

DATE: 1 November 2018

HOTELS, PUBS, TAVERNS, BARS, ACCOMMODATION HOTELS AND CASINOS SECOND CONSULTATION PAPER

This is the second consultation paper we've released on the proposed OneMusic Australia rate for Hotels, Pubs, Taverns and Bars, which now also includes Accommodation Hotels and Casinos. As the paper covers a number of different types of music use and rates, it is divided into four sections:

Section 1: Definitions

Section 2: Proposed new OneMusic licence fees

Section 3: Summary of amendments to the proposed licence

Section 4: Feedback and background to the proposed licence and rates

SECTION 1: DEFINITIONS

The following definitions, listed here in alphabetical order, are relevant to the proposed OneMusic licence scheme for Hotels, Pubs, Taverns and Bars set out in this document, and will assist in choosing the rates you need to cover the ways you use music. The definitions will form part of the final terms and conditions offered by OneMusic, subject to possible minor amendments required to draft into the agreement but not changing the intent of the meaning.

Capacity

"Capacity" means the number of patrons licensed by the Local Government, Liquor Licensing body or Fire Department (as applicable to that venue). Examples of official sources licensees can use when determining the capacity of their venue include:

- ACT: the occupancy loading for each relevant area from the venue's Licensed Premises Plan;
- NSW: the patron capacity from the venue's liquor licence, or capacity from the venue's Development Consent;
- NT: the maximum number of persons permitted to occupy the licensed premises as assessed by the Northern Territory Fire and Rescue Service;
- QLD: the occupancy limit from the venue's occupancy notice provided by the Office of the Commissioner of the QFES;
- SA: the total capacity from the venue's liquor licence, or capacity set by local council or a registered private certifier;
- TAS: from the venue's council Occupancy Permit;
- VIC: the maximum patron capacity from the venue's liquor licence or Council occupancy permit;
- WA: the maximum accommodation from the venue's Department of Health Certificate of Approval.

Where official sources are not available, or in cases where a venue operates at a lower capacity than the capacity stated on official sources, (for example where a nightclub area is partitioned to make it smaller during slow periods, or if areas of the nightclub are regularly closed to patrons on particular nights), OneMusic may agree to a variation to the reported capacity provided supporting documentation is supplied. Where a layout plan of the premises is supplied delineating the operating nightclub area, OneMusic Australia will calculate capacity at 1 person per 0.75 square metres of space accessible by patrons

Corporate and Workplace Music Use

“*Corporate Music Use*” means to:

- a) perform music by any means for the benefit of employees or their family or corporate guests at the premises, and at functions and places to which the general public is not admitted, except at any non-ticketed conference, event or other function where artist expenditure is \$50,000 or more;
- b) perform music in reception or front-of-office areas that are open to the public;
- c) allow employees to play music at their desks during their work day (including via radios, streaming services, CD players); and
- d) permit the copying of music from legally obtained sources for the purposes noted above.

Dance Use

“*Dance Use*” means the playing of recorded music for the purpose of dancing.

Dining

“*Dining Business or Establishment*” means 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) the music played in the dining area is different to that audible in the rest of the premises, but excluding any area where the provision of food and/or beverages does not include full or part table service.

We have listed at page 4 of this paper (and will include in the plain English guide when published) practical examples of how OneMusic will apply this definition.

Entry Fee

“*Entry Fee*” means a fee charged for admission (even if not charged to all patrons) including but not limited to a ticket price, membership fee or cover charge.

Featured Music

“*Featured Music*” means 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.

“*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.

Music on Hold

“*Music on Hold*” means to reproduce onto and communicate music on the business’ telephone on hold system.

Recorded Music for Dance Use Venue (RMFD Venue)

For the purposes of this scheme, a venue which provides recorded music for dance use means an establishment or a specific area within a multi-function establishment that:

- a) Provides recorded music for dance use by patrons; and
- b) Has a dance floor or other area for dancing or charges an entry fee (even if the fee is not charged to all patrons); and
- c) Is not being used for
 - i. a non-ticketed private function;
 - ii. a dance or dance party;
 - iii. an event that features ballroom or similar traditional dancing;
 - iv. An event promoted by a National Event Promoter; or
 - v. An event for underaged persons (such as a ‘blue light’ disco).

This definition covers venues which are stand-alone businesses providing recorded music for dance use, such as nightclubs, as well as venues which are operating as part of a multi-purpose venue, or within a multi-purpose premises in a physically separate area of that premises, where that separate area satisfies the above criteria.

For the sake of convenience we have used the term ‘nightclub’ throughout this paper but note that the actual tariff covers the use of recorded music for dance use wherever it occurs.

