

OUR CONSULTATION PROCESS WITH YOU

OneMusic Australia is consulting with dining businesses and would like to hear your views. If you have already provided us with comment, thank you – but as we've made a number of changes in this updated proposal your further feedback is welcome and encouraged.

In your dining business, you're likely to be paying licence fees to APRA AMCOS and PPCA, the caretakers of the copyright of the music you use. These fees ensure you're legally entitled to use music in your dining business, and with your support music creators are paid for their contribution to your business.

This is the second consultation paper we've released for the proposed OneMusic Australia licence scheme for Dining. We've made some adjustments to the proposed scheme based on the feedback we've received so far. We'd like you to take a look, and let us know if you have any additional feedback. Remember, this is still just a proposal, and may not become the final scheme.

What's different in the second consultation paper:

- We've received valuable feedback including from fast food chains and reduced the maximum annual fee payable by dining businesses in each capacity tier, so that the most you'll pay each year is lower than in our initial proposal.
- We've clarified the definition of 'dining business or area' to make it easier to determine which licence you'll need. We have also provided and will include in the plain English guide to the scheme further examples of what does and does not fall within the definition.
- We now propose a reduction of 50% to the background music rate for those motels and similar businesses – extending the current PPCA concession to the OneMusic licence - where the dining area is primarily for the benefit of residents of that establishment and their guests and is not promoted to the general public.
- The rate for background music now includes coverage for up to two concurrent lines for telephone hold music and use of music in corporate and workplace areas of your business, such as offices, kitchens and staff areas, under the background music rate at no extra cost.
- We've adjusted the lowest capacity tier so that very small dining businesses, with a seating capacity of six or lower, will be licensed under the separate proposed OneMusic Australia licensing scheme for Retail and Service Providers.
- For businesses that use streaming or download services or copy music from CDs as their source of music, we've lowered the proposed price of the annual fee for copying to \$400 for a music library of up to 2,000 tracks.

To see how the proposed OneMusic Australia scheme will apply to your specific circumstances, you can use the calculator found here: form.jotform.co/apraamcos/dining. To use the calculator, review:

- The definition on page 7 and 8, to check whether your operation would fall under this scheme.
- The seating capacity of your dining business, and how many days you are open per year.
- Whether or not you are licensed to serve alcohol.
- How many days per year you offer featured music, if any.
- If you use incidental music on your website.
- If you copy CDs or use a commercial streaming or download service as a source of music.

What should I do next?

If you have any questions about OneMusic Australia during this consultation, feel free to ask them at questions@onemusic.com.au.

If you'd like to take part in the consultation process, we'd love to hear your thoughts at consultations@onemusic.com.au.

YOUR PROPOSED NEW ONEMUSIC LICENCE FEES

The proposed fee structure for the use of music in dining businesses (inclusive of GST) is illustrated in the table below. The rest of this consultation paper contains information about why and how we developed and amended these proposed fees in response to your feedback, and lets you know how to further take part in the consultation process.

	BACKGROUND MUSIC	FEATURED MUSIC ¹ FOR DINING BUSINESSES NOT LOCATED IN HOTELS	WEBSITE MUSIC	COPYING MUSIC
VENUE/ AREA CAPACITY ²	PER DAY/NIGHT RATE & MIN/MAX ANNUAL FEE (NOTE PER DAY RATES REDUCED BY 50% FOR THOSE MOTELS AND SIMILAR BUSINESSES WHERE THE DINING AREA IS PRIMARILY FOR THE BENEFIT OF RESIDENTS OF THAT ESTABLISHMENT AND THEIR GUESTS)	FEE PER DAY/ NIGHT OF USE ³	ANNUAL FEE	ANNUAL FEE
1-6	PLEASE SEE CONSULTATION PAPER FOR 'RETAIL & SERVICE PROVIDERS' SCHEME			
7 – 30	\$4.13 per day/night of operation Min. Annual Fee \$210 Max. Annual Fee \$1,100 (licensed to serve alcohol) Max. Annual Fee \$550 (not licensed to serve alcohol or BYO only)	\$12	\$550	\$400
31 – 50	\$6.19 per day/night of operation Min. Annual Fee \$320 Max. Annual Fee \$1,900 (licensed to serve alcohol) Max. Annual Fee \$950 (not licensed to serve alcohol or BYO only)			
51-100	\$9.29 per day/night of operation Min. Annual Fee \$320 Max. Annual Fee \$2,000 (licensed to serve alcohol) Max. Annual Fee \$1,000 (not licensed to serve alcohol or BYO only)			
100+	\$13.93 per day/night of operation Min. Annual Fee \$320 Max. Annual Fee \$2,100 (licensed to serve alcohol) Max. Annual Fee \$1,050 (not licensed to serve alcohol or BYO only)	\$24		

