

DATE: 24 October 2017

COUNCILS

ONEMUSIC AUSTRALIA CONSULTATION

OneMusic Australia is a joint venture initiative of APRA AMCOS and PPCA. On 6 June 2017, OneMusic Australia released a consultation paper seeking feedback on a proposed music licensing scheme for Local Government Areas (LGAs). That paper can be found [here](#).

OneMusic Australia received welcome feedback on that paper from LGAs which has been very helpful in determining if the proposed scheme is practical and accepted by the sector.

This document serves as further notification that OneMusic Australia has reviewed the way in which LGAs are licensed to use music in order to implement a new, wide-ranging and simplified music licensing scheme. This paper is not for the purpose of consultation on the individual distribution processes undertaken by APRA AMCOS and PPCA.

The proposed scheme set out below will commence from late 2018 and OneMusic Australia will provide due notice to LGAs to migrate their existing licences where relevant.

FEEDBACK RECEIVED

The feedback received by OneMusic Australia was straightforward and concerned in the most part with the same issues. Almost all submissions were agreeable to the concept of a blanket licence scheme which would cover the majority of music uses across the Council. The consensus was that a blanket licence will make compliance easier and allow Councils freedom to use music without concern of infringement – especially in those Councils where a holistic approach to licensing is not currently employed.

Some Councils submitted that the proposed fee structure would result in increases to the licence fee for their area.

As per the initial consultation paper, the proposed structure is a rate per person residing within the Council, with a different rate applicable to urban and rural Councils based on the classification in the Department of Infrastructure and Regional Development's Local Government National Report.¹

The proposed annual rates are 18 cents per person residing within an Urban Council² and 15 cents per person residing within a Rural Council³, with a minimum fee of \$350 per year per Council irrespective of location. These rates are inclusive of GST with the minimum fee to increase annually in line with the weighted average of eight capital cities Consumer Price Index.

Under the proposed scheme, Councils would provide to OneMusic Australia the total number of people residing in their jurisdiction every year. If no figures are provided by the Council, or if the Council prefers, OneMusic Australia will use the report published annually by the Australian Bureau of Statistics which sets out the number of people residing in each jurisdiction⁴ to calculate the licence fee payable by Councils each year. The licence year would be concurrent with the financial year.

1 The most recent of which can be found online here: <http://regional.gov.au/local/publications/reports/>.

2 This includes those categorised as RAL, RAM, RAS, RAV, RSG, RTL, RTM, RTS and RTX as per the Department of Infrastructure and Regional Development classifications.

3 This includes those categorised as UCC, UDL, UDM, UDS, UDV, UFL, UFM, UFS, UFV, URL, URM, URS and URV as per the Department of Infrastructure and Regional Development classifications.

4 Available for download here: <http://www.abs.gov.au/AUSSTATS/abs@nsf/Lookup/3218.0Main+Features12015-16?OpenDocument>

As noted in the original paper, OneMusic Australia's analysis indicates that currently, out of the 560 local governments, approximately 25% are unlicensed, 70% are under-licensed and only 5% are fully compliant with their music licensing requirements.

OneMusic Australia analysed the current APRA AMCOS and PPCA licensing that is held by those Councils who responded to the consultation paper and who claimed they would experience unfair licence fee increases under the proposed scheme. One Music Australia found, including by reference to the Council's websites, that on average these Councils had APRA AMCOS licensing in place for between one-third and one-half of their likely actual music usage. OneMusic Australia understands that because not all Councils have taken out the full range of licences they require, it appears that the proposed scheme will indeed lead to perceived fee increases. However, were these Councils properly licensed for their usage, according to our analysis, the potential average licence fee fluctuation is a saving of around 9%.

It is for this reason that OneMusic Australia continues to believe that the proposed licence scheme is appropriate, and intends to implement it across Councils nationally.