Physically Separate

“*Physically Separate*” means distinguishable from other areas of the venue. Examples of such distinguishing features include but are not limited to whether there is an Entry Fee for that area, whether the area has its own entrance or it is a separate room, or where it is a separate floor or other space within the venue that has a clearly defined perimeter or access rules.

Racing Screen

“*Racing Screen*” means a screen used exclusively for the display of thoroughbred, harness or greyhound racing. Where a Racing Screen is regularly used for a purpose other than racing, it must be declared as a TV Screen.

TV Screens – receiving broadcast only

“*TV Screens - receiving broadcast only*” means screens that only exhibit content received via services over the broadcast service bands or via cable or satellite delivery. This would exclude any internet delivered services. A screen that does not deliver any content containing sound recordings, music videos or musical works is not included.

SECTION 2: PROPOSED NEW ONEMUSIC LICENCE FEES

The proposed fee structure for the use of music in hotels, pubs, taverns and bars (inclusive of GST) is illustrated in the tables 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. To find the rate table relevant to your different uses of music:

Background Music Use, with or without Dining: Table 1

Copying music – from CDs, or using a streaming service: Table 1

Music on your website: Table 1

Featured Music and Live Music Performance (using sound recordings): Table 2

Live Music Performance (no sound recordings): Table 3

‘All In’ – a flat annual rate for all of the above: Table 4

Recorded Music For Dance Use (Nightclubs): Table 5

Note that, where you use music in a range of ways, your total licence fee will be the sum of the applicable fees from each relevant table.

Table 1 – Background Music

Package	Radio & Racing ¹ TV Screens	TV Screens (receiving broadcasts only) ²	Background and Digital Music Systems**	TV Screens Showing Music Videos (including Video Jukeboxes)	Background Music Licence Fee	Background Music Plus Dining & 7-30 Capacity	Background Music Plus Dining & 31-50 Capacity	Background Music Plus Dining & 51+ Capacity	
Bronze	One racing or broadcast TV screen OR one radio only		N/A	N/A	\$130	\$1,230	\$2,030	\$2,130	
Silver	Any Number	Single Screen Only	N/A	N/A	\$200	\$1,300	\$2,100	\$2,200	
Gold	Any Number	Single Screen Only	1 Only	N/A	\$525	\$1,625	\$2,425	\$2,525	
Platinum	Any Number	2 – 6 Screens	Any Number	Any Number	\$1,200	\$2,300	\$3,100	\$3,200	
Diamond	Any Number	7 – 9 Screens	Any Number	Any Number	\$2,100	\$3,400	\$4,000	\$4,100	
Sapphire	Any Number	10+ Screens	Any Number	Any Number	\$3,350	\$4,450	\$5,250	\$5,350	
Copying		Up to 2,000 tracks at any one time					\$400		
Website		Incidental use only					\$550		

Gold, Platinum, Diamond & Sapphire include Corporate Music Use for your employees at the hotel.

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

If more than one dining area in the hotel has a separate music source, additional fees per relevant capacity will apply

¹Racing Screen means a screen used exclusively for the display of thoroughbred, harness or greyhound racing. Where a Racing TV Screen is regularly used for a purpose other than racing, it must be declared as a TV Screen.

²‘TV Screens - receiving broadcast only’ means screens that only exhibit content received via services over the broadcast service bands or via cable or satellite delivery. This would exclude any internet delivered services. Of course, in this scheme context, a screen that does not deliver any content containing sound recordings, music videos or musical works is not included.

Table 2 – Featured Music including Live Music Performance (with sound recordings)

Relevant Table 1 fee, plus the following, as required:

FEATURED MUSIC AND LIVE MUSIC PERFORMANCE (WITH SOUND RECORDINGS) PER NIGHT RATE**					
CAPACITY	OFFERED UP TO 56 NIGHTS PER YEAR	OFFERED 57 TO 104 NIGHTS PER YEAR*	OFFERED 105 TO 156 NIGHTS PER YEAR*	OFFERED 157 TO 208 NIGHTS PER YEAR*	OFFERED 209 TO 365 NIGHTS PER YEAR*
1 to 25	\$3.99	\$3.80	\$3.60	\$3.39	\$3.19
26 to 50	\$7.99	\$7.59	\$7.19	\$6.79	\$6.39
51 to 75	\$11.98	\$11.38	\$10.79	\$10.29	\$9.58
76 to 100	\$15.97	\$15.17	\$14.37	\$13.57	\$12.78
101 to 200	\$31.94	\$30.34	\$28.75	\$27.15	\$25.55
201 to 350	\$55.90	\$53.11	\$50.31	\$47.52	\$44.72
351 to 500	\$79.85	\$75.86	\$71.87	\$67.87	\$63.88
501 to 750	\$119.78	\$113.79	\$107.80	\$101.82	\$95.82
751 to 1000	\$159.70	\$151.72	\$143.73	\$135.75	\$127.76
1001 +	\$273.78	\$260.09	\$246.40	\$232.71	\$219.02
ATTENDANCE RATE ##					\$0.28

Note: where all the recorded music has been directly licensed or where there is no use of sound recordings, the Live Music Performance (no sound recordings) rate applies.