¹As outlined in our initial consultation paper, by Featured Music we mean music (recorded or otherwise) used at the venue that is given prominence as a feature of that venue or any part of that venue. Music that is used in a featured context includes but is not limited to:

- Performances, including Live Music Performances and patron karaoke performances, which have been advertised to the public as having music as a feature such as 'Live Music Every Friday', 'Karaoke Thursday', or where music is advertised as part of a specific event or series of events; or
- Nights of operation where the music has been compiled with a particular or recognisable theme such as 'Retro Night', 'Friday Night Beats' or 'Sunday Jazz'
- a Live Music Performance

²Capacity in this context is the number of patrons licensed by the local government, liquor licensing body or fire department as applicable to that venue or area of the venue.

³Where a dining establishment has 56 or more nights of featured entertainment per year, the licence fee will be discounted by 4 nights (i.e. \$48 or \$96 depending on capacity).

DATE: 1 November 2018

DINING **SECOND CONSULTATION PAPER**

OneMusic Australia is an initiative of APRA AMCOS and PPCA. On 13 October 2017, OneMusic Australia released a consultation paper seeking feedback on a proposed music licensing scheme for Dining businesses. That paper can be found [here](#).

OneMusic Australia received welcome feedback on that paper from dining businesses and industry stakeholders, which has been very helpful in determining whether 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 dining businesses 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 of licence fees undertaken by APRA AMCOS and PPCA to their members, licensors and affiliates for the use of music.

It is proposed that the scheme set out below will commence in mid-2019. OneMusic Australia will notify dining businesses well in advance, so that they may migrate their existing licences.

FEEDBACK RECEIVED

OneMusic Australia received feedback from individual dining businesses, larger restaurant chains, and from the peak industry body, Restaurant & Catering Australia. OneMusic Australia also met with a representative from Restaurant & Catering Australia to discuss the points made in its submission. The feedback received by One Music Australia was straightforward and fairly consistent, so we have used the specific recommendations submitted by Restaurant & Catering Australia as the basis for this second paper.

Those recommendations and our responses are as follows:

OBTAINING AN AFFORDABLE AND EQUITABLE SYSTEM FOR BUSINESS OWNERS THAT ALSO ADEQUATELY COMPENSATES MUSIC ARTISTS, PRODUCERS AND RECORD LABELS MUST BE A KEY TENET AND DRIVER OF THE ONEMUSIC AUSTRALIA SYSTEM'S DEVELOPMENT

We agree that the proposed licensing schemes should be as fair and equitable as possible for both businesses and music creators, and that has been a key driver of the development of the proposed schemes. It should be noted that, just as OneMusic Australia aims to minimise fee fluctuations for dining businesses as much as possible, it considers minimising fluctuations in its royalty revenue for music creators to be an aim of equal importance.

IMPLEMENTING A SEPARATE TIER OR CATEGORY OF MUSIC LICENCE FOR FUNCTION CENTRES AKIN TO THE FUNCTIONS LICENCE CURRENTLY OFFERED BY APRA AMCOS

OneMusic Australia has now developed a proposed licensing scheme for Function, Convention and Conference Centres. The consultation paper for the proposed scheme is available [here](#).

A DRAMATIC READJUSTMENT OF THE PRICING STRUCTURE ALIGNED WITH THE CAPACITY OF WHAT SMALL BUSINESS CAN PAY AND WHAT IS ALREADY THE CASE IN NEW ZEALAND IS REQUIRED

ONEMUSIC NEW ZEALAND

A number of respondents commented on the differences in the rates for dining businesses proposed by OneMusic Australia and those offered by OneMusic New Zealand. OneMusic Australia has sought to harmonise existing APRA AMCOS and PPCA fees, neither of which are based on music licensing fees in New Zealand.

