

**Report of The Triennial Code Reviewer  
(The Hon Alan Robertson AM SC,  
formerly a Judge of the Federal Court of Australia)  
upon a Review of the  
Operation of the Code of Conduct of the  
Copyright Collecting Societies  
of Australia**

**Dated: 19 May 2025**

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## Introduction

1. Clause 5.3 of the Code of Conduct for Copyright Collecting Societies (as amended 20 May 2022) (the **Code**) requires that the Code will be reviewed “in 2021” and at least once within each subsequent three-year period. A link to the Code is at **Appendix 1** to this Report.
2. This Triennial Review is of the operation of the Code, including recommendations for amendments of the Code.
3. By cl 5.3(e):

At the completion of the period for the making of submissions, the Triennial Code Reviewer will prepare a report of the Review, and will make such recommendations as he or she considers appropriate in relation to the operation of the Code, including recommendations for amendments of the Code.
4. The Triennial Review is to be distinguished from the task of the (annual) Code Compliance Reviewer, whose functions are “to monitor and prepare *annual* reports on the level of compliance by Collecting Societies with the obligations imposed on them by this Code;” and as part of those functions, “to consider Complaints from Members or Licensees in accordance with clause 5.2 (c)”.
5. By cl 5.1(d)(i) of the Code, the Triennial Code Reviewer is required to be a person other than the Code Compliance Reviewer.
6. In relation to process or procedure, by cl 5.3 of the Code:
  - (b) For the purposes of a Review of the Code, the Triennial Code Reviewer will:
    - (i) invite written submissions on the operation of the Code and on any amendments that are necessary or desirable to improve the operation of the Code;
    - (ii) convene and publicise widely, during the period in which submissions may be made, one or more meetings that Members, Licensees and the general public may attend to make oral submissions to the Review; and
    - (iii) undertake such other consultations as he or she considers

appropriate, including consultations of the kind set out in clause 5.2(a).

- (c) Each Collecting Society will inform its Members and Licensees in an appropriate manner that the Review is being conducted and that they may make submissions to the Triennial Code Reviewer.
- (d) The Triennial Code Reviewer will allow a period of at least two months for the making of submissions.
- (e) At the completion of the period for the making of submissions, the Triennial Code Reviewer will prepare a report of the Review, and will make such recommendations as he or she considers appropriate in relation to the operation of the Code, including recommendations for amendments of the Code.
- (f) The Triennial Code Reviewer will make a copy of the report of the Review available to:
  - (i) each Collecting Society;
  - (ii) the Commonwealth Department(s) responsible for the administration of the *Copyright Act 1968*;
  - (iii) each individual or group that made a submission to the Triennial Code Reviewer;
  - (iv) the Code Compliance Reviewer; and
  - (v) members of the public.

7. As defined in the Code:

**Collecting Societies** means the copyright collecting societies that have agreed to be bound by this Code, being:

- (a) Audio-Visual Copyright Society Limited trading as Screenrights (ABN 76 003 912 310)
- (b) Australasian Performing Rights Association Limited (ABN 42 000 016 099)
- (c) Australasian Mechanical Copyright Owners Society Limited (ABN 78 001 678 851)
- (d) Australian Screen Directors Authorship Collecting Society Limited (ABN 80 071 719 134)
- (e) Australian Writers Guild Authorship Collecting Society Limited (ABN 38 002 563 500)
- (f) Copyright Agency Limited (ABN 53 001 228 799); and
- (g) Phonographic Performance Company of Australia Limited (ABN 43 000 680 704)."

...

**Licensee** means:

- (a) a person granted permission by a Collecting Society to use copyright material;
- (b) a person entitled to use copyright material under a statutory licence in the *Copyright Act 1968*;
- (c) a person who requires a licence from a Collecting Society to use copyright material; and
- (d) for the purposes of this Code, people who are obliged to report resales and people who are liable to pay royalties under the *Resale Royalty Right for Visual Artists Act 2009*. “

**Member** means a person who creates copyright material, or who owns or controls copyright material or a resale royalty right, and who is entitled to be a Member of a Collecting Society under its Constitution. This includes creators of copyright material, such as authors, publishers, playwrights, musicians, composers, artists, computer programmers, producers or broadcasters, as well as people or organisations to whom the rights in copyright material have been assigned or in whom they have become vested.

8. I also set out here the definitions in the Code of “Complaint” and “Dispute” since submissions were made to me about those definitions.

**Complaint** means an allegation that a Collecting Society’s conduct has fallen short of a standard of conduct required of it by the Code (such as an allegation that the Collecting Society has not responded within a reasonable time to correspondence from the Licensee or has been rude in dealing with the Licensee over the Dispute is a Complaint).

...

**Dispute** means the taking of rival positions by a Collecting Society on the one hand and Member, Licensee or other person on the other hand, as to their respective legal rights and obligations, resolution of which depends on a determination of what the relevant law is and/or a finding as to what the relevant facts are (such as whether a Licensee owes an amount of money to a Collecting Society).