Table 3 – Live Music Performance (no sound recordings)

And/or the following, as required:

LIVE MUSIC PERFORMANCE (NO SOUND RECORDINGS) PER NIGHT RATE**					
CAPACITY	OFFERED UP TO 56 NIGHTS PER YEAR	OFFERED 57 TO 104 NIGHTS PER YEAR*	OFFERED 105 TO 156 NIGHTS PER YEAR*	OFFERED 157 TO 208 NIGHTS PER YEAR*	OFFERED 209 TO 365 NIGHTS PER YEAR*
1 to 25	\$2.00	\$1.90	\$1.80	\$1.70	\$1.60
26 to 50	\$4.00	\$3.80	\$3.60	\$3.40	\$3.20
51 to 75	\$5.99	\$5.69	\$5.40	\$5.15	\$4.79
76 to 100	\$7.99	\$7.59	\$7.19	\$6.79	\$6.39
101 to 200	\$15.97	\$15.17	\$14.38	\$13.58	\$12.78
201 to 350	\$27.95	\$26.56	\$25.16	\$23.76	\$22.36
351 to 500	\$39.93	\$37.93	\$35.94	\$33.94	\$31.94
501 to 750	\$59.89	\$56.90	\$53.90	\$50.91	\$47.91
751 to 1000	\$79.85	\$75.86	\$71.87	\$67.88	\$63.88
1001 +	\$136.89	\$130.45	\$123.20	\$116.36	\$109.51
ATTENDANCE RATE ##					\$0.14

Note

* In each category, where Featured Music is offered 56 or more nights a year, four nights will be included at no charge.

** Where the highest priced ticket or Entry Fee is no more than \$40. Where ticket or entry fee exceeds \$40, a separate OneMusic licence is required.

For Featured Music use where there is an Entry Fee; the venue keeps accurate nightly attendance figures; and the venue agrees to provide an annual statement of attendance and nights of operation with a written declaration by an authorised person warranting the veracity of those figures.

Table 4 – ‘All In’ Annual Rate

Covering Background/Copying/Website/Featured/Dining Music Use – but excluding Recorded Music for Dance Use (Nightclubs)

TOTAL CAPACITY OF FEATURED MUSIC AREA(S)	ANNUAL LICENCE FEE
1 to 25	\$4,438
26 to 50	\$5,528
51 to 75	\$6,609
76 to 100	\$7,694
101 to 200	\$12,037
201 to 350	\$18,552
351 to 500	\$25,068
501 to 750	\$35,926
751 to 1000	\$46,785

Because this is a bundled offering, the Partial Rights discount is not available for this rate.

Table 5 - Nightclubs

Plus the following for Recorded Music For Dance Use, as required:

NIGHTCLUB (RECORDED MUSIC FOR DANCE USE) PER NIGHT RATE					
CAPACITY	OFFERED UP TO 56 NIGHTS PER YEAR	OFFERED 57 TO 104 NIGHTS PER YEAR*	OFFERED 105 TO 156 NIGHTS PER YEAR*	OFFERED 157 TO 208 NIGHTS PER YEAR*	OFFERED 209 TO 365 NIGHTS PER YEAR*
1 to 25	\$44	\$43	\$42	\$39	\$37
26 to 50	\$87	\$85	\$83	\$79	\$75
51 to 75	\$131	\$128	\$125	\$118	\$112
76 to 100	\$174	\$170	\$166	\$158	\$149
101 to 200	\$349	\$340	\$332	\$315	\$299
201 to 350	\$610	\$596	\$581	\$552	\$523
351 to 500	\$872	\$851	\$830	\$789	\$747
501 to 750	\$1,307	\$1,276	\$1,245	\$1,183	\$1,121
751 to 1000	\$1,743	\$1,702	\$1,660	\$1,577	\$1,494
1001 +	\$1,917	\$1,872	\$1,826	\$1,735	\$1,643
ATTENDANCE RATE ##					\$2.52

Note

* Where Recorded Music For Dance Use is offered 56 or more nights a year, four nights will be included at no charge.

For Recorded Music for Dance Use nights where there is an Entry Fee; the venue keeps accurate nightly attendance figures; and the venue agrees to provide an annual statement of attendance and nights of operation with a written declaration by an authorised person warranting the veracity of those figures.