The fees and licensing schemes in both territories have been developed from a different historical basis and are not linked, indeed they have varied between the two countries for some considerable time. Licensing schemes and rates for dining businesses differ greatly across numerous international territories and markets due to historical, structural, and developmental variables, and a comparison of any two will reveal disparities for those reasons.

Matching the fees offered by OneMusic New Zealand, which are lower, would also indicate that the value of music to dining businesses in Australia is lower than it was prior to the launch of OneMusic Australia. In our view, the value of music to dining businesses has not changed. The adoption of the New Zealand fees would represent a reduction in fees for dining businesses, but also a reduction in royalty revenue for music creators, which is not in line with the agreed aim of a licensing scheme that is fair and equitable for both business owners and music creators.

THE VALUE OF MUSIC

Restaurant and Catering Australia made the point that the value of music to dining businesses is lower than the value to nightclubs, and suggested that music does not generate any revenue for dining businesses. OneMusic Australia agrees that the value of music to a nightclub is higher than to a dining business, and for this reason has proposed a higher fee for the use of music in nightclubs in the Recorded Music For The Purpose Of Dancing consultation paper found [here](#).

Regarding music generating revenue for dining businesses, research shows that 78% of customers say that hearing music in a restaurant makes them more likely to enjoy their food and drink and 70% stay in a restaurant longer. Further, 43% of customers say they would be unlikely to return to a restaurant that had no music.⁴

CAPACITY

As is currently the case under PPCA licences for restaurants and cafes, using seating capacity as the basis of the proposed OneMusic licence fee is a way to provide a convenient and transparent indication of a dining business' size. Revenue or floor area are other potential indicators, however seating capacity represents a much simpler, clearer metric on which to base fees. OneMusic Australia acknowledges that dining businesses do not always operate at capacity, and has taken this into account when setting what we believe are fair and equitable licence fees. Indeed, whilst a dining business may regularly operate below capacity, it is equally true that the number of customers that a dining business serves throughout the day may often exceed its capacity. To be clear, the use of capacity as a metric is a means of measuring the relative size of a business and therefore the relative value of music to that business. It does not mean, nor has the rate been based on, an assessment that attendance equals capacity. Proposed fees for other industry sectors have also been based on metrics tailored to deliver the simplest and most accurate indicators of size and use, such as a metric based on the number of members of a gym, the premise size of a retail business, or the capacity of a nightclub.

Dining businesses with very small seating capacities have provided feedback to OneMusic Australia indicating that they find the lowest tier for the proposed background music fees – that of 0-30 patrons – to be too broad. Based on this feedback and further research, in order to avoid unnecessary fee variations for our licensees as a result of over-simplification we now propose that dining businesses with 6 or fewer seats that operate primarily as take-away food businesses would be more suitably licensed under the proposed OneMusic Australia licensing scheme for retail businesses, which can be found [here](#).

Licensees with large seating capacities (i.e. over 100) that are not licensed to serve alcohol have responded to the first consultation paper advising that they would see large fee increases for background music under the initial proposed OneMusic Australia Dining scheme. OneMusic Australia has now undertaken additional testing of the proposed background music fees and agrees that large fee variances are likely to occur for dining businesses with high capacities, so adjustments to the proposed fees have been made.

PARTIAL RIGHTS

Some submissions claimed that under OneMusic Australia the option of paying for partial rights, usually 'PPCA free' music, has been removed. This is not the case and was addressed in the 'Partial Rights' section of the first consultation paper. In that initial proposal, for dining businesses that have no requirement to access sound recordings under OneMusic Australia's licence and can provide supporting evidence, a discount of 42.5% would be applied to relevant components of the proposed scheme.

⁴Canadian rights management organisation (SOCAN) and Leger conducted a study in 2015: www.socan.ca/files/pdf/SOCAN%20%20Music%20and%20Food%20Report%20FINAL.pdf

It has been noted in some feedback, however, that dining businesses that use so-called 'PPCA free' music will see a relatively high increase in fees under the proposed OneMusic Australia scheme. This is due to the OneMusic Australia fees being based on combined existing APRA AMCOS and PPCA rates and that the average PPCA fee for dining businesses is higher than the average APRA AMCOS fee for dining businesses. Accordingly, when the rates are combined and the partial rights discount applied, the resulting fee is almost always higher than the current APRA AMCOS fee alone.

