those allocations in subsequent payment runs because:

- The publisher's solicitors had failed for several months to provide a copy of the formal settlement agreement so that Copyright Agency could confirm the terms as advised by the author;
- When that settlement agreement was provided, it did not have the legal effect that the publisher's solicitors had assumed;
- Copyright Agency advised all parties that it was Copyright Agency's view that the agreement did not affect the author's entitlement to continue to claim Part VB allocations in respect of the relevant work, and awaited confirmation by the publisher; and
- Copyright Agency realised that its systems would not accommodate paying reallocations in the circumstances.

431. When Copyright Agency realised that its systems would not allow Copyright Agency to include the reallocated amounts in a normal run of payments, it made a manual payment, which required a number of internal authorisations.

### ***Copyright Agency/Viscopy – other complaints***

432. A second category of 21 complaints were treated by Copyright Agency/Viscopy as not as significant or serious as the seven described above. The following table is from Copyright Agency/Viscopy's compliance report to the Code Reviewer and shows their summary of those complaints.

<b>ISSUE</b>	<b>RESOLUTION</b>
<p>An art market professional who pays royalties under the artists' resale royalty scheme complained to a senior manager about the conduct of a staff member of the visual arts team. The art market professional had tried call the staff member on the staff member's mobile phone, about an issue associated with the resale royalty scheme, while the staff member was on leave, and the staff member had not taken the call.</p>	<p>The staff member apologised to the art market professional. The staff member's manager then met with the art market professional, who was satisfied with the response.</p>
<p>An author member queried, via their association, the operating costs on the itemised report provided to the member with their payment. The operating costs were inaccurate due to a system error.</p>	<p>We apologised to the member, fixed the system error, published the operating costs for each distribution on the website, and published a guide to understanding each of the items on the payment summary and itemised report. The member was satisfied with the response.</p>
<p>An author member wrote to the CEO regarding a decrease in the payments he had received in recent years. He was unhappy about a lack of information from Copyright Agency about allocations for his works that had been paid to his publisher, that the publisher had not on-paid his share to him within 60 days, and that he had not been informed about a delay in payment of certain allocations for his works due to checking of the payment arrangements between him and his publisher. In a more general sense, he felt that Copyright Agency paid insufficient concern to the interests of authors, and that there were no allocations to new titles he had published.</p>	<p>The CEO called the member, apologised for insufficient communication, and explained various aspects of recent distributions, and distributions in general. The member was satisfied with the response.</p>
<p>A publisher member raised a concern about Copyright Agency's 'author first' policy whereby, if we do not have information about the contractual</p>	<p>We reviewed our communications regarding the obligation to share payments, and now send a reminder about sharing payments</p>



<p>arrangements between an author and a publisher, and the author is a member, we pay an allocation to the author's work to the author on the author's undertaking to share any amounts due to others (including a publisher). The publisher thought that authors do not always share payments as required.</p>	<p>after each distribution</p>
<p>A Queensland-based member complained that our notification to members about an event in Sydney did not give him sufficient time to travel to Sydney.</p>	<p>A similar event was subsequently held in Queensland to which the member was invited.</p>
<p>An artist who joined Viscopy online was upset that her date of birth was published on the Viscopy website without her permission.</p>	<p>We removed the artist's date of birth from the Viscopy website. The website was also changed so that, for all member artists, the year of their birth can be viewed (in accordance with the practice of other visual arts collecting societies), but not their date of birth.</p>
<p>Another Viscopy member complained about her date of birth appearing in the database of members accessible on the Viscopy website.</p>	<p>The database was amended so that the year of birth, but not the date of birth, appears.</p>
<p>An author member was unhappy about not having received any recent payments.</p>	<p>The Membership Manager wrote to the member, explaining that he had received an overpayment in 2013 from the distribution of licence fees from schools which was partly recouped from the 2014 allocation, and that he would be receiving payments from licence fees from other licences later in the year. The member was satisfied with the response.</p>
<p>An author member asked to cancel his membership as he had not received a payment he was expecting when he joined.</p>	<p>The author's membership was ceased. We also reviewed our processes for future communications with prospective members, with a view to avoiding any expectations of payments that may not eventuate.</p>
<p>An author member was unhappy about not having received a</p>	<p>A staff member called him and explained that works are only</p>