## History

9. The Code was developed and adopted by Australian copyright collecting societies in 2002.

10. The first Triennial Review Report was issued by the Hon J C S Burchett QC in April 2005. Triennial Reviews were the subject of further Reports issued by the Hon JCS Burchett in April 2008 and June 2011.
11. The Hon Kevin Lindgren AM KC issued such Reports in April 2014, with a Supplementary Report in October 2015, and in April 2017. At that time, before 2019, the same Reviewer conducted both the Annual Review and the Triennial Review and was called simply the "Code Reviewer".
12. In 2018, the Code was reviewed by the Bureau of Communications and Arts Research (**BCAR**) in the Department of Communications and the Arts. The final report was released on 1 April 2019.
13. As noted by the Hon Kevin Lindgren AM KC in the Report of his compliance review dated 13 December 2021, at [6]:

A significantly revised version of the Code was adopted with effect from 1 July 2019, implementing recommendations of the review of the Code carried out by the Bureau of Communications and Arts Research....
14. An amendment to the Code was made in May 2022 as a result of the most recent Triennial Review in March 2022. Clause 6.2(a) was amended as follows:

~~Where there is any doubt about the intent or scope of this Code, it should be interpreted in the light of the objectives set out in clause 1.3.~~ The provisions of this Code must be interpreted and applied, and any power conferred or duty imposed by them must be exercised or carried out, in the way that best promotes the objectives set out in clause 1.3.
15. Since the last Triennial Review, the Hon Kevin Lindgren AM KC has published annual compliance reports on 30 November 2022, 30 November 2023, and 21 November 2024.
16. As a further matter of background, the Australian Competition and Consumer Commission (**ACCC**) made an authorisation determination dated 13 July 2020 on APRA's Application for revocation of A91367 - A91375 and the substitution of authorisation AA1000433 in respect of arrangements for

the acquisition and licensing of performing rights and communication rights in musical works.

17. On 6 February 2024, APRA lodged with the ACCC an application for revocation of authorisation AA1000433 dated 4 August 2020 and substitution of a new authorisation AA1000661. Authorisation was sought for 5 years.
18. On 19 June 2024, the ACCC granted interim authorisation on the terms and conditions of authorisation AA1000433 to enable APRA to continue its arrangements for the acquisition and licensing of performing rights in musical works (the conduct authorised by the 2020 ACCC Determination), while the ACCC considered the substantive application.
19. APRA expected the ACCC to make its final determination regarding its re-authorisation application before the end of calendar year 2025.
20. A matter before the Copyright Tribunal at the time of the last Triennial Review, was an application by Copyright Agency to determine the methodology for ascertaining, and the amount of, equitable remuneration payable to it by the respondents, being 39 universities. The remuneration related to the copying and communication of copyright works by the Universities under a statutory licence pursuant to s 113P of the Act for the period 1 January 2019 to 31 December 2024. See *Copyright Agency Limited v University of Adelaide (Interim Orders)* [2019] ACopyT 2 at [1]. See also *Copyright Agency Limited v University of Adelaide* [2022] ACopyT 2 (31 May 2022).
21. Universities Australia applied for judicial review of the Tribunal determination. The matter was thereafter settled between the parties in February 2023. Universities Australia and Copyright Agency reached agreement on the copyright fees payable until 2026 and the balance of fees from 2019 to 2022. The agreement also established a working party to develop mechanisms for data collection on the copying and sharing of content in the university sector.

## Process

22. The process I adopted for this Triennial Review was to have notices published in the *Australian Financial Review* on 7 February 2025 and in *The Australian* on 8-9 February 2025. There was also a direct email distribution of the notice on 18 February 2025 to 2,458 stakeholders.
23. A copy of the notices is **Appendix 2** to this Report.
24. By that notice I attempted to give effect to my observation in the 2022 Report that for future Triennial Reviews, the submitting entities should be as specific as possible in their contentions that the operation of the Code has failed or fallen short in some way. I added that where there was factual material to support any such contention, that should be provided to the Reviewer and, if necessary, tested. Further, where a submitting entity contended that there was an amendment, or more than one amendment, that was necessary or desirable to improve the operation of the Code then that entity should identify and articulate the amendment, or the amendments, for which it contended.
25. My attempt to encourage specificity was unsuccessful in that the first round of submissions was general. It still seems to me to be a useful request however so as to encourage attention to the Code itself and to its terms.
26. I am satisfied that each Collecting Society has informed its Members and Licensees in an appropriate manner that the Review is being conducted and that they could make submissions to the Triennial Code Reviewer.
27. As advertised in the notices referred to in [22] above, on 14 April 2025 I held a public meeting at which members of the Collecting Societies, their licensees and the general public had the opportunity to make oral submissions.
28. A further meeting, reserved for 22 April 2025, was not required.
29. Further written submissions were taken until 28 April 2025 with any responses

to those further submissions by 12 May 2025.

30. The participants at the 14 April 2025 meeting were:

- **APRA AMCOS** (Australasian Performing Rights Association and Australasian Mechanical Copyright Owners Society)
- **Copyright Agency** (Copyright Agency Limited)
- **Screenrights** (Audio-Visual Copyright Society Limited)
- **ADA** (Australian Digital Alliance)
- **IHEA** (independent Higher Education Australia)
- **CAG** (Corporate Advisory Group-Schools)
- **ASDACS** (Australian Screen Directors Authorship Collecting Society Limited)
- **Corrs Chambers Westgarth**, as legal advisors to several stakeholders.