While developing the OneMusic Australia rates, we considered that, due to there being wide market acceptance of the PPCA rates for dining, with over 4,400 restaurants licensed under that scheme, that there were grounds for increasing the APRA AMCOS rate to match the PPCA rate under OneMusic Australia. However, OneMusic Australia was concerned that the resulting fee combined with the introduction of the new venture would have caused unnecessary market upheaval, so the idea of increasing the APRA AMCOS component of the fee at this time was rejected.

Having now undertaken further research OneMusic Australia acknowledges that, for dining businesses using 'PPCA free' music, the partial rights discount of 42.5% suggested in the first consultation paper represents a price increase. To ease the impact on those businesses we propose to scale the discount in the first year. This scaling will take two forms. Firstly, under OneMusic Australia, for the first year dining businesses that only have need of the APRA rights will be eligible for a 65% discount⁵, applied to the relevant background music per day/night rate. Secondly, OneMusic Australia has undertaken a broader review of the originally proposed partial rights discount, and now proposes that discount is increased to 48.25%. By way of example this would mean that a restaurant with capacity between 31-50, not serving alcohol and subject to the \$950 annual cap but who only needs APRA rights would pay \$332.50 in year one and \$491.63 (subject to CPI) in year two.

PUBLISHING THE FULL REPERTOIRE OF MUSIC ASSOCIATED WITH A ONEMUSIC AUSTRALIA LICENCE SO THAT BUSINESSES CAN THEN MAKE THE DECISION AS TO WHETHER PURCHASING THIS LICENCE IS A WORTHWHILE COMMERCIAL DECISION

PPCA and APRA AMCOS represent a repertoire of approximately twenty to thirty million recordings which is updated daily, so it is logistically impossible to publish a full and accurate list. Nonetheless, it should be noted that:

- APRA AMCOS has a works search facility;
- PPCA has a list of its licensors and associated record labels; and
- If a dining establishment wishes to use non-represented repertoire, there are many businesses operating and advertising on that basis.

FREEZING ANNUAL INCREASES TO MUSIC LICENSING FEES FOR THE FIRST FIVE YEARS OF ONEMUSIC AUSTRALIA'S OPERATION IN RESPECT OF THE INCREASED COVERAGE THAT THE NEW SYSTEM IS EXPECTED TO GENERATE; AND FOLLOWING THE FIVE-YEAR FREEZE, NO FEE INCREASES OUTSIDE OF THE CPI SHOULD BE APPLIED WITHOUT PROPER CONSULTATION WITH INDUSTRY

OneMusic Australia intends to increase fees in line with the weighted average of eight capital cities Consumer Price Index, and does not accept that the degree of coverage the licensing scheme achieves is relevant to the application of CPI increases.

In accordance with the Code of Conduct for Collecting Societies, and in line with the existing practice of both APRA AMCOS and PPCA, OneMusic Australia intends to consult with relevant industry bodies before applying any fee increases outside of CPI and, in any event, will not further review the scheme for at least three years after implementation.

USING LIQUOR LICENSING AS AN ELEMENT OF CALCULATING MUSIC LICENSING FEES SHOULD BE REMOVED

Feedback from various licensees has included questions on the appropriateness of using a dining establishment's liquor licence status as a factor in determining maximum fees for the use of background music. Whether or not a dining business is licensed to serve alcohol is an effective indicator of a dining business' turnover without the need to declare actual revenue, and is used for this purpose in the current PPCA licensing tariffs for dining businesses. OneMusic Australia acknowledges that this metric is problematic for some licensees, and has adjusted its proposed maximum annual fees in order to make the scheme more acceptable to the industry.