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

- The devices you use to provide background music in your venue, from a single radio to multiple screens and video jukeboxes.
- If you offer Featured Music on some nights:
 - the capacity of the areas used;
 - the number of nights of operation; and
 - whether you can comply with the requirements to report on attendance numbers.
- If you have an area where the dining rate would apply, and if so the capacity of that area.
- Whether the All-In Rate provides a saving on the aggregate of the above rates.
- If you operate part or all of your hotel as a nightclub on some nights:
 - the capacity of the areas used;
 - the number of nights of operation; and
 - whether you can comply with the requirements to report on attendance numbers.

Using the above information you can determine what the annual fees for your venue would be under this proposal compared to your current total licence fees for APRA AMCOS and PPCA. Remember – these cost comparisons will only be valid if you currently need and hold a licence with both APRA AMCOS and PPCA.

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

SECTION 3: SUMMARY OF AMENDMENTS

OUR CONSULTATION PROCESS WITH YOU

HOTELS, PUBS, TAVERNS, BARS, ACCOMMODATION HOTELS AND CASINOS

OneMusic Australia is consulting with Hotels, Pubs, Taverns and Bars and would like to hear what you think. 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 venue, you’re likely to be paying licence fees to APRA AMCOS and PPCA, the caretakers of the copyright in the music you use. These fees ensure you’re legally entitled to use music in your venue, and with your support music creators are paid for their contribution to your business.

This is the second consultation paper we’ve released on the proposed OneMusic Australia rate for Hotels, Pubs, Taverns and Bars. We’ve made some adjustments to our original proposal based on the feedback we’ve received so far – thank you.

We acknowledge that some submissions asserted that the existing APRA AMCOS, existing PPCA and/or proposed OneMusic rates are too high. However, these submissions did not include any underlying critical analysis - including relevant data, economic analysis or examination – necessary to give proper consideration or weight to these submissions. If the same assertions still apply to the revised fees in this paper, we invite submissions that include critical assessment and analysis. We’d like you to take a look, and let us know if you have any additional feedback. Remember, this is just a proposal, and may not become the final scheme.

What’s different in the second consultation paper:

- We’ve made it clearer that the rates proposed for hotels also apply to accommodation hotels and casinos. However, for simplicity’s sake we do refer to ‘hotel’ throughout the paper.
- We’ve combined the rates for hotels (Background/Featured Music) with abridged versions of the second round papers for dining and dance use (i.e. nightclub) because many hotels also require this coverage. The full version of those papers is available [here](#). The structure of this paper reflects this change, so it’s a little longer as a result.
- Even though this second paper is long in order to address the extensive feedback we’ve received, the basics of the proposed new rates are set out on the following five pages.

Hotels – Background and Featured Music Use

- We’ve added a lower-priced background music tier for hotels that only have one radio or television, which is cheaper than the current APRA rate.
- We’ve included “attached bottle shops” under all background music tiers – no separate retail licence is required, saving \$144-\$650 per annum for all hotels with an attached bottle shop.
- If you take out one of the Gold, Platinum, Diamond or Sapphire packages, we’ve included coverage for use of music in corporate and workplace areas of your hotel³, such as offices and staff areas, or as music on hold (up to two lines) under the background music rate at no extra cost.
- We’ve increased the number of tiers for Featured Music use to provide for a more graduated approach. We’ve also given you four free nights of Featured Music use where your use of music in that way occurs 56 or more nights per year.
- Alternatively, for Featured Music use where there is an Entry Fee and the venue keeps accurate and verifiable nightly attendance figures, the rate will be based on actual recorded attendance numbers and will also differentiate between circumstances where recorded music is / is not used.
- 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, a reduction of \$200 per annum on the initial proposal.

Hotels – Dining Music Use

- We’ve reduced the maximum annual fee payable for Dining music use in each capacity tier, so that the most you’ll pay each year is lower than in our initial proposal. For a hotel with a dining capacity of 31-50 and average meal price of \$24, the maximum fee is now only \$1,900 compared to the current combined APRA AMCOS and PPCA fee of approximately \$3,500.

³For hotel chains this does not include head or other back offices and for casinos and accommodation hotels it does not include reception or front-of-office areas.

- Furthermore, the Dining rate will now only apply where there is a restaurant/dining room/café area with its own music source as per the current APRA AMCOS definition, meaning that many hotels currently covered by the PPCA dining tariff will no longer be categorised as 'dining'. OneMusic may also charge a separate Dining rate, even if music use is the same, where the dining area is leased by a separate business.
- We now propose to continue with the current PPCA practice of applying a reduction of 50% to the background music rate for those accommodation motels and similar businesses 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.