31. A list of the written submissions I received is at **Appendix 3** to this Report.

## **Submissions**

### **CAG**

32. CAG submitted it is comprised of senior representatives from the Commonwealth, State and Territory Departments of Education, all Catholic Education Offices and Independent Schools Australia. On copyright matters, CAG represents the almost 9,700 primary and secondary schools in Australia and their approximately 4 million students. CAG is assisted by the National Copyright Unit, a small secretariat based in Sydney. The NCU operates the Smartcopying website, the official guide to copyright issues for Australian schools and TAFEs.

33. As outlined in a number of submissions over many years, CAG submitted it had long-standing concerns about the lack of appropriate governance arrangements for declared collecting societies, namely Copyright Agency,

and the practical consequences of these deficiencies.

34. CAG submitted that neither the Code, nor the existing legislative framework applying to collecting societies provided any mechanism for the education sector to have these concerns rectified. This was why CAG continued to submit that a governance review was needed to address these ongoing issues.
35. CAG accepted the changes it sought were outside this Triennial Review. However, CAG submitted that a fit-for-purpose regulatory framework for declared collecting societies should have at least the following features:
  1. legislative provisions which imposed obligations on declared collecting societies with respect to licensees as well as to their members.
  2. power for the relevant Minister to review and make determinations regarding the formal structure and conduct of declared collecting societies, including powers to review and require changes to a society's constitution, distribution arrangements or reporting obligations.
  3. mandatory guidelines that set out the information that must be provided in a declared collecting society's annual report.
  4. a requirement that there be a very clear separation between a declared collecting society's statutory functions and any commercial functions that the society may also exercise with respect to non-statutory licences. Further consideration should be given as to whether a form of operational separation is required in order to fully achieve this.
  5. independent oversight of a declared collecting society's compliance with its statutory obligations, preferably by the ACCC.
36. To address these issues and establish a fit-for-purpose regulatory framework, CAG encouraged the Government to commence a full governance review of declared collecting societies.

## **ADA**

37. The ADA submitted it is a non-profit coalition of public and private sector interests formed to provide an effective voice for a public interest perspective in copyright policy. It was founded by former Chief Justice of the High Court of Australia, Sir Anthony Mason in February 1999, to unite those who seek copyright laws that both provide reasonable incentives for creators and support the wider public interest in the advancement of learning, innovation and culture. ADA members include universities, schools, disability groups, libraries, archives, galleries, museums, technology companies and individuals.
38. The ADA submitted that the Code failed to ensure adequate accountability, transparency and fair conduct from declared collecting societies. The Code did not achieve its stated objectives including “promoting confidence in Collecting Societies and the effective administration of copyright”.
39. The shortcomings of the current system could not be remedied through minor adjustments to the Code, the ADA submitted. Instead, the ADA believed that broader regulatory reforms were required.
40. The ADA submitted that the Productivity Commission highlighted these concerns in its 2016 Intellectual Property report which recommended making the Code mandatory in order to enhance governance and transparency for Australia's collecting societies: see *IP Arrangements, Productivity Commission Inquiry Report No. 78 (26 Sept 2016)*, Recommendation 5.4 and pp.153-16. The ADA agreed with the Commission's view that collecting Australian societies were not currently held up to a sufficient degree of scrutiny or accountability. Too often, these collecting societies appeared to operate with a singular focus on maximising licensing revenue, without considering the public interest, the appropriateness of licences and their terms, fairness to licensors, or the equitable compensation of individual creators.
41. Recommendation 5.4 was:

The Australian Government should strengthen the governance and transparency arrangements for collecting societies. In particular:

- The Australian Competition and Consumer Commission should undertake a review of the current code, assessing its efficacy in balancing the interests of copyright collecting societies and licensees.
- The review should consider whether the current voluntary code: represents best practice, contains sufficient monitoring and review mechanisms, and if the code should be mandatory for all collecting societies.

42. I note here the report on the Code of Conduct by BCAR in 2019 and the collecting societies implementation of the BCAR recommendations, as noted in my 2022 Report and see [13] above.
43. Additionally, the ADA submitted the lack of visibility in the distribution by collecting societies of funds paid out of public education budgets fell short of best practice standards required by public sector organisations. Public sector entities were legally and policy-bound to ensure responsible expenditure, value for money and accountability in their use of public funds.
44. Noting the particular importance of this review to the education sector, the ADA supported the submissions of its members CAG and Universities Australia (UA). And the ADA supported CAG's submission that outlined the key features that a fit-for-purpose regulatory framework should incorporate. ADA believed a full governance review of declared collecting societies was needed to ensure fair and transparent conduct.
45. The ADA also highlighted the importance of copyright licensing to a broader range of user groups, including libraries, archives, galleries and museums. These groups participated in collective licensing and also had a strong interest in the good governance of Australia's collecting societies.
46. The ADA advocated for an independent review of collecting societies governance by a body with the authority to establish a stronger, internationally aligned best-practice code. This would be the most effective

and appropriate way to address these concerns, it submitted: a broader review of the regulation of collecting societies in Australia that would have the ability to examine and recommend true structural reform of the regulatory system as a whole, including considering legislation, guidelines, ministerial powers and the role of the Copyright Tribunal. Ideally this review would introduce oversight by an external entity such as the Australian Competition and Consumer Commission.