<p>payment for more than a year. He thought it was because his works weren't listed in his online account.</p>	<p>listed in online accounts if we have received information about contractual payment shares. He can receive a payment for works that are not listed. The staff member also outlined the future distributions that may include an allocation to the member.</p>
<p>A member complained again that she had never received payment for the copying of her work in a school in 2005–6. She also said her work had been copied in a surveyed school in 2014. She expressed lack of confidence in the surveys of copying in schools.</p>	<p>A staff member called the member, explained the survey process (including that surveys could only be conducted in a relatively small number of schools given the costs involved), and that she would check the records for 2014 for the member's work. The staff member subsequently emailed the member about copying of her work in survey records. The member received an allocation in the 2014 distribution.</p>
<p>A publisher member complained about the fixed deduction for administrative costs from licence fees from full-text database services.</p>	<p>We reviewed the history and rationale for the deduction, and the board approved a change whereby, for the future, the deduction is based on actual operating costs rather than being a fixed deduction.</p>
<p>A member was concerned that a recent email about a forthcoming payment made no reference to future distributions of licence fees from universities, and why he wasn't receiving payments from university licence fees.</p>	<p>A staff member called the member, explained when the future distributions of licence fees from universities would occur (and where to find the relevant page on our website), and how the fees are allocated using survey data.</p>
<p>A literary agent member called about a number of concerns regarding management of her online account (particularly linking to authors she represents), the accuracy of our processes, insufficient allocation to authors, and her perception that Copyright Agency has an unfavourable attitude to literary agents and an overly favourable attitude to publishers.</p>	<p>A staff member explained the relevant aspects of Copyright Agency's distribution policies and processes, including the 'author first' policy whereby payments are made to authors, if they are members, to share with publishers.</p>
<p>A licensee was upset about an automated email he received regarding licence renewal, and that he had attempted to contact the licensing team and no-one</p>	<p>A staff member contacted the licensee and apologised. The licensee has now renewed his licence. We have also reviewed our</p>

<p>had got back to him. The usual follow up had not occurred because of a change in staff in the licensing team, and insufficient handover on the staff member's departure.</p>	<p>systems and handover processes.</p>
<p>A publisher member raised concerns about decline in payments to them from licence fees from schools.</p>	<p>A senior staff member contacted the member to explain the various factors that affect how licence fees are distributed, and how those factors had affected allocations to the publisher and authors published by the publisher. The member was satisfied with the response.</p>
<p>A state government department proposed amendments to the Code to address what it regards as insufficient transparency to licensees regarding aspects of Copyright Agency's distribution of licence fees paid by them, including the names of individual recipients and how much they received, and undistributed licence fees held in trust. The proposed changes would also affect Screenrights, as the other collecting society that is declared to manage statutory licences in the Copyright Act.</p>	<p>Copyright Agency has agreed to provide more detailed information in its future annual reports about distribution of licence fees from governments, and to an amendment to the Code regarding information to be included in annual reports and provided on request to governments regarding undistributed licence fees held in trust. Copyright Agency takes the view that disclosure of an amount paid to an individual member without the member's consent would be inconsistent with the objects of the Code. Copyright Agency and Screenrights are in discussions with the NSW government with a view to finding a solution to its concerns.</p>
<p>The body representing schools and TAFEs for the purposes of negotiating copyright fees supported the proposal by the state government for amendments to the Code. The body's principal concern was access to additional information to assist it to implement its 'smartcopying' strategy of entering into direct licensing arrangements with publishers rather than relying on the statutory licence for education.</p>	<p>Copyright Agency agreed to provide the body with the name of the publisher of works that are recorded as used in schools in surveys of use. Copyright Agency and Screenrights are in are discussions with the body to ascertain whether anything further is required to address the body's concerns.</p>
<p>An artist associated with a Canadian visual artists' society affiliated with Viscopy contacted</p>	<p>We removed her details from the database of artists.</p>