Hotels – Background, Featured and Dining All-In Rate

- Because some feedback considered that the proposed structure of the licence scheme in the first consultation paper was too complicated, we have developed an 'all-in' rate to cover all of the music uses otherwise covered under Background, Featured and Dining. We acknowledge that these rates will only be attractive to some hotels, depending on their size and music use.

Hotels – Recorded Music for Dance Use

- We've listened to your concerns and removed the per person capacity metric for Dance Use and simplified the rate into capacity-based tiers. This way we still get a good idea of the relative size of your business to ensure there's a link between use of music and the licence fee, but we won't be charging a 'per person' fee based on capacity.
- However, we've retained the previous structure whereby the more nights per year you open, the lower your nightly fee, and added an extra discount so that when you open for Dance Use 56 or more nights a year you will receive four free nights of music. By way of example this would save a hotel operating a nightclub with a capacity of 120 persons at least \$1,196 a year.
- In addition, for those nightclubs that have an Entry Fee and the nightclub keeps accurate and verifiable nightly attendance figures, licence fees will be assessed on attendance.
- We've explained how we'd like you to report your capacity to us, and how to report a modified capacity depending on how the venue space is configured on different nights, such as reporting a reduced capacity on nights where only one level or room is open.

SECTION 4: FEEDBACK AND BACKGROUND TO THE PROPOSED LICENCE AND RATES

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 Hotels, Pubs, Taverns and Bars. That paper can be found [here](#).

OneMusic Australia received welcome feedback on that paper from hotels, pubs, taverns, bars and industry bodies 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 hotels, pubs taverns, bars, accommodation hotels and casinos 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 will commence in mid-2019 and OneMusic Australia will provide due notice to businesses to migrate their existing licences where relevant.

HOTELS INDUSTRY FEEDBACK RECEIVED – BACKGROUND & FEATURED MUSIC USE

OneMusic Australia received feedback from individual venues, Music Victoria (the State peak body for contemporary music), Yarra Music Venues Group, and from the peak industry body, the Australian Hotels Association (AHA). OneMusic Australia also met with the National CEO of AHA to discuss its submission. The feedback received by One Music Australia was straightforward and concerned in the most part with the same issues, so we have used the specific issues raised by the AHA and individual businesses as the basis for this second paper.

The issues raised are as follows:

RATE ISSUES

BACKGROUND TIERS

In order to accommodate those venues with very minimal music use from a single broadcast source, an additional tier for background music has been added, catering for businesses that have only one television or one radio receiving broadcasts. This has become the new 'Bronze' package, and pricing has been set at \$130 per annum, lower than the equivalent current APRA licence for the same use.

BUNDLING OF RATES

OneMusic Australia received feedback as to whether it would consider rolling a number of uses such as those for telephone on hold, dining, and fitness centres into the fee for general music used in the venue. We prefer to make these rates optional for venues that need additional components to acquire them as necessary, particularly in circumstances where we are tailoring the e-commerce system to simplify the process. In this way hotels that do not need coverage for this type of use need not bear the cost, and those that do can easily obtain the necessary extra coverage.

We also have concerns that bundling rights may increase the number of venues that experience an upward variance in annual licence fees under OneMusic Australia. Furthermore, the range of variances between businesses will be broadened.

That said, OneMusic Australia is happy to include coverage for music in the workplace, which applies to music used in areas of a venue that are not accessible to the public, under the original Bronze to Platinum background music packages with no variance to the packages and rates.

However, we have introduced the concept of an optional "all in" annual rate covering background music, featured music, dining music, copying and website use based on the capacity of the featured music area. This bundled offering will not appeal to all hotels but will further simplify licensing for those hotels for which it does.

FEATURED MUSIC

The definition of Featured Music is provided in Section 1 of this paper.

OneMusic Australia received feedback opposing the use of capacity as a metric for the calculation of fees for Featured Music (and also Recorded Music for Dance Use), and we have addressed in more detail concerns about the use of capacity later in this consultation paper. While we maintain that capacity is an efficient metric to determine music licensing rates, we are willing to adjust

these rates to make licensing Featured Music more affordable for both smaller venues and venues that offer Featured Music several days per week. We’re also proposing that for venues holding Featured Music events where:

- there is an Entry Fee,
- the venue keeps accurate nightly attendance figures, and
- the venue agrees to provide an annual statement of attendance and nights of operation with a written declaration by an authorised person warranting the veracity of those figures,

the rate will be based on actual recorded attendance numbers and will also differentiate between circumstances where recorded music is / is not used. Where a hotel can do this for live (non-recorded music) performances but cannot for “DJ nights”, it would report on attendance and capacity for the two types respectively.⁴ A licensee’s election to report attendance subject to the provisions outlined will be fixed for each twelve month licence period and the resulting fee is not subject to review against the capacity-based fee structure.

