



AUSTRALIAN HOTELS ASSOCIATION

24 Brisbane Avenue Barton ACT 2600 • PO Box 4286 Manuka ACT 2603 • Australia
email: aha@aha.org.au • Facsimile: (02) 6273 4011 • Telephone: (02) 6273 4007
Web: www.aha.org.au

28 February 2011

The Hon. J. C. S. Burchett QC
Code Reviewer
Suite 704, 4 Young Street
NEUTRAL BAY NSW 2089
Via Email: codereviewer@gmail.com

Dear Mr Burchett

SUBMISSION IN RESPONSE TO THE COPYRIGHT COLLECTING SOCIETIES' CODE OF CONDUCT REVIEW

The Australian Hotels Association is an organisation of employers in the liquor and hospitality industry registered under the *Fair Work (Registered Organisations) Act 2009*. The AHA comprises approximately 5,000 members across Australia serviced by branches in every state and territory plus a Canberra-based national office. The majority of these members are pub-style hotels providing food, beverages and entertainment. In addition, a significant minority of members are accommodation hotels.

Every AHA member is affected by issues relating to music whilst many play host to live music events of varying size and frequency. Marketing products and services of hotels is a key factor driving the business models of hotels. The provision and promotion of music is one such product and service that can be provided by hotels.

Hotels provide one of the best avenues for musicians to gain opportunities for paid public performances, and are recognised as a breeding ground for Australian music talent and many of Australia's leading performers began their careers playing before live audiences in hotels.

Music is a desired form of entertainment in hotels and many of the AHA members are committed to capital investment providing functional and compliant premises for both live and recorded music.

In recent times the regulatory requirements imposed on licensed premises and the costs associated with the same have impacted upon what musical products and services are provided by a hotel business.

In relation to the Code of Conduct, the AHA raises two areas which should be priorities for development going forward:

1. Fee setting and distribution

The AHA has long been concerned with the process by which licence fees can be increased by societies. Given that AHA members often have significant capital investment tied up in the provision of music as entertainment, any increase in fees has a major impact on the viability of the business. In recent years the fees associated with some licences held by AHA members have increased exponentially. We note that the Code does not provide guidelines for collecting

societies on how to determine pricing structures or licensing terms and suggest that this be considered as a priority to be addressed in the review.

The AHA commends APRA for its willingness to engage with the industry with respect to its fee structures. In 2010 APRA announced that, following consultation (including a survey of hotels) with the hospitality industry, it would restructure its scheduled fee increases in its nightclub category to enable the continued viability of live music venues. APRA had worked with organisations including the AHA to determine the impact of rising recorded music licence fees and found it to be affecting hotels' ability to offer live music performances. With this knowledge, gained from working with licensees, APRA was able to put in place a pricing structure that reflects the value of copyright while also preserving the critical talent development role played by hotels.

The AHA commends APRA for its willingness to engage and urges the Code Reviewer to consider producing guidelines within the Code which can be followed by other societies.

2. Alternative to the Copyright Tribunal for dispute resolution

Despite the development by the societies of detailed dispute resolution processes, in reality the only avenue available to licensees facing a fee increase is to take the matter to the Copyright Tribunal. The Copyright Tribunal is a highly complex and very costly medium for dispute resolution. The cost of taking a dispute to the Copyright Tribunal is prohibitive for even major industry organisations representing the interests of thousands of licensees such as the AHA.

We acknowledge that the role of the Copyright Tribunal is not within the scope of the Review, but raise it to highlight the need for the development of alternatives for dispute resolution and the importance of pro-active consultation with licensees by the collecting societies.

3. More clarity over coverage and licence requirements

There is a degree of confusion within the hospitality industry over the coverage of APRA and PPCA and their respective roles in collecting on behalf of copyright holders. This could be addressed by expanding the Code to include a requirement for societies to present their materials and licence options in a clear, non-ambiguous and easy to understand manner. This would help to engender confidence within the industry that fees are being fairly collected and distributed.

We thank you for the opportunity to contribute the views of the hotel industry to the Review. The AHA is available to expand on any aspect of this submission through our National Chief Executive Officer, Des Crowe, who can be contacted in our Canberra office on 02 6273 4007 or crowe@aha.org.au.

Yours sincerely



Des Crowe
Chief Executive Officer