No feedback was received on the grant of rights proposed by OneMusic Australia, except to say that a blanket licence was of value to Councils. Music in this context includes all works and recordings represented by APRA AMCOS and PPCA respectively. The breadth of this repertoire is vast including the worldwide catalogues of hundreds of thousands of musicians and millions of recordings. Therefore, the rights proposed and which OneMusic Australia intends to implement remain consistent with the initial consultation paper, namely:

- a) Playing background music (for example from radios, CD players, smartphones, tablets, television screens and other devices) at council buildings, council-run premises and libraries including in reception or front-of-office areas open to the public;
- b) Playing background music at council owned and operated halls and function centres for all events where there is no admission fee (whether or not the event is ticketed);
- c) The use of music in council-owned and operated premises which have been let for hire to third-parties (whether free or at a cost):
 - when it is played as background music; or
 - when it is performed by a Live Artist Performer⁵ but provided that the total payments made to performers⁶ by the lessee are no more than \$50,000 per event⁷;
- d) Playing music in offices, warehouses and similar areas for the benefit of Council employees (for example, corporate presentations and training sessions, internal intranet, performances by Live Artist Performers of recorded or live music at staff functions or parties (subject to the restriction on events where more than \$50,000 is spent on musical entertainment as noted above), and as background music at workstations, in staff recreation areas, warehouses, depots, workshops and lunchrooms etc.);
- e) Using telephone on hold music for council services, irrelevant of the caller capacity of the phone system;
- f) Streaming music on Council websites, as long as this streaming is incidental, not the primary purpose of the website and provided that (i) no revenue is generated directly as a result of the streamed music, and (ii) the use does not suggest any association with or endorsement by the artists;
- g) Live Artist Performances of live and recorded music at events where there is no admission fee (whether or not the event is ticketed) and where the total payments to those performers are no more than \$50,000 per event;
- h) Using music at council-owned and operated community concession fitness centres in classes and as background music;⁸
- i) Holding cinema screenings where there is no admission fee or ticket price;
- j) Authorising public performances given by street performers in the Council;

5 Live Artist Performer means any performer participating in the performance of music including featured and associated singers, musicians, DJs, dancers, models and conductors.

6 Includes all monies and the monetary value of all benefits receivable directly or indirectly by the Live Artist Performer including all salaries, wages, profit shares, allowances, accommodation, travelling and other expenses and whether receivable by the Live Artist Performer or an agent.

7 These rights did not form part of our 2015 proposal, but are included here for no additional charge.

8 Where a fitness centre is owned by a council but run by a third party provider, this licence will not apply. Only those council run fitness centres through which disadvantaged members of the community are able to access low-fee concessions for their use of the facility are covered.

- k) Using music in not-for-profit council-run child care centres; and
- l) Copying music for the purposes set out above.

Likewise the proposed scheme would specifically exclude the following uses as set out in the original consultation paper:

- a) Using music in fitness classes and centres which are not covered by (h) above;
- b) Using music, other than background music, at events where an admission fee is charged;
- c) Live performances (including DJs) where the total expenditure on performers is more than \$50,000 per event;
- d) Using music at any nightclub run by the Council; and
- e) Synchronisation rights for the purpose of making any audio-visual content.

The exclusions to this proposed scheme will require further licensing from OneMusic Australia. They have been excluded as, according to our research, they are rarely used by Councils and it is therefore more appropriate to license on a user-pays basis rather than factoring them into the scheme and increase the per-person rate unnecessarily.

It should be noted that the use of music in concession fitness centres which are owned and operated by Councils was not part of the initial consultation proposal that was put forward by APRA AMCOS and PPCA in 2015, nor was the right to allow third parties who hire council owned and operated spaces to play music. However, the use of music in these contexts has been included in this proposal after feedback from Councils with no change to the proposed licence fee.

IMPLEMENTATION

As mentioned above, OneMusic Australia notes that a number of Councils will experience licence fee increases as a result of the regularisation of the music licensing requirements. While this should not impact on the proposed rates, OneMusic Australia does propose as a result of the feedback it received, to phase in the new tariffs over three years as set out in the table below.

Year	Minimum Fee	Per Person Rate (Rural)	Per Person Rate (Urban)
1 ⁹	\$350	\$0.08	\$0.12
2	\$350	\$0.12	\$0.15
3	\$350	\$0.15	\$0.18
4		Plus CPI	

As noted above, OneMusic Australia intends to implement this scheme effective from late 2018. As any existing APRA AMCOS or PPCA licences held by your Council come up for renewal in the 12 month period leading up to the launch of OneMusic Australia, we will be sending you information on how you can switch from those licence schemes onto the new OneMusic Australia scheme outlined here.

Please keep an eye out for this information and do not hesitate to get in touch through the details provided on that correspondence if you have any questions or concerns with the process.

⁹ The first 'year' of the scheme will run from late 2018 to 30 June 2019 to bring the annual reporting period in line with the fiscal year. The rates for year one above will be subject to a pro rata adjustment.

FURTHER QUESTIONS

If you have any questions or would like to discuss the proposal further, please email questions@onemusic.com.au and we will be in touch.