We also received feedback from venues with a live music focus and the AHA that the proposed single Featured Music rate covering both recorded and live music was problematic. In the first paper we acknowledged the innovation behind the proposal and that acceptance of the approach would require a trade-off between simplicity and accuracy. The feedback shows that hotels preferred accuracy over simplicity in this area and OneMusic now proposes separate rates.

Additionally, any venues that offer Featured Music (per category) more than 56 days per year and pay according to capacity tiers will receive coverage for four of those days at no charge. For example, if the venue offers Featured Music 200 nights a year in an area with a single capacity, OneMusic would only charge for 196 nights.

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

Fig.2

OneMusic considers that the option at Figure 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. OneMusic notes that the combined rate is both cheaper than the aggregate of the current two licences and enables the copying of more tracks, so proposes to adopt the structure outlined in Figure 2, at a rate of \$400.

OTHER ISSUES

BETTER OFF/WORSE OFF

Some submissions expressed concern that the tariff harmonisation process set out in the consultation paper could lead to some hotels being ‘worse off’. It is impossible to restructure the rates such that there are no variations in the licence fees of individual premises, although we have done all we can to minimise those variations. We note that the desire to ensure that no such variations occur is mutually exclusive to the desire for simplicity in rate structure and streamlined licence management processes, the latter of which obviously requires changes to the rates and will therefore impact on the fee paid by individual hotels.

⁴Election to use attendance subject to the provisions is fixed for the year and the fee is not subject to review against the capacity-based fee structure.

PARTIAL RIGHTS

A number of respondents to the first OneMusic Australia consultation paper for Hotels, Pubs, Taverns and Bars, and indeed Accommodation Hotels and Casinos, have asked about circumstances in which a PPCA licence is not required. We have addressed the circumstances where PPCA licences are not required in the following ways:

- a) the Bronze and Silver packages for background music do not include the use of sound recordings in their fees;
- b) where only live music is performed, and not protected sound recordings or music video clips, the featured live music rates do not include a consideration for the use of sound recordings (and this rate will also apply where all Featured Recorded Music is directly licensed from an entity other than the PPCA); and
- c) in all other circumstances where alternative licences for sound recordings have been obtained from another source, fees will be reduced by 48.25%.

ONEMUSIC NEW ZEALAND

Respondents to the first consultation paper have asked why the licensing fees for OneMusic Australia are not the same as those for OneMusic New Zealand. OneMusic Australia has sought to harmonise existing Australian 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 can differ greatly across international territories and markets due to historical, structural, and developmental variables, and a comparison of any two will reveal disparities for those reasons. (For example in the UK the APRA AMCOS' equivalent organisation, PRS, has rates for live performances in a hotel that are generally higher than those proposed here).

OneMusic Australia's proposed rates are derived – either directly or indirectly - from existing well established Australian licence schemes operating in the market, many of which have been in place for a long period. If the hotel industry believes that these historical rates are unfair then this can be appropriately addressed through the industry making a reference to the Copyright Tribunal.

CAPACITY VS ATTENDANCE

For the areas of a hotel, pub, tavern or bar that will have a licence that includes a rate based on capacity (for example, a venue that has a restaurant and/or a nightclub area), AHA and other respondents commented that they were concerned about using capacity as a metric on which to base fees.

It seems there is a misconception that a capacity-based scheme means that every night a venue is open and attendance is less than capacity, the venue is over-paying. However, capacity-based schemes do not assume that capacity is the same as attendance.

Using capacity gives a means to obtain a convenient and transparent indication of the value of music under a particular rate and provides for appropriate scaling between smaller and larger venues. There are other metrics that could be used – for example bar turnover - however that has already been rejected as a licence fee basis, and capacity represents a much simpler, clearer and non-confidential metric on which to base fees.

OneMusic Australia acknowledges that venues do not always operate at capacity, does not assume that all venues are successful all the time, and has taken this into account when setting what we believe are fair and equitable licence fees. Indeed, whilst a venue may regularly operate below capacity, it is equally true that the number of customers that visit a venue throughout its opening hours may often exceed its capacity.

OneMusic Australia also notes that it now proposes to use attendance rather than capacity in certain circumstances – see above under Featured Music.

TRANSPARENCY

The AHA response included repeated requests for detailed data that was used by OneMusic Australia in its modelling, research, testing and analysis for the purpose of developing the proposed scheme. Beyond the sample data provided to us on a confidential basis by the AHA, we are bound by confidentiality obligations to our licensees and cannot disclose more detail than has already been provided. OneMusic Australia maintains that it has acted in a transparent manner and notes that these provisions do not take precedence over confidentiality.