47. The ADA submitted the collecting society system was central to Australia's copyright regime. It was essential that clear and enforceable standards that ensured consistency, accountability, and transparency for all collecting societies were in place if this system was to have the confidence of Australians.
48. In its oral submissions at the public meeting on 14 April 2025, the ADA supported CAG's contentions which I have set out at [35] above.

#### **IHEA**

49. IHEA submitted that it was a peak body established in 2001 to represent Australian independent (private sector) higher education institutions. Its membership spanned independent universities, university colleges and other institutes of higher education, all of which were registered higher education providers accredited by the national higher education regulator, the Tertiary Education Quality and Standards Agency or associate members seeking registration.
50. IHEA's principal concern was that independent higher education providers were treated fairly compared to public providers with respect to licence fees they paid. This was not only in relation to hard or electronic copies of written works (Copyright Agency), but also in relation to playing music (APRA) and (AMCOS) and broadcasts such as films (Screenrights).
51. IHEA's interest was in how independent higher education providers were treated in terms of licensing for all of these media. However, throughout its

submission it specifically focused on the detail surrounding licence fees administered by the Copyright Agency, by way of a specific case study.

52. The Copyright Agency had been the declared Collecting Society for the Statutory Education Licence available to educational institutions since 1990. However, IHEA was concerned that the Copyright Agency was applying different approaches to license fees for public and independent (private) providers. While it was stated that the Code “does not cover matters that the Copyright Tribunal can determine, such as licence fees”, it was clear, IHEA submitted, that there were requirements on agencies’ conduct, as follows:

- “1.3 The Objectives of this Code are to facilitate efficient and fair outcomes for members and licensees by...(b) promoting confidence in Collecting Societies and the effective administration of copyright or the resale royalty right or both in Australia”.
- “2.3 (a) Each Collecting Society will treat Licensees fairly, honestly, impartially, courteously, and in accordance with its Constitution and any licence agreement.  
(d) Each Collecting Society’s policies, procedures and conduct in connection with the setting of licence fees for the use of copyright material will be fair and reasonable.”

53. IHEA was concerned that the requirements of the Code were not being met as a result of the differential approaches that the Copyright Agency was taking for public and independent higher education providers.

54. IHEA understood that the Copyright Agency and the 39 public universities, as members of and represented by Universities Australia (**UA**), had been engaged in litigation from 2019 until an agreement was reached in 2023. The basis for the litigation was UA seeking a better copyright deal for their members. The 2023 agreement stipulated licence fees for public universities, as follows: \$31 million per year for 2019-2022; \$28.5 million per year for 2023-2024; and \$27.5 million per year for 2025-2026. This equated to up to approximately \$15 per Equivalent Full-Time Student Load (**EFTSL**).

55. By comparison, although litigation was not pursued by IHEA, the best

outcome it was able to negotiate for the independent sector was a rate card to pay either \$40.50 per EFTSL (if they were not-for-profit) and the option of either 25 per cent of revenue or \$45 per EFTSL for commercial entities.

56. IHEA submitted that while the negotiated arrangement represented an improved position for independent providers, it still resulted in a significant divide between the costs that public and independent higher education providers were required to pay. IHEA submitted independent higher education providers were paying about \$20 per EFTSL more than public universities to access the exact same material.
57. This was perplexing and difficult to reconcile as a fair and reasonable outcome, IHEA submitted.
58. The agreement with UA stipulated a copyright rate of 9.3 cents per page for electronic copying and communication. This was based on a detailed survey of use, administered by a third party, that produced rolling three year average EFTSL page numbers. However, if, for example, an independent higher education provider was able to show that they only used 10 pages by 30 students, they would only pay \$27.90 for copyright. However, under the current arrangements and methodology, they were paying over \$1000.
59. IHEA's advice from the Copyright Agency was that the rate agreed with UA was not appropriate for the independent higher education sector, nor was it an appropriate starting point for any discussion and negotiation. The Copyright Agency further advised that the result for public universities was peculiar to those institutions that were party to the proceedings (noting that there was also at least one private university included in this grouping).
60. However, IHEA's view was that the decision in the UA case provided a strong basis for IHEA members to negotiate a reduction in the amount they paid for statutory licence copying and communication. This was because the agreement confirmed that the methodology for determining the amount of "equitable remuneration" payable for statutory licence copying and

communication should take into account the amount of copying and communication actually occurring.

61. IHEA did not think it was fair and reasonable that it should be required to undertake costly legal proceedings to achieve a better outcome for independent providers. Conversely, a review would establish the factual basis for any licence fees.
62. As part of IHEA's negotiations, it was understood that the Copyright Agency would review the usage by providers in the independent sector. The purpose of the review was to analyse usage by providers to determine the actual number of pages copied and distributed to students during their studies. This would involve multiple members recording data over several months. The Copyright Agency was to appoint an expert to lead the review and IHEA would ask members to volunteer to be involved. Whilst this process would be labour intensive for independent higher education providers to undertake, IHEA had members that were willing and keen to participate. However, this review was yet to commence and IHEA were unaware of any steps the Copyright Agency had taken to commence a review.
63. IHEA's concern regarding the lack of progress toward a review was that it fully expected that it will identify just how little independent providers utilised the statutory licence. The Copyright Agency had declined to use the results of the survey of public universities, which would also lower costs for independent higher education providers, and so independent providers were at a disadvantage to their public counterparts.
64. In conclusion, IHEA submitted it did not have the resources to fund a protracted litigation process in order to reach a settlement for a better deal for independent providers. It was also of the view that such action should not be necessary to secure a fair and reasonable arrangement for independent higher education providers, and their students, that was comparable to what occurred at public universities.