REPLACING THE DAY-NIGHT MULTIPLIER USED TO CALCULATE THE COSTS OF A MUSIC LICENCE WITH A FLAT COST STRUCTURE AS IS THE CASE IN NEW ZEALAND (TRADING HOURS CAN CHANGE ACROSS THE YEAR)

OneMusic Australia understands that the dining industry has a unique pattern in terms of variations in the number of opening days

⁵This higher first year discount only applies to the background music rate, and for example does not apply to Website music use.

across the course of a year. On that basis, we believe a per-day rate is more equitable for a larger number of businesses than a flat rate, and provides a flexible user-pays structure for the industry, that can self-adjust to accommodate changing business needs, including seasonal activity.

CAPPING THE MAXIMUM ANNUAL MUSIC LICENSING FEE FOR A RESTAURANT OR CAFÉ AT \$942.95, IN LINE WITH THE CURRENT UNLIMITED MUSIC LICENCE OFFERED BY APRA AMCOS

AND

RETAINING THE EXISTING APRA AMCOS PRICE OF \$172.88 FOR A WEBSITE-ONLY MUSIC LICENCE

AND

RETAINING THE EXISTING PPCA 'TARIFF Z' PRICE STRUCTURE SUBJECT TO AN INCREASE ON PERMITTED QUANTITY

We remind licensees and industry stakeholders that the OneMusic Australia licensing schemes represent the rights of both APRA AMCOS and PPCA, so capping the proposed rates at those of just one of the two organisations' current fees means that only one set of rights would be remunerated.

OneMusic Australia has nonetheless in response to submissions made across various consultation papers undertaken a broader review and reduced its proposed tariff for copying music to play in businesses. We remind businesses that, while this tariff prevents infringement of OneMusic Australia's rights, separate permissions may be required from the operators of some services (e.g. Apple Music, Google Play or Spotify).

INCORPORATING BUNDLED DISCOUNTS AND A COMPLIMENTARY ONE-NIGHT LIVE MUSIC LICENCE CURRENTLY AVAILABLE UNDER APRA AMCOS

In our view, bundled discounts only work effectively with licensing schemes with flat annual fees, and as noted earlier we believe that a flat fee is not as equitable as a per-day rate. Additionally, we have not seen any anecdotal evidence of an increase in the use of featured or live music by restaurants since the introduction of the complimentary one night offer by APRA AMCOS in November 2014, so the benefit of offering the same deal under OneMusic Australia is unclear.

That said, businesses that host featured music more than 56 nights a year, will now receive four licence fee-free nights for that year.

OFFERING A 5% DISCOUNT FOR PROMPT PAYMENT OF MUSIC LICENSING FEES CONSISTENT WITH THE ONEMUSIC FRAMEWORK CURRENTLY OPERATING IN NEW ZEALAND

It is worth noting that the discount offered by OneMusic New Zealand is a) only applicable to licence fees over NZ\$1,000; and b) not applicable to businesses that pay their licence fees quarterly. As Restaurant & Catering Australia recommends quarterly payment as a default, regardless of the fact that OneMusic Australia has not based its fee structure on that of OneMusic New Zealand, we feel that a discount is inappropriate. OneMusic Australia considers prompt invoice payment to be a reasonable expectation of its licensees.

ADOPTING A QUARTERLY REPORTING/PAYMENT SYSTEM AS A DEFAULT, WHILST STILL OFFERING BUSINESSES THE OPTION OF PAYING MUSIC LICENCE FEES ANNUALLY SHOULD THEY WISH TO DO SO

In the first Dining consultation paper, OneMusic Australia asked for feedback on whether monthly or quarterly reporting and payment was preferred by licensees. Restaurant & Catering Australia recommended that quarterly reporting and payment be adopted as a default, with annual reporting and payment provided as a further option. OneMusic Australia accepts Restaurant & Catering Australia's recommendation.

EXTENDED PAYMENT OPTIONS, AS IS CURRENTLY THE CASE WITH APRA AMCOS, SHOULD BE MADE AVAILABLE UNDER THE ONEMUSIC AUSTRALIA SCHEME FOR CAFÉ AND RESTAURANT BUSINESSES EXPERIENCING FINANCIAL DIFFICULTIES GIVEN THE HIGHLY SEASONAL NATURE OF THE INDUSTRY

As is currently available from APRA AMCOS and PPCA, extended payment options will be available under OneMusic Australia according to circumstance.