PRIVACY AND CONFIDENTIALITY

We note that concerns regarding APRA AMCOS' and PPCA's compliance with their respective privacy and confidentiality obligations have been expressed by some respondents, due to the information being shared between APRA AMCOS and PPCA for the purpose of establishing OneMusic Australia, including the data-matching and alignment of renewal cycles required to do so.

Both APRA AMCOS and PPCA are committed to ensuring that personal information collected from licensees is handled strictly in accordance with each organisation's privacy policy. In that regard, the personal information shared between APRA AMCOS and PPCA for the purposes of OneMusic Australia is done so on a strictly confidential basis and limited to only such personal information necessary to allow for the continued and effective administration of music licensing in preparation for, and for the operation of, that joint licensing initiative. Such disclosure is consistent with the terms of each organisation's privacy policy, being limited to sharing only with associated collecting societies in Australia and for the purposes of administering the licensing and distribution of royalties.

Similarly, to the limited extent that APRA AMCOS and PPCA have shared licensees' confidential information with one another, this has been done in accordance with all contractual confidentiality obligations set out in the respective organisations' existing licence agreements with licensees. In addition, the limited number of key executives at each of APRA AMCOS and PPCA who have access to any confidential data have all entered into appropriate confidentiality arrangements setting out precisely how they must handle that information and for what purposes they may use it.

Finally, it is important to remember that not all information that APRA AMCOS or PPCA holds in relation a licensee is personal or confidential in nature. Any information which is publicly available (including for example a licensee's business name and address, the size of a venue's dance floor or capacity, or even the number of televisions a particular venue has playing on any given evening) is not properly regarded as confidential. Nor is the fact that an individual business holds a particular type of licence from APRA AMCOS or PPCA. That said, if any licensee has concerns regarding APRA AMCOS and/or PPCA's handling of their personal or confidential information they should feel free to contact OneMusic Australia at complaints@onemusicaustralia.com.au.

DISTRIBUTION

Questions have been raised regarding how licensing fees will be distributed to music creators under OneMusic Australia. OneMusic Australia will not be involved in the distribution of licensing fees and the responsibility for distribution will remain with both APRA AMCOS and PPCA. Both societies will retain their current and respective board-approved distribution policies and practices and as ever are actively looking at ways they can be improved.

DISPUTE RESOLUTION

OneMusic Australia's response to the AHA's submission referred to APRA AMCOS' independent dispute resolution service run by Resolution Pathways. Because we remain in consultation and open dialogue with the industry on the final form of a OneMusic Hotel Licence Scheme, in our view it is likely premature to involve Resolution Pathways in the process. However, once we release a final version of the scheme following receipt and consideration of submissions in relation to this paper, hotels and licensee stakeholders will be in a position to assess the extent to which the consultation process has addressed any concerns they may have and if relevant refer those aspects of the proposed licence scheme to Resolution Pathways. OneMusic Australia acknowledges the importance in keeping Resolution Pathways informed of the consultation process, including to ensure plans are in place in case there is an increase in individual referrals once the new schemes go live.

OneMusic also notes that the outcome of a dispute referred to ADR may cause a variation in the way certain definitions should be interpreted and in which case OneMusic will update the relevant plain English guides as appropriate.

OTHER DOCUMENTATION

OneMusic will produce supplementary documentation in due course similar to the information currently provided by APRA AMCOS and PPCA. This will include standard terms and conditions for all OneMusic licences, the ability for new licensees to check their licence fee before purchase and plain-English licence guides.

DINING MUSIC USE – KEY ITEMS OF FEEDBACK AND RESPONSE

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 provided:

“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. The resulting definition for dining businesses located within hotels is now proposed is as follows:

“Dining Business or Establishment” means 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) *the music played in the dining area is different to that audible in the rest of the premises,*

but excludes any area 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 considered a separate dining area.*
- *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.*

- *Multiple dining areas* – the proposed fees for hotels with separate dining areas are based on the maximum fees for each capacity tier as described in the OneMusic Australia consultation paper for Dining, which have been added to the relevant background music rates for Hotels. In circumstances where a venue has more than one separate dining area, each meeting the definition set out above, the rates set out in the Dining paper will apply to each such dining area.

Please note that in circumstances where the dining area in a hotel is operated by a third party – ie not the same business that operates the hotel – then the party operating the dining area is responsible for licensing the music, regardless of whether or not the dining area has a separate music source.

GUEST DINING AREAS IN ACCOMMODATION HOTELS

The AHA 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% (where there is no partial rights licence required) will be applied to the background music per day/night fees below for dining areas in accommodation hotels that fulfil the above criteria (subject to annual minimum fees).

