



HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Reference: Copyright, music and small business

TOWNSVILLE

Thursday, 16 October 1997

OFFICIAL HANSARD REPORT

CANBERRA

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

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Matter referred to the committee for inquiry into and report on:

1. The Committee is to inquire into and report on the collection of copyright royalties for licensing the playing of music in public by small businesses, in particular:

- (a) the information provided to them by the organisations collecting those royalties on the law under which those organisations seek the royalties;
- (b) whether the licences offered and the amounts of the royalties sought take sufficient account of the likely limit on the number of employees or customers of the small businesses who are able to enjoy or hear the playing of the music which is the subject of the licence and royalty collection;
- (c) the desirability of amending the law to provide for a means to assess the difference in value to the copyright owners, if any, between the direct playing of recorded music in public (e.g. by compact disc or cassette player) and the indirect playing of recorded music in public by radio or TV broadcasts;
- (d) whether it is desirable or practical to require that the collection of all royalties for the playing of music in public be done by one organisation on behalf of other organisations, where royalties are payable to more than one organisation representing different copyright owners;
- (e) whether the present structure and constitution of the Copyright Tribunal is the most effective avenue for small businesses to seek review of the amount of the royalties being sought;
- (f) the likely future technological or other developments in

- (i) the playing of music in public; and
 - (ii) the methods to be employed by organisations collecting royalties for licensing such playing.
- (2) In undertaking the inquiry and framing its recommendations, the Committee shall have regard to:
- (a) Australia's membership of international treaties and agreements, including, in particular, its obligations under:
 - (i) the Berne Convention for the Protection of Literary and Artistic Works;
 - (ii) the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations;
 - (iii) the World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights;
 - (b) the possibility that Australia will accede to the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty concluded in Geneva in 1996;
 - (c) the reference to the Copyright Law Review Committee so far on simplification of the Copyright Act;
 - (d) the purpose of the Copyright Act and Australia's membership of international treaties in fostering the creation and performance of musical works and the enrichment of Australia's cultural heritage;
 - (e) the fact that some composers and performers of music and producers of musical sound recordings are also operators of small businesses;
 - (f) the relevant findings and recommendations contained in the *Review of Australian Copyright Collecting Societies* by Shane Simpson; and
 - (g) any dispute resolution mechanisms established in relation to the licensing of the public performance right.

WITNESSES

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HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS

(Subcommittee)

Copyright, music and small business

TOWNSVILLE

Thursday, 16 October 1997

Present

Mr Mutch (Chair)

Mr Kelvin Thomson

The subcommittee met at 11.32 a.m.

Mr Mutch took the chair.

HOOGSTEYNS, Mr Mark, Regional Manager, Queensland Chamber of Commerce and Industry (NQ), PO Box 882, Townsville, Queensland 4810

REITANO, Mr Felix John, President, Hinchinbrook Chamber of Commerce, 77 Townsville Road, Ingham, Queensland

CHAIR—I open this public hearing of the subcommittee of the committee inquiring into the licensing of copyright for the playing of music in public by small businesses. I welcome the witnesses, members of the public and others who are attending this meeting. The subject of the inquiry is the law under which royalties can be collected from small businesses for the use made by them of copyright materials consisting of playing of music on commercial premises.

This public hearing in Townsville is the first day of two days of hearings in Far North Queensland. Tomorrow the committee will take evidence from witnesses in Cairns. The committee is aware that there is considerable interest in this copyright inquiry in Far North Queensland and has held hearings here to give as many people as possible the opportunity to put forward their views on the committee's terms of reference.

I would like to take this opportunity to thank the witnesses who have made themselves available to assist the committee today. We recognise that some of you have travelled some distance to meet with us. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Would you like to make some introductory remarks?

Mr Reitano—My introduction to my submission to this inquiry here today is that, as President of the Hinchinbrook Chamber of Commerce, I represent about 180 to 200 small businessmen in the town of Hinchinbrook Shire. We were formerly called the Ingham Chamber of Commerce; we are now the Hinchinbrook Chamber of Commerce in order to encompass the whole district. In my own capacity I am an unpaid member of the Chamber of Commerce. I run my own business, which is now in its fourth generation in that shire. So we have a long association with the people and the businesses of that shire.