65. In the context of the Triennial Review, IHEA believed that the Code was not being adhered to in terms of the requirement that Collecting Societies act fairly, reasonably and impartially. It believed the Code needed to be strengthened so that where a Collecting Society was not meeting the Code, that they be required to undertake an independent review. Further, while compliance with the Code was reviewed annually, there was clearly a case for these arrangements to be overhauled to actively capture and address non-compliance.
66. To assist in achieving parity and to provide an evidence base around actual usage, IHEA recommended an independent review of the licence rates as the only way to address the current approach to independent higher education providers and to ensure that there was parity with public universities. This review would analyse usage by providers to determine the actual number of pages copied and distributed to students during their studies. The outcomes of such a review would provide insights into the amount of material utilised and assist with determining the ongoing fee structure, which was the approach used to inform the agreement with UA.
67. If at all possible, a review could also include APRA AMCOS and Screenrights, with a requirement to be transparent about differing methodologies for determining licence fees for public and independent providers.
68. While some steps had been taken to bridge the gap in licence fees between public and independent providers, there was still some way to go to achieve parity. IHEA believed there were steps that must be taken as part of this review to ensure that the Code was effective in achieving its mission – IHEA saw that a requirement to undertake a review where it was clear, as it was in this case with respect to independent providers, that a fair, impartial and reasonable approach was not occurring. In accordance with the requirements of section 2.3 of the Code. It was also critical that appropriate arrangements were in place to ensure compliance with the Code.

69. In time, there would also be a need to review the *Copyright Act 1968* to ensure that the interpretation of “equitable remuneration” was not a matter of interpretation and applied differentially based on provider type. This would ensure that statutory licence provisions and costs reflected modern education practices and reduced unreasonable cost imposts on education.
70. In its second submission, in response to my request in the course of the public hearing, IHEA proposed that the following text be included as item (x) under Clause 3 (Complaints and Disputes) of the Code:

Where an issue is raised by or on behalf of a Licensee or a grouping of Licensees that the Objectives of the Code are not being met under clause 1.3, for example by not being treated fairly or impartially, the Collecting Society is required to commence an independent review within 6 months of the issue(s) being raised by, or on behalf of, the Licensee(s).

### **APRA AMCOS**

71. APRA AMCOS considered that in 2025 the existing Code remained fit for purpose and achieved its stated objectives.
72. In its submission following the public hearing APRA AMCOS responded to propositions I had put at that meeting.

#### **Clause 2.1(a)**

The Code Reviewer proposed the following amendment for consideration:

#### **2.1 Legal Framework**

- (a) This Code is one element of a broader legal and regulatory framework within which Collecting Societies operate. This Code sets minimum standards for the conduct of Collecting Societies and complements the following regulatory instruments, which each Collecting Society **will-must** comply with:

73. APRA AMCOS had no objection to the proposal.

#### **Clause 2.3(c)(ii)**

The Code Reviewer has proposed the following amendment for consideration:

#### **2.3 Licensees**

- (c) Each Collecting Society will:

- (i) make available to Licensees and potential Licensees information about the licences or licence schemes offered by the Collecting Society, including the terms and conditions applying to them, and about the manner in which the Collecting Society collects remuneration and/or licence fees for the use of copyright material; and
- (ii) to the extent it reasonably can, having regard to the complexity of the questions of fact and law ~~necessarily~~ involved, take steps to ensure that all licences offered by the Collecting Society are drafted so as to be plainly understandable to Licensees, and are accompanied by practical and suitable explanatory material.

74. APRA AMCOS had no objection to the proposal.

**Clause 2.3(d)**

2.3 Licensees

- (d) Each Collecting Society's policies, procedures and conduct in connection with the setting of licence fees for the use of copyright material will be fair and reasonable. In setting or negotiating such licence fees, a Collecting Society ~~may~~ **is to** have regard to the following matters:
  - (i) the value of the copyright material;
  - (ii) the purpose for which, and the context in which, the copyright material is used;
  - (iii) the manner or kind of use of the Copyright Material;
  - (iv) any relevant decisions of the Copyright Tribunal; and
  - (v) any other relevant matters.

75. APRA AMCOS had no objection to the proposal.

**Clause 6: definition of 'complaint'**

The Triennial Code Reviewer has proposed the following for consideration:

**Complaint** means an allegation that a Collecting Society's conduct has fallen short of a standard of conduct required of it by the Code (such as an allegation that the Collecting Society has not responded within a reasonable time to correspondence from the Licensee or has been rude in dealing with the Licensee over the Dispute ~~is a Complaint~~).