RECORDED MUSIC FOR DANCE USE – SUMMARY OF FEEDBACK AND RESPONSE

ATTENDANCE VS. CAPACITY

A number of submissions expressed concern about the 'move' to a capacity-based scheme for nightclubs (including nightclub areas with hotels). It should be noted that PPCA has licensed Recorded Music For Dance Use under a capacity-based scheme for ten years (and the APRA attendance-based rate is subject to a capacity threshold). In addition to the points mentioned above we note that the Copyright Tribunal acknowledged that nightclubs do not always operate at capacity, and took this into account when setting what it considered to be fair and equitable licence fees.

However, OneMusic Australia accepts the feedback received that a per person capacity fee applied per night of operation as described in the first consultation paper is unpopular. While OneMusic Australia still considers capacity to be an appropriate and practical measure of the relative size of a nightclub (or a nightclub area in a hotel), we understand that a per-person fee based on capacity is problematic to some licensees.

We have further simplified the structure of the proposed licence scheme, arranging capacity into tiers that indicate the relative size of the venue, rather than multiplying the per-night fee by the venue's exact relevant capacity. After extensive testing that modelled different tiers and fees based on capacity and number of nights open per week, we settled on the modelling that resulted in a fee reduction (from current APRA AMCOS and PPCA tariffs) for the highest number of venues – 60% of those with both licences. The modelling also indicates that across all those venues, total licence fees will decrease in each of the capacity tiers and by approximately 8% overall.

A venue is still able to adjust the capacity reported on nights where their capacity is reduced, for example when only one floor or room of the nightclub is open for business.

Venues that operate more than 56 days per year will also receive coverage for four of those days at no charge.

OneMusic has previously noted its compliance concerns about an attendance-based metric but notes also the concern expressed in submissions about applying a capacity-based metric for both the APRA AMCOS and PPCA fees under the OneMusic licence. Seeking to find a balance between those two positions, OneMusic proposes that where a venue provides Recorded Music For Dance Use it can report on an attendance rate subject to the following conditions:

- the venue keeps accurate nightly attendance figures;
- the venue charges an Entry Fee;
- the venue can and agrees to provide an annual statement of attendance and nights of operation with a written declaration by an authorised person warranting the veracity of those figures.

Under this attendance rate option the 'free' nights and the decreasing fee according to number of operating nights – both measures offered by OneMusic to address industry concerns about capacity-based reporting - are accordingly not available.

Consistent with APRA AMCOS' current practices, venues able to report in this way will provide their reasonable accurate estimate of attendance for the year and pay a provisional licence fee subject to an adjustment against actual figures at the end of the venue's licence year.

If a venue elects to take out this option⁵ but then fails to provide the written declaration and information, OneMusic will have the right to rescind the concession and instead recalculate licence fees based on its reasonable assessment of relevant capacity and nights of operation.

MEASURING CAPACITY

Notwithstanding that PPCA has charged on capacity, many submissions queried how capacity would be established. Both current schemes use capacity (either as the metric or the cap) and OneMusic does not intend to change the current approach on measuring capacity. We have included in the definition section at the front of this paper examples of the kind of official sources licensees can use when determining the capacity of their venue, together with a proposed methodology – currently used when necessary by PPCA - where such official sources are not available.

“PHYSICALLY SEPARATE”

Questions have been raised regarding the meaning of the continued use of 'physically separate' when defining nightclub areas in multi-purpose premises. The definition of a nightclub includes 'a venue operating *within a multi purpose premises in a physically separate area* [emphasis added] *of that premises, where that separate area satisfies the [nightclub] criteria*'. While the definition appears not to have been problematic in the past for licensees of both APRA AMCOS and PPCA, OneMusic understands that the release of the first consultation paper has rightly caused licensees to look more closely at relevant definitions and so has now provided a definition of "Physically Separate" in Section 1, which will be included in the licence scheme.

It should be noted that the same area may not be considered as a "Nightclub" on every day of the week. For example, if a room is occupied by tables on Sunday to Thursday inclusive but is cleared to make way for a dance floor on Friday and Saturday nights and it now meets the definition of "Physically Separate" then the Recorded Music For Dance Use rate would apply to that area for those two nights.

Our licensing reps will liaise with hotels and nightclub operators as required if a question arises and where agreement cannot be reached the licensee or potential licensees has recourse to Resolution Pathways (APRA AMCOS' independent ADR service that will be available to all OneMusic clients).

⁵Election to use attendance subject to the provisions is fixed for the year and the fee is not subject to review against the capacity-based fee structure.



SUBMITTING YOUR FEEDBACK

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

According to demand, OneMusic Australia will conduct in-person or virtual 'town hall' meetings with hotels and their representative bodies in state and territory capital cities.

Please provide your feedback, including if you would like to attend a consultation session, in the form of a submission and/or request 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.