I have travelled 100 kilometres to come here today because I believe the Copyright Act is in urgent need of review. It is important for both parties to take notice of the feedback I am getting from my businesses and the approaches I have made to the people particularly affected. In general, businesses are still struggling. The further you are away from the centre of government, the more difficult it is. When you have extra licences of any sort, it is extra nails in the coffin of those businesses. The businesses that I have spoken to regard this as an extra nail in their coffin.

I know for a fact that some businesses have closed after being approached by your members. I am not saying they closed because of that, but they have closed. It has possibly been the straw that broke the camel's back. Retailers generally, in an effort to attract customers, deck their shops out in the most attractive way. Part of attracting customers is by having good staff. To ensure we have good staff we have to keep the staff entertained to some degree, and certainly on side with the business policy of service, et cetera.

It is the view that businesses play music for the benefit of staff and not as entertainment for customers. I am sure that if you approach some of the unions you might find there have been union cases fought over the issue of whether the TV, radio or music is working in their staffroom. I have not heard that as evidence myself; I have heard it through a third party.

The people I have spoken to say that communication is critical to workplace health and safety for product recalls. I have spoken to a number of people in grocery stores and retailers and they inform me that it is quicker to get information from a radio they are listening to than to wait for the due process of communication from a government department for product recalls. When we talk about safety in the workplace and the number of issues that have occurred, especially the Garibaldi issue that raised its head last year, communication is important, especially if you live in a town which has a large ethnic population who eat a fair bit of ethnic foods such as salami, et cetera. We need to be aware of any recalls that may happen. This is an issue that many retailers have put to me.

I have also spoken to stores that use radio and TV for advertisements. In our case, we do our own business. We advertise exclusively on a number of radio stations and through the press. We pay for that advertisement and we would like it to be heard. Radio stations, I believe, already pay licences to APRA for the use of this material. We pay radio stations to advertise our material. Surely this is double dipping if we are made to pay an extra licence.

Recently we conducted a promotion with a local radio station here. It was broadcast over the air that the winners would be announced. It is on record in my submission that we were fortunate enough to have it from our store. This helps our business to be a little bit more successful in hard times. I would like to see a greater issue of radio stations because my research tells me that the law, as it presently stands, dates back to about 1930 where, over in the English side of the world, publicans bought a radio and used that as a means of attracting customers. Obviously we have seen the light to do away with wireless licences as such. Rather than have another impost on businesses with these licences, we should try to encourage businesses to perform better themselves. I urge the committee to amend the Copyright Act to allow them to play music.

It is no good giving businesses traineeships from government, talking about consumer protection through government and asking for fair trading, to give businesses a fair go, if right at the front line you impose all these other imposts on businesses. I wish to ask you to consider changing the law to allow businesses to have the usage of radios and TVs on their premises. I certainly agree that, if you have a Col Joy or Elvis Presley night where you are promoting a particular copyright issue such as that, there should be some charge. But for the everyday running of businesses, I urge you to consider changing the law.

Mr Hoogsteyns—Firstly, for the record, I directly represent over 400 members and indirectly represent seven local chambers of commerce. Hinchinbrook is certainly one of those in my region. It covers Hinchinbrook to the north, Homehill to the south, and west to Mount Isa and the border, and all ports in between.

I suppose from our point of view the first thing that was of note in this whole argument about APRA and licensing of the playing of music, et cetera, is that we believe provincial and regional areas of Queensland have been targeted foremost. There seems to be very little complaint from our membership base

in Brisbane, and it seems to be the same for some of the other regions further south. In this particular region, I have had more complaints about the approach of APRA and the payment of licences from areas such as Hinchinbrook, the Burdekin and west of Townsville, but fewer complaints from Townsville itself.

To set the scene, in Queensland 92 per cent of the private sector businesses are small business. We are not only the largest per capita small business sector of any other state but also the most decentralised. As Felix has already said, double dipping does occur. When you or any business have purchased the product to play in the store, you have already paid some form of royalty. It seems inane that, if you are playing that for the benefit of staff or just as background music within the shop, you have to pay another licence.