PUBLISHING THE ACTIVATION DATE FOR ONEMUSIC AUSTRALIA AT LEAST SIX MONTHS IN ADVANCE TO ALLOW FOR AN ADEQUATE TRANSITION PERIOD BETWEEN THE TWO SCHEMES

OneMusic Australia intends to provide at least six months' notice to existing licensees before the launch of OneMusic Australia.

IMPLEMENTING A MINIMUM 12-MONTH AMNESTY PERIOD IN TRANSITIONING BETWEEN THE TWO SCHEMES WHERE PREVIOUSLY UNLICENSED OR INADEQUATELY LICENSED BUSINESSES ARE NOT CHARGED RETROSPECTIVE MUSIC LICENSING FEES UNDER APRA AMCOS OR THE PPCA

OneMusic Australia cannot accept the recommendation for an amnesty period for unlicensed or inadequately licensed businesses. We feel it is unfair to dining businesses that are adequately licensed to reward those that have been infringing copyright. We feel that granting an amnesty period would be effectively condoning the infringement of the same rights that it is our purpose to protect. We urge businesses to review their current arrangements to ensure they are adequately licensed, and not inadvertently infringing copyright.

CONDUCTING AN EXTENSIVE, INDUSTRY-WIDE MARKETING AND AWARENESS CAMPAIGN TO BOTH INFORM AND EDUCATE DINING ESTABLISHMENTS OF THE IMPENDING CHANGES TO THE MUSIC LICENSING SCHEME

OneMusic Australia has and will continue to keep dining and other businesses informed regarding the proposed music licensing schemes.

PRODUCING EDUCATIONAL GUIDES WITH A COMPREHENSIVE SECTION OUTLINING THE VARIOUS OPTIONS FOR PLAYING MUSIC WHICH EXIST OUTSIDE THE ONEMUSIC AUSTRALIA FRAMEWORK AND HOW MUSIC LICENSING FEES ARE DISTRIBUTED UPON COLLECTION

Under OneMusic Australia there will be plain-English guides for each licensing scheme containing at least as much information as is currently available in the APRA AMCOS plain-English guides regarding alternatives to licensing music through collecting societies. We are happy to clearly outline the various options for playing music which exist outside the OneMusic Australia licensing schemes, however we do not consider it our position to undertake work that essentially advertises or markets our competitors. In respect of the separate distribution practices of APRA AMCOS and PPCA, OneMusic's guides will provide links to relevant pages on the APRA AMCOS and PPCA websites.

ENSURING THAT THE PROCESS OF OBTAINING A ONEMUSIC AUSTRALIA LICENCE IS AS SIMPLE AND COST-EFFECTIVE AS POSSIBLE FOR CAFÉ AND RESTAURANT OWNERS

It is our intention that the OneMusic Australia eCommerce site will make the licensing process far simpler, faster and easier for licensees, particularly when compared to the separate processes currently available under APRA AMCOS and PPCA. We note that the company engaged to design the eCommerce site has undertaken testing and feedback sessions with a number of licensees, in order to make the facility as user-friendly as possible.

GUEST DINING AREAS IN ACCOMMODATION HOTELS

The Australian Hotels Association requested more information regarding licensing background music for dining areas in accommodation hotels that are primarily for guests. Under PPCA's current R2 tariff, the playing of protected sound recordings in restaurant areas operating within a hotel, motel, guest house or similar establishment offering accommodation as its primary function, where the restaurant area is primarily for the benefit of residents of that establishment and their guests (i.e. the restaurant area is not promoted to the general public) attracts a fee considerably lower than the fee applicable to dining businesses that are open to and promoted to the general public. We propose a similar arrangement under OneMusic Australia, and a reduction of 50% will be applied to the background music per day/night fees set out on page 2 for dining areas in accommodation hotels that fulfil the above criteria (subject to annual minimum fees).

DEFINITION OF "DINING BUSINESS OR ESTABLISHMENT"

Submissions were received from Clubs Australia and AHA that the definition of "Dining Business or Establishment" is too broad despite it being effectively the same definition as used by PPCA since the introduction of its current restaurant tariff in 2009. The definition as proposed in the first consultation paper provides:

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

- a) *that is open to the public; and*
- b) *where the primary function is either:*
 - (i) *the sale of food, with or without beverages; or*
 - (ii) *the sale of hot beverages (e.g. tea, coffee) alone or in conjunction with the sale of food and which is not licensed for the consumption of alcohol; and*

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

To accommodate the concerns raised about the definition, OneMusic now proposes the following amendments. OneMusic Australia also notes that further to the proposed discount for accommodation hotels set out above, the final paragraph is no longer required.