<p>Viscopy about an artist profile of her on a website hosted in New Zealand. She wanted assistance with removing the profile from the site. We provided some assistance, but she requested further assistance. We then ascertained that she had resigned her membership of the Canadian society, and we informed her that we could not provide any further assistance. She was unhappy that her name appeared in the database of artists accessible from the Viscopy website.</p>	
<p>An applicant for funding from the Cultural Fund contacted Copyright Agency seeking feedback on why her application was unsuccessful. There was a delay in responding to her enquiry.</p>	<p>The Cultural Fund manager called the applicant, apologised for the delay in responding, and explained why the application had been unsuccessful. The applicant was satisfied with the outcome, including that we had contacted her by phone rather than email.</p>
<p>The agent (and gallery) for a recently deceased Indigenous artist raised concerns about lack of consultation regarding a book about the artist, which included images licensed by Copyright Agency Viscopy. She was also concerned about a reference to the book in Copyright Agency Viscopy's eNewsletter, <i>Canvas</i>.</p>	<p>The visual arts team reviewed, and was satisfied, that its management of the licensing arrangements for the images in the book was done properly, and with sufficient consultation with the art centre with which the artist was connected.</p>

433. I requested Copyright Agency/Viscopy to provide me with the documents underlying those 21 complaints. They did so and I have read those documents.
434. Of the 21, two were complaints by the State of New South Wales ("State") and the Copyright Advisory Group ("CAG") in relation to lack of transparency. The State and CAG asked me to recommend amendment of the Code in a manner that would impose on collecting societies a greater obligation of transparency. This matter was referred to at [55] – [65] of my Triennial Report

dated 30 April 2014 on the operation of the Code, and was the subject of my Supplementary Report dated 28 October 2015. Nothing further need be said about the matter here.

435. The other nineteen matters are fairly summarised in the above table.
436. It is difficult to identify “themes” or “categories” of complaint and each set of facts is specific to itself. However, complaints about lack of receipt of distributions, complaints by authors that publishers are favoured and by publishers that authors are favoured, complaints about disclosure of an artist’s date of birth, and complaints about a lack or tardiness of response to an enquiry of one kind or another, feature in the nineteen complaints.
437. In all cases, Copyright Agency/Viscopy have acted to address the matter raised. Moreover, it is difficult for me to assess the significance of the number and nature of the complaints against the totality of the operations of Copyright Agency/Viscopy. However, my impression is that they are small in number and do not detract from the impression that members and licensees are dealt with fairly and efficiently.
438. Another point is that the tone of the complaints varies greatly. Indeed, in one case the member began by saying: “The following is not a complaint but a serious and disturbing observation”. On the other hand, another member wrote that he wished to have no further association with Copyright Agency as it had led him to believe he would receive payments in respect of infringements of his copyright, and these did not eventuate.

439. I do not think that the fact that a small number of members feel much aggrieved should be allowed to detract from the overall impression that complaints are not numerous and that where they are made they are dealt with courteously, promptly and efficiently.

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

### **General**

440. Screenrights reports that during the Review Period it has worked to improve its ADR Procedure with minor changes that provide greater clarity and assist in the resolution of claims in a more cost effective and timely manner. The changes took effect from 1 January 2015.

441. In its report to the Code Reviewer, Screenrights gives particulars of the changes and attaches to its report a copy of the current ADR Procedure for Multiple Claims between Screenrights' members. A multiple claim arises when Screenrights receives multiple registrations from two or more members of Screenrights asserting a claim to a single royalty.

442. During the Review Period, 3,267 "conflicts were launched" and 2,374 conflicts were resolved.

443. Screenrights continues to publicise on its website procedures for dealing with complaints from members and licensees and for resolution of disputes between Screenrights and its members and/or licensees.

444. Screenrights did not receive any formal complaints during the Review Period. However, it notes in its report that there has been a chain of correspondence between AWGACS and Screenrights in relation to the issues reported in my Report for the previous review period. According to Screenrights, AWGACS has indicated that litigation is imminent. Screenrights states that in response to a request, it has provided to AWGACS certain documents to assist AWGACS to determine whether, and, if so, on what basis, to proceed to litigation.
445. The correspondence between the parties on the issues in dispute is voluminous. Screenrights has offered to provide it to me if I so require. I see no point, however, in making the request because I dealt with this matter in some length in last year's report.