76. APRA AMCOS had no objection to the proposal.

**Clause 6: definition of 'dispute'**

The Triennial Code Reviewer has proposed the following for consideration:

**Dispute** means the taking of rival positions by a Collecting Society on the one hand and Member, Licensee or other person on the other hand, as to their respective legal rights and obligations, ~~resolution of which depends on a determination of what the relevant law is and/or a finding as to what the relevant facts are (such as whether a Licensee owes an amount of money to a Collecting Society).~~

77. AMCOS preferred that the highlighted wording not be deleted from the definition of dispute. Its experience had been that the existing wording had been useful in helping stakeholders, regulators and APRA AMCOS staff distinguish between complaints and disputes involving the organisation. However, it did suggest that replacing the word “determination” with the word “consideration” might be appropriate. It proposed this amendment because many APRA AMCOS disputes with stakeholders were not resolved by way of independent determination, but by other means to alternative dispute resolution, such as facilitated negotiation or mediation.

### **Copyright Agency**

78. Copyright Agency's submissions received on 17 April 2025 set out its response to:

- amendments proposed for consideration by the Code Reviewer; and
- submissions to the Code Reviewer by CAG, ADA and IHEA.

79. Copyright Agency had no objection to the suggested amendments to Clause 2.1(a), Clause 2.3(c)(ii) Clause 2.3(d) or Clause 6 'Complaint'.

80. In relation to Clause 6 'Dispute' Copyright Agency supported the comments made by APRA AMCOS.

81. As to the submissions by CAG, Copyright Agency submitted that as noted by the Code Reviewer in the meeting on 14 April 2025, CAG's submission says: 'CAG accepts the changes it seeks are outside this review'.

82. The Code Reviewer therefore did not need to address the issues raised in the submission. If the Code Review Report were to refer to the suggestions made by CAG, then Copyright Agency would ask that its responses to those suggestions also be included in the report.

83. As to the submissions by ADA, Copyright Agency submitted that at the public hearing on 14 April 2025, it appeared that the main purpose of ADA's submission was to echo the submission made by CAG, which was an ADA member and represented on ADA's Board. The ADA's submission also

referred to a submission from Universities Australia (UA), but as far as Copyright Agency knew there had not been a submission from UA in connection with the 2025 Triennial Review.

84. ADA's submission also referred to a 2016 report of the Productivity Commission, without referring to the comprehensive report on the Code of Conduct by the BCAR in 2019. The collecting societies implemented each of the BCAR recommendations, as noted in the 2022 Report of the Code Reviewer.
85. As to the submissions by IHEA, Copyright Agency submitted that Clause 2.1(b) of the Code said that the Code 'does not apply to matters that are covered by the jurisdiction of the Copyright Tribunal of Australia, such as the determination of licence fees payable.' This was acknowledged in IHEA's submission.
86. Copyright Agency submitted that the matters raised in IHEA's submission were, however, matters covered by the jurisdiction of the Copyright Tribunal. These included the relationship between equitable remuneration payable by members of Universities Australia and IHEA respectively, and the nature of an institution relying on the education statutory licence.
87. IHEA referred to a review of usage by IHEA members. This was raised by IHEA in discussions with Copyright Agency, but there had been no agreement between IHEA and Copyright Agency regarding such a review.
88. On 15 April, IHEA submitted the following proposed amendment to Clause 3 of the Code:

Where an issue is raised by or on behalf of a Licensee or a grouping of Licensees that the Objectives of the Code are not being met under clause 1.3, for example by not being treated fairly or impartially, the Collecting Society is required to commence an independent review within 6 months of the issue(s) being raised by, or on behalf of, the Licensee(s).
89. Copyright Agency submitted Clause 3 required collecting societies to have procedures for dealing with complaints from members and licensees, and

for resolution of disputes. IHEA's proposed amendment did not appear to add anything to the existing obligations under the Code.

### **PPCA**

90. PPCA's view was that the Code had consistently met its stated objectives, and those objectives continue to be appropriate – particularly in light of the broader governance context in which all of the societies operated. PPCA submitted it complied not only with the Code, but the *Corporations Act*, the *Competition and Consumer Act*, the *Copyright Act* and all other legislation applicable to Australian companies. For the declared societies there was an additional overlay of compliance with their specific Government guidelines.
91. Consequently, PPCA submitted, the Code was but one of many instruments that informed the decisions made and behaviour adopted by PPCA, and the Code could not be considered without reference to the broader regulatory and governance framework.
92. PPCA had no objection to the amendments suggested for Clause 2.1(a), Clause 2.3(c)(ii), Clause 2.3(d) and Clause 6: definition of 'complaint'.
93. As to Clause 6: definition of 'dispute', it was PPCA's preference that the definition of "dispute" remained as it stands, retaining the highlighted wording.
94. PPCA noted the APRA AMCOS submission proposing that the word "determination" be replaced with the word "consideration. PPCA had no objection to the APRA AMCOS proposal.

### **ASDACS**

95. ASDACS had no objections to the proposed amendments to Clause 2.3(c)(ii), Clause 2.3(d) and Clause 6: definition of 'complaint'.
96. Further, ASDACS agreed will with APRA / AMCOS comments and proposed counter amendment to Clause 6: definition of 'dispute' (retention of the definition of 'dispute', with replacement of the word "determination" with the word "consideration").

## **Screenrights**

97. Screenrights submitted it had no objection to the amendments proposed to Clauses 2.1(a), 2.3(c)(ii), 2.3(d) or the definition of 'complaint'. In relation to the definition of 'dispute', Screenrights had no objection to APRA AMCOS's proposal. In relation to IHEA's submission by email dated 14 April 2025, Screenrights supported the submission of PPCA dated 22 April 2025.

