

**DATE:** 8 March 2019

# DINING

## FINAL POSITION 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. Feedback from industry associations and stakeholders was received, leading to a second consultation paper being released on 1 November 2018. Those papers can be found [here](#).

Feedback received by OneMusic Australia has been 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 dining businesses will be 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 is expected to commence from mid-2019 and OneMusic Australia will provide due notice to dining businesses to migrate their existing licences where relevant.

### YOUR NEW ONEMUSIC LICENCE FEES

The fee structure for the use of music by dining businesses (inclusive of GST) is illustrated in the table below. The rest of this paper contains relevant definitions, notes about the most recent amendments to the scheme, and information aiming to clarify certain aspects of the scheme.

*Table 1: Background music*

Package	Capacity Tier	Year 1	Year 2	Year 3	Year 4	Year 5
Gold	7-15	\$700	\$790	\$835	\$870	Plus CPI
	16-30	\$950	\$1,070	\$1,130	\$1,180	Plus CPI
	31-50	\$1,350	\$1,520	\$1,605	\$1,680	Plus CPI
	51-100	\$1,400	\$1,580	\$1,665	\$1,735	Plus CPI
	101+	\$1,450	\$1,635	\$1,725	\$1,800	Plus CPI
Silver	7-15	\$300	\$340	\$355	\$375	Plus CPI
	16-30	\$550	\$620	\$655	\$685	Plus CPI
	31-50	\$950	\$1,070	\$1,130	\$1,180	Plus CPI
	51-100	\$1,000	\$1,130	\$1,190	\$1,240	Plus CPI
	101+	\$1,050	\$1,185	\$1,255	\$1,305	Plus CPI
Bronze	7-15	\$150	\$173	\$210	\$225	Plus CPI
	16-30	\$190	\$219	\$266	\$285	Plus CPI
	31-50	\$330	\$380	\$462	\$490	Plus CPI
	51-100	\$350	\$403	\$490	\$515	Plus CPI
	101+	\$365	\$420	\$511	\$540	Plus CPI

OneMusic Australia proposes a phase-in over five years to assist businesses with the transition to OneMusic.

The **Gold** package is for businesses that use a digital source for their music, such as streaming or download services, and for those that copy CDs – it includes rights coverage for Digital Copy/Delivery.

The **Silver** package is for businesses that play CDs or DVDs, or have their music provided by a Background Music Supplier.

The **Bronze** package is for businesses that only play music via traditional terrestrial broadcast radio or television.

Where a dining business has a Gold or Silver licence but is not using both APRA and PPCA rights, for example if they are using so-called ‘PPCA free’ music or have otherwise directly licensed the relevant rights directly from the rights owners, the Gold and Silver packages are reduced by 65% in Year 1 and by 48.25% thereafter.

In cases where a business is open on fewer than 150 days per year, a 50% discount will be applied on the relevant package fee for background music.

Dining businesses with fewer than seven seats will be licensed under the OneMusic Retailer and Service Provider Licence, found [here](#).

Table 2: *Featured Music, and Website Music*

<b>Featured Music</b>	Per day/night of use	Seating capacity 100 or lower: \$12 per day/night Seating capacity over 100: \$24 per day/night (subject to no entry fee and/or artist expenditure cap of \$4,000 per event)
<b>Website Music</b>	Incidental, audio only	\$550 per annum

You may also require coverage for other uses of music – for example, music on hold, and corporate and workplace. These proposed rates are detailed in separate consultation papers available [here](#), but your single OneMusic licence when issued will provide coverage for these additional uses. You may also need a separate OneMusic licence for featured music that does not meet the above criteria, ie featured music events that have an entry fee or with artist expenditure exceeding \$4,000. A proposal for the licensing of these events will be available soon.

## DEFINITIONS

The following definitions are relevant to the OneMusic licensing scheme for dining businesses. The definitions will form part of the final terms and conditions offered by OneMusic, subject to possible minor amendments required to draft the agreement without changing the intent of the meaning.

### Featured Music

“**Featured Music**” means music (recorded or otherwise) used at the location that is given prominence as a feature of that location or any part of that location. It includes performances by DJs and karaoke, including those advertised as part of a specific event or series of events, and days of operation where the music has been compiled with a particular or recognisable theme such as ‘Retro Night’, ‘Friday Night Beats’ or ‘Sunday Jazz’.

“**Live Music Performance**” means music that is performed by a Live Artist Performer and includes, but is not limited to, the use of music during days / nights of operation or events where the music is compiled, presented or performed by a Live Artist Performer who is engaged for the principal purpose of compiling, presenting or performing music to patrons.

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

### Traditional Terrestrial Radio and/or Television

“**Traditional Terrestrial Radio and/or Television**” means radio and/or television that only plays content received via services over the broadcast service bands or via cable or satellite delivery. This would exclude any internet delivered services.