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

### **General**

446. PPCA reports that it is committed to an equitable handling and resolution of complaints, and that all employees are provided with information on PPCA's policy and are encouraged to ask questions and review related processes regularly. The policy document is available on PPCA's public website and its internal intranet site, and is provided to new employees as a hard copy document as part of their induction package.
447. PPCA has a "Complaints Officer" who oversees the complaints process. That person has access to all other PPCA employees in order to address properly any issues raised.

448. The complaints policy incorporates provision for mediation, neutral evaluation and conciliation options.
449. All complaints are recorded in a complaints register database and are reviewed for identification of recurring issues. Individual complaints and the processes for dealing with them, are reviewed annually.
450. During the Review Period, PPCA received seven complaints, of which four related to public performance licences and three were reports concerning venues that appeared to the complainant to be using music without a licence from PPCA.
451. Within the Accompanying Underlying Documents, are the documents that underlay the seven complaints.

### **PPCA Complaint 1**

452. A licensee (a restaurant) contacted PPCA after the licensee had received a "Statement of Claim" from the local court of New South Wales, Small Claims Division. The complainant acknowledged having received an adjusted invoice in November 2013 but denied having had any subsequent contact from either PPCA or its external collection agent, and claimed to be unaware that the outstanding debt was being pursued.
453. PPCA responded by giving details of the attempts made to contact the licensee by PPCA and its external collection agent (some five letters, 34 emails and five telephone messages between July 2013 and March 2014, in addition to the sending out of the monthly statements).



454. During that period, the complainant had responded only once, and that was by a request in November 2013 that the amount of the licence fee be reassessed, in response to which PPCA had provided an adjusted invoice on the same day and confirmed the balance still outstanding.
455. The complainant said that he was in the process of selling the business. Despite rejecting the merit of the complaint, PPCA offered to suspend further action provided the complainant settled the outstanding amount and related collection costs promptly upon settlement of the sale of the business.
456. The amount of the outstanding licence fees was paid in October 2014, and after unsuccessfully attempting to recover the outstanding legal costs, PPCA terminated the licence in February 2015.

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

457. I cannot see any deficiency or fault on the part of PPCA in its handling of the complaint.

## **PPCA Complaint 2**

458. A licensee complained that he had paid his licence fee but was still being contacted by PPCA on the basis that it was unpaid. Upon investigation, PPCA discovered that the licensee had incorrectly used his PPCA licence number as the bank account number. PPCA drew the error to his attention and supplied the correct bank account number for PPCA to the licensee, who paid the amount into that account the following day.

### **PPCA Complaint 3**

459. A person complained that he had enquired about taking a licence but specified that he did not wish to proceed until he had explored all other options. Nonetheless, subsequently he received an invoice for a licence from PPCA.
460. PPCA's investigation revealed that the complainant had in fact submitted an online application form specifying a commencement date. PPCA was unable to see any indication that he had only been requesting a quote. PPCA contacted the complainant and followed up the conversation with an email explaining the position.
461. PPCA apologised for any miscommunication and any misinterpretation of the complainant's application form. Based on his recent email, PPCA cancelled the licence and raised a credit note to clear the original invoice leaving a nil balance outstanding.

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

462. This matter was handled in an exemplary fashion by PPCA.

### **PPCA Complaint 4**

463. PPCA was contacted by the Australian Small Business Commissioner who had been contacted by the Association of Liquor Licensees. The Commissioner requested information relating to a number of matters which had been referred to the Commissioner's Office in relation to music licensing fees.

464. PPCA spoke with the Commissioner's Office before responding in detail by email on 9 December 2014. That email was lengthy, detailed and informative.
465. Some six months later, the Commissioner wrote to PPCA again and PPCA replied promptly.
466. The issue related to PPCA's tariff E1 which had been set by the Copyright Tribunal of Australia in 2007.
467. In addition to explaining the position in some detail, PPCA offered to meet with the Commissioner's staff.
468. The last item of correspondence was PPCA's letter dated 10 July 2015 to the Commissioner and there has been no correspondence since then. It may be that the Commissioner is satisfied with the explanation.