## **Consideration**

98. In my view, there is nothing self-evident in the Code indicating that its operation is deficient or that any amendments of substance are necessary.

99. I do not need to consider the submissions on behalf of CAG as they were expressly stated to address matters beyond the scope of this Review. In my view, this means that I should not address those matters given the nature of my task under the Code.

100. The ADA submissions were to a similar effect and I do not therefore address those matters either.

101. Turning to the IHEA's submission, I characterise the bulk of it as directed to matters that are covered by the jurisdiction of the Copyright Tribunal of Australia such that the Code does not apply to those matters. I note in particular Clause 2.1(b) of the Code which gives as an example of the matters the Code does not apply to, "the determination of licence fees payable".

102. Clause 2.1(b) reads:

The Code does not apply to matters that are covered by the jurisdiction of the Copyright Tribunal of Australia, such as the determination of licence fees payable.

103. In my view, contrary to IHEA's approach, as a matter of construction of the Code it is not permissible to read down that provision, Clause 2.1(b), by reference to the more general objectives of the Code set out in Clause 1.3.

104. I reach the same conclusion, as a matter of construction, in relation to

Clause 2.3(a) of the Code, also relied on by IHEA: see [52] above. Clause 2.3(a) reads:

Each Collecting Society will treat Licensees fairly, honestly, impartially, courteously, and in accordance with its Constitution and any licence agreement.

105. I would draw a distinction between the determination of licence fees payable, as an example of matters that are covered by the jurisdiction of the Copyright Tribunal, and a proposition that a determination of the Copyright Tribunal was not being complied with by, for example, the Copyright Agency.
106. The submission put by IHEA that In time there would also be a need to review the *Copyright Act* to ensure that the interpretation of "equitable remuneration" was not a matter of interpretation and applied differentially based on provider type self-evidently stands outside the scope of this Triennial Review and I do not address it.
107. I note, as I said in my 2022 Review Report, that comprehensive statutory provision is made for the Copyright Tribunal in Part VI of the *Copyright Act*. That Tribunal has a statutory responsibility to hear and determine applications made to it under the *Copyright Act*. For example, it has a statutory power under s 113R(2)(b) of the *Copyright Act*, on application made to it, to determine the amount of the equitable remuneration that the body administering an educational institution undertakes to pay a collecting society for licensed copying or communicating. Regulation 73(2) sets out the matters the Tribunal must have regard to in determining the amount of that equitable remuneration.
108. Similarly, as I said in my 2022 Review Report, complaints about the formality of Tribunal proceedings, their cost and the delay inherent in that process do not seem to me to be matters relating to the operation of the Code or properly the subject of recommendations on a Triennial Review. A code applying to those who have agreed to be bound by it does not displace or qualify a statutory regime which does not adopt that code as it exists from

time to time or otherwise give effect to it.

109. Next, in my view the submission by IHEA at [65] above, put in the context of the Triennial Review, that IHEA believed that the Code was not being adhered to in terms of the requirement that Collecting Societies act fairly, reasonably and impartially is a branch of the same complaint. But more fundamentally. IHEA's belief that the Code needed to be strengthened so that where a Collecting Society was not meeting the Code, they be required to undertake an independent review, is a matter that needs first to be established as a matter of non-compliance by the Code Compliance Reviewer. At present, it does not have a sufficient factual foundation.

110. It follows that I do not accept the IHEA submission that "while compliance with the Code was reviewed annually, there was clearly a case for these arrangements to be overhauled to actively capture and address non-compliance."

111. At [70] above I set out IHEA's proposed textual amendment. It seems to me that this proposal largely relates to licence rates which are central to IHEA's concerns and contentions. Also, the proposal has at its heart a non-compliance issue. I have considered these aspects above. I also observe that the drafting does not reproduce the pre-condition suggested by IHEA, that precondition being where a Collecting Society was not meeting the Code. In light of the terms of Clause 3 of the Code, I am not persuaded that the amendment put forward by IHEA should be made.

112. I note that, apart from IHEA, none of the submissions made to me suggested substantive amendments to the Code.

113. Turning to the textual matters, the only resistance to the suggestions I made at the public hearing was in relation to the following:

**Dispute** means the taking of rival positions by a Collecting Society on the one hand and Member, Licensee or other person on the other hand, as to their respective legal rights and obligations, ~~resolution of which depends on a determination of what the relevant law is and/or a finding as to what the relevant facts are (such as whether a Licensee owes an~~

amount of money to a Collecting Society).

where the strikethrough indicates the words I raised as possibly surplusage.

114. I agree with the suggestion that the word “determination” be replaced with the word “consideration”.

115. I also accept the submission that the words struck through have served a useful purpose. But I suggest those words be used as an example so that the definition of ‘Dispute’ reads as follows:

**Dispute** means the taking of rival positions by a Collecting Society on the one hand and Member, Licensee or other person on the other hand, as to their respective legal rights and obligations, for example where resolution depends on a ~~determination~~ **consideration** of what the relevant law is and/or a finding as to what the relevant facts are (such as whether a Licensee owes an amount of money to a Collecting Society).