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

- a) that is open to the public; and
- b) where the primary function is either:
 - (i) the sale of food, with or without beverages; or
 - (ii) the sale of hot beverages (e.g. tea, coffee) alone or in conjunction with the sale of food and which is not licensed for the consumption of alcohol; and
- c) that has a designated seating area of at least seven seats available for patrons of that business or establishment to consume the food/hot beverages on the premises; and
- d) where it is part of a multi-function establishment, that the music played in the dining area is different to that audible in the rest of the premises, but excluding any area within a multi-function establishment where the provision of food and/or beverages does not include full or part table service.

To the extent that the definition is not clear, OneMusic Australia provides the following examples to aid clarity.

- *A pie warmer or a coffee machine in a bar of a multi-function establishment* – these items alone do not fit the definition of ‘dining area’. If they are in a part of a multi-function establishment where the primary function is the sale of food with or without beverages or the sale of hot beverages with a designated seating area for that purpose, then the area of the establishment containing the pie warmer or coffee bar may be considered a dining area, if full or partial table service is provided and the area has a separate music source.
- *Counter lunch in multi-function establishment*– counter lunches or other meals served in areas of a multi-function establishment such as a hotel and which are not primarily used for food service or where there is no table service do not qualify as a dining area. Areas where customers can normally buy and consume a cold drink without buying and consuming a meal or a hot beverage are not considered to have the sale of food or hot beverages as their primary function.
- *Bistros in multi-function establishment* – if a bistro’s primary function is the sale of food with or without beverages and has a designated seating area for that purpose and a separate music source, it would be licensed under the OneMusic Dining scheme.
- *Dining area with restaurant paging system or ‘food buzzer’* – an alert system such as the use of ‘food buzzers’ to notify patrons that their meal is ready to collect is not considered either full or part table service. Where diners in an area primarily used for the service of food are given a table number and their food is delivered by a waiter or waitress, it may be considered a dining area with partial table service if it has a separate music source.

COPYING

In the first consultation paper, the two options below were proposed for licensing the reproduction, or copying, of tracks. This includes copying from CDs and using streaming or download services.

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

Fig. 1

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

Fig. 2

OneMusic considers that Option 2 provides the greatest level of flexibility to businesses. In forming this view OneMusic also reviewed the rate and now proposes a reduction to \$400 per year. OneMusic notes that the combined rate is both cheaper than the aggregate of the current two licences and enables the copying of more tracks.

REVISED FEE STRUCTURE

Based on our consideration and analysis of the information provided through the consultation process, as outlined above, we have now reviewed our proposed scheme and provide an updated version at the start of this paper.

In this revised fee structure, the lowest tier has been adjusted to allow dining businesses with a seating capacity of six or lower to be licensed under the OneMusic Australia licensing scheme for Retail/Service Providers – see [here](#).

The maximum annual fee cap has also been reduced across the board.

Additionally, coverage for up to two concurrent lines for telephone hold music and use of music in corporate and workplace areas of your dining establishment, such as offices, kitchens and staff areas, has now been included under the background music rate at no extra cost.

Our analysis shows that in each tier, the average fee paid by a dining business requiring the full OneMusic Australia licence will be lower than the current average aggregate APRA AMCOS and PPCA fees.

The minimum annual fees in the revised fee table are applicable irrespective of any discounts businesses in each tier are eligible for, such as the discount for partial rights or for dining areas primarily for the use of accommodation guests.

SUBMITTING YOUR FEEDBACK

OneMusic Australia, having regard to the submissions it has received in response to the initial consultation paper, intends to implement the new Dining Scheme as varied and set out above in mid 2019, subject to any new and substantive arguments that are received by 31 December 2018.

Please provide your feedback in the form of a submission to consultations@onemusic.com.au. Submissions are preferred in a Microsoft Word or PDF format.

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.