### **PPCA Complaint 5**

469. A person who claimed to "work in a bollywood music industry" emailed PPCA, drawing to its attention to the playing of bollywood music in a certain restaurant without a licence.
470. In fact the particular venue had held a particular licence until August 2013 at which time the restaurant advised it was no longer paying protected sound recordings.
471. PPCA contacted the restaurant again and the matter was referred to PPCA's Legal Department. The venue was visited in May 2015 and was streaming ABC radio at the time of the visit.

472. PPCA wrote to the complainant thanking him for having brought the matter to PPCA's attention and assuring him that while PPCA could not comment on the business's current licensing status, he could rest assured that PPCA was taking the matter seriously and was investigating his report appropriately.

### **PPCA Complaint 6**

473. A person reported to PPCA that a retail store was playing sound recordings without a licence. PPCA thanked the informant and advised him that the matter had been handed to PPCA's Licensing team for further investigation.

474. PPCA was subsequently advised that the retail store played the radio only.

### **PPCA Complaint 7**

475. A person reported to PPCA that two fitness centres were conducting group fitness classes using accompanying sound recordings without a licence. PPCA thanked the complainant for drawing the matter to its attention and added both centres to PPCA's "prospect list". At the time of preparing its report to the Code Reviewer, PPCA had not been able to make contact with the manager of the fitness centres because he was overseas.

### **Other Legal Matters**

476. Five matters of alleged copyright infringement and of debt recovery have resulted in court proceedings by PPCA. Information relating to these is within the Accompanying Underlying Documents.

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

477. AWGACS reports that its Complaints Handling Procedure and Dispute Resolution Procedure were developed in accordance with the requirements of the Code, the requirements of CISAC and Australian Standard AS4269 – 1995 (Complaints Handling). During the Review Period, the procedures were reviewed by CISAC.

478. During the Review Period, AWGACS received no complaints from members or affiliates, outside the ongoing dispute with Screenrights that I have addressed in previous years' Compliance Reports, and which is touched on above in relation to Screenrights.

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

479. ASDACS reports that during the period July 2014 to June 2015 which covered its 2014 distribution which is now complete, no complaints were received by ASDACS.

480. ASDACS also reports that in accordance with the recommendation in the Code Reviewer's Report for a previous year, ASDACS has changed its process for the recording of complaints so that if any complaint had been received during the Review Period it would be identified in a specific and dedicated "Complaints Register", separate from other general interactions with members.

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

Dated this 23<sup>rd</sup> day of December 2015

A handwritten signature in black ink, appearing to read 'K E Lindgren'. The signature is written in a cursive style with a long horizontal flourish extending to the right.

The Hon K E Lindgren, AM, QC  
Code Reviewer

## APPENDIX TO REPORT

### Review of Code Compliance For the Year to 30 June 2015

Notice of the Review, with an invitation to make submissions by mail to the Code Reviewer at a specified address or by email by 31 July 2015, was given by the Societies to their members, and by the Code Review Secretariat to the licensees of the various societies or to bodies representing large classes of licensees, as well as to other interested persons, names and addresses having been supplied by the societies. The Notice was published in an advertisement in *The Australian* newspaper on 6 June 2015 and it was also placed on the websites of the societies. It was in the following terms:

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

**COPYRIGHT COLLECTING SOCIETIES  
CODE OF CONDUCT  
CALL FOR SUBMISSIONS 2015**

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

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

Compliance by participating collecting societies with the Code's standards of conduct is the subject of an independent annual review. The Code Reviewer for this purpose is former Federal Court judge and former President of the Copyright Tribunal of Australia, The Hon Kevin Lindgren AM, QC. He is currently reviewing the Societies' compliance with the Code during the period 1 July 2014 to 30 June 2015.

The Code allows for interested parties to make submissions to the Code Reviewer concerning a collecting society's compliance or non-compliance with the Code. Accordingly, should you wish to make such a submission to Dr Lindgren, please do so in writing to the following address by no later than **31 July 2015**.

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

**The Code Reviewer**  
**Suite 704, 4 Young Street**  
**Neutral Bay NSW 2089**

**Email: [codereviewer@gmail.com](mailto:codereviewer@gmail.com)**