**I so recommend.**

116. The textual matters where there was no resistance to my suggestions were as follows:

**Clause 2.1(a)**

**2.1 Legal Framework**

(a) This Code is one element of a broader legal and regulatory framework within which Collecting Societies operate. This Code sets minimum standards for the conduct of Collecting Societies and complements the following regulatory instruments, which each Collecting Society ~~will~~ **must** comply with:

**Clause 2.3(c)(ii)**

**Licensees**

(c) Each Collecting Society will:

(i) make available to Licensees and potential Licensees information about the licences or licence schemes offered by the Collecting Society, including the terms and conditions applying to them, and about the manner in which the Collecting Society collects remuneration and/or licence fees for the use of copyright material; and

- (ii) to the extent it reasonably can, having regard to the complexity of the questions of fact and law ~~necessarily~~ involved, take steps to ensure that all licences offered by the Collecting Society are drafted so as to be plainly understandable to Licensees, and are accompanied by practical and suitable explanatory material.

### **Clause 2.3(d)**

#### **2.3.1 Licensees**

- (d) Each Collecting Society's policies, procedures and conduct in connection with the setting of licence fees for the use of copyright material will be fair and reasonable. In setting or negotiating such licence fees, a Collecting Society ~~may~~ **is to** have regard to the following matters:
  - (i) the value of the copyright material;
  - (ii) the purpose for which, and the context in which, the copyright material is used;
  - (iii) the manner or kind of use of the Copyright Material;
  - (iv) any relevant decisions of the Copyright Tribunal; and
  - (v) any other relevant matters.

### **Clause 6: definition of 'complaint'**

**Complaint** means an allegation that a Collecting Society's conduct has fallen short of a standard of conduct required of it by the Code (such as an allegation that the Collecting Society has not responded within a reasonable time to correspondence from the Licensee or has been rude in dealing with the Licensee over the ~~Dispute is a Complaint~~).

**I recommend** that those amendments be made.

117. I report on this Triennial Review accordingly. For the reasons I have given, I make the recommendation in paragraphs [115]-[116] above.



Alan Robertson  
Triennial Code Reviewer

19 May 2025

## **Appendix 1**

The Code of Conduct for Copyright Collecting Societies may be found here: <https://www.copyrightcodeofconduct.org.au/code>

## Appendix 2

### Review of Code of Conduct for Copyright Collecting Societies Notice by the Triennial Code Reviewer

By this Notice, the Triennial Code Reviewer, the Hon. Alan Robertson AM SC, **invites written submissions** on the operation of the Code of Conduct for Copyright Collecting Societies and on any amendments that are necessary or desirable to improve the operation of the Code.

This triennial review, to review the Code itself, is separate from the annual review of the Copyright Collecting Societies' compliance with the Code.

The Code is to be found here: <https://www.copyrightcodeofconduct.org.au/code>

Written submissions may be made to the Triennial Code Review Secretariat, Suite 704, 4 Young Street, Neutral Bay NSW 2089 or by email to [TriennialCodeReviewSecretariat@gmail.com](mailto:TriennialCodeReviewSecretariat@gmail.com).

The period allowed for the making of written submissions is two months, ending on **Monday 7 April 2025**.

Written submissions should preferably be typed and must include the name, postal or email address, and contact telephone number of the person or organisation making the submission.

Written submissions should be prepared so that they may be made publicly available. Any material in a submission which is confidential should be clearly identified.

Submissions should be as specific as possible in their contentions that the operation of the Code has failed or fallen short. Where there is factual material to support such a contention, it should be provided to the Reviewer. Further, where a submitting entity contends that there is an amendment or amendments necessary or desirable to improve the operation of the Code then the submission should identify and articulate the amendment, or the amendments, for which the entity contends.

The Triennial Code Reviewer will convene the following meeting[s] that Members, Licensees, **and the general public** may attend to make oral submissions to the Review:

- **Monday 14 April 2025** from 10 AM at the offices of APRA AMCOS, 16 Mountain Street, Ultimo New South Wales 2007 and via Zoom conference. Details on how to connect will be provided by the Secretariat on request.
- If required, a further meeting on Tuesday **22 April 2025** from 10 AM at the same venue and by video conference.

If you wish to make a written or oral submission, please inform the Triennial Code Review Secretariat by email to: [TriennialCodeReviewSecretariat@gmail.com](mailto:TriennialCodeReviewSecretariat@gmail.com) by no later than **Friday 11 April 2025**.

After **22 April 2025**, the Triennial Code Reviewer will prepare a report of the Review and will make such recommendations as he considers appropriate in relation to the operation of the Code, including recommendations for amendments of the Code.

**The Hon. Alan Robertson AM SC**  
**Triennial Code Reviewer**  
**7 February 2025**

## **Appendix 3**

### **Submissions Received**

1. CAG – Schools received 4 April 2025
2. ADA dated 7 April 2025
3. IHEA dated 7 April 2025

The following submissions were received following the public meeting on 14 April 2025:

4. IHEA dated 14 April 2025
5. APRA AMCOS dated 17 April 2025
6. Copyright Agency received 17 April 2025
7. PPCA dated 22 April 2025
8. ASDACS dated 28 April 2025
9. Screenrights dated 9 May 2025