## Website Music

The rights that OneMusic Australia is able to provide under its licence for online uses are limited, partly due to restrictions on the use of music in advertisements. Due to the limited rights OneMusic Australia is able to provide under this part of the scheme, businesses must:

- limit music use to audio-only content;
- only use music where it is incidental and where the primary purpose of the website is not the streaming or sharing of musical content;
- use no fewer than 10 and no more than 15 tracks playing in a random linear, non-interactive loop;
- not derive any revenue from the playing of music; and
- only stream music from their website (e.g. does not include use on a business's social media).

## FEEDBACK RECEIVED

OneMusic Australia received welcome feedback to both consultation papers for the proposed Dining licence, and has made adjustments and amendments to the scheme based on that feedback. We consulted with Restaurant and Catering Australia, as well as with some major dining chains and individual licensees. Responses to the consultation papers have also helped identify where clarification of some aspects of the proposed scheme is needed.

The amendments made and clarifications needed as a result of the feedback are outlined below.

### FLAT ANNUAL FEE AND REMOVAL OF LICENSED FOR ALCOHOL METRIC

The original proposal for the OneMusic Dining licence included a background music fee charged 'per day', with maximum annual fees scaled according to whether or not a dining business was licensed to serve alcohol or not. Feedback to the first two papers indicated that dining businesses preferred a flat annual fee, and did not agree with OneMusic that a licence to serve alcohol is an indicator of a dining business's turnover.

We have now removed the licensed for alcohol metric from the rates for dining businesses, and introduced a flat annual rate, tiered according to seating capacity and the source of music. The way a business sources music is relevant as different music sources utilise different licensable rights.

### ADDITIONAL TIER AND LOWER MAXIMUM FEES

We received feedback indicating that smaller businesses were concerned that their fees would increase under OneMusic, including those that only use traditional terrestrial broadcast music sources. To accommodate these businesses, we introduced an additional tier for businesses with a seating capacity for 7 to 15 people, and a Bronze tier for those only using broadcast TV or radio. Additionally, we reduced the maximum fees proposed under the original proposal, reducing the average licence fee for most dining businesses from the first and second consultation papers.

### LOWER RATE FOR 'SEASONAL' BUSINESSES

When discussing the move from the proposed 'per day' rate to a flat annual rate, Restaurant and Catering Australia suggested that a concession be made for dining businesses that do not operate throughout the year, for example those in seasonal tourist areas that close for extended periods. We have introduced a 50% discount on background music rates for dining businesses open fewer than 150 days per year.

### GOLD, SILVER AND BRONZE PACKAGES

As clarification for the difference in pricing between the Bronze, Silver, and Gold background music packages:

**Bronze** licences are for broadcast-only music sources. Where music is publicly performed via a terrestrial broadcast, no PCCA licence is required. The pricing of the Bronze licence represents fees for APRA rights only.

**Silver** licences cover both APRA and PCCA rights.

**Gold** licences include a fee for the copying and digital delivery of music. Businesses that use the digital music sources listed in the Gold package are required to pay a licence fee for both the public performance and the copying, or 'reproduction' of music. Reproduction occurs when music is downloaded or streamed, and also when a CD is copied. Where a business sources music from a licensed background music supplier, coverage for digital copying/delivery is not required. Please note that fees for the Gold package are simply the fees for the Silver package plus a flat fee of \$400 for copying. The \$400 copying fee is standard across a number of other OneMusic licences.

## PARTIAL RIGHTS

For those businesses which are not licensed under the Bronze package but can show they are not using both APRA AMCOS and PPCA rights – for example, businesses that use background music which does not include any PPCA recordings, or that have licensed either the underlying musical works or the sound recordings directly with copyright owners - a 'partial rights' discount will be applied to the relevant background music package. In the first year of the OneMusic licence the partial rights discount will be 65%, and from the second year onwards the discount will be 48.25%

## CALCULATOR

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](http://form.jotform.co/apraamcos/dining)

## NEXT STEPS

Implementation of the new Dining Licence is scheduled to begin in mid-2019. OneMusic Australia intends to publish the main terms of the licence scheme shortly in order to provide advance notice to dining businesses of the new structure and rates. The timing of that publication will depend on the finalised start date for OneMusic Australia, but we will endeavour to provide as much notice as possible.

Businesses may object to some of the proposals set out above. Licensees and associations have recourse to expert processes under APRA's existing alternative dispute resolution service, Resolution Pathways, which will also be made available in relation to all licences offered by OneMusic.

If there is a reference to Resolution Pathways and the parties are unable to agree on an outcome, then either party may make a reference to the Copyright Tribunal.

## FURTHER QUESTIONS

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