From our point of view, we are certainly concerned, foremost, about the targeting of regional areas; it seems to be double dipping. Certainly I concur with the double dipping example that Felix has already given in terms of the radios and TVs. They have already paid the licensing and royalty factor to play that material.

APRA's approach has been very rigorous. It is almost the same approach that we are getting from the Nigerian people when they say, 'Give me \$100,000. We will invest it and you will get a lot of money back.' It seems to be saying, 'Here is an invoice: pay up. If you don't pay up we will take you to court.' The approach just seems to be ludicrous in this day and age. There certainly was not any consultation prior to hitting everyone with the licence fee. It seems to have been around for a long time, but it has only reared its ugly head in the last year or so, which seems to be even more ludicrous again. That is where I leave my opening comments.

CHAIR—How integral is the playing of music to your members' businesses in general. What financial impact would result, for instance, if the businesses played music which is no longer subject to copyright or did not play music at all.

Mr Reitano—The playing of music just adds to the aesthetic appeal of the shop. It breaks the monotony of having a dead, morbid environment in which to work. I could not say in dollar terms how detrimental it would be without doing a survey, to be quite honest. It does add to pleasant surroundings for customer shopping and the staff environment, which is the overall part of the business, by having the music there.

CHAIR—Would you like to comment on that?

Mr Hoogsteyns—In respect of the small businesses in this neck of the woods—we are certainly not talking about the national chain retail shops that play music and even have video screens for atmosphere—that is really there to encourage their target market to purchase from them rather than from their opposition. We are talking about a lot of small businesses which have a cassette in the cassette deck or a CD in the CD player playing in the background. It does break the monotony if the phone does not ring 100 times a day or if there are not 100 customers coming through the door.

In some cases it may very well be that the playing of music is occurring in the backroom, not even in the retail part of the premises, but can be heard outside in the retail premises—and we are also still expected to pay a licence on that. I suggest that, by ceasing to play the music, the impact on businesses would be

minimal in a lot of cases; in fact, in a lot of cases there would be no impact.

I would expect that if a decision was made to turn off the music that in most cases the turnover figures for those particular small businesses that we are talking about would not be impacted. There certainly would be some obviously that would, but they would not be in the majority, I would suggest.

CHAIR—I am interested to know what types of businesses have been approached by APRA to pay the licence fee? Have you had instances where, for instance, businesses with employees only have music played for their benefit? Have those sorts of businesses been approached by APRA? I am talking about places like a mechanic's workshop or something like that.

Mr Hoogsteyns—In garages and service stations where the cassette is playing while the mechanic is fixing the cars, yes, there has been one out at Yuendon that has experienced it.

CHAIR—Was that for the playing of music in the actual workshop and not in the customer area?

Mr Hoogsteyns—Yes, it was in the workshop.

CHAIR—Separate from the customer area?

Mr Hoogsteyns—It was for the purposes of listening to something during the day, I suppose.

CHAIR—Did APRA pursue that?

Mr Hoogsteyns—They sent out a form letter. In that particular case, if a member rang me up and said, 'What will I do?', I would say, 'File it. I wouldn't pay it.' That would be subject to anyone getting pursued, obviously. My advice was, 'Don't pay it in those circumstances.'

CHAIR—Do you know what has eventuated? Does that service station now have an area where customers come in and move around the shop?

Mr Hoogsteyns—It is a typical small town service station which is probably more like the old ones you are used to in the capital cities. It has two garages next to a small shop, per se, and people go in there to book in their cars for a service, to pay for their fuel or to purchase a product.

CHAIR—Do you know about the outcome of that particular example?

Mr Hoogsteyns—No. In most of the cases in north Queensland where I have advised not to pay there has not been anyone pursued at this stage. From my recollection, most of this happened about 15 or 16 months ago in north Queensland when APRA really went wild and hit everybody. Obviously there was a lot of feedback at that point about what we would do and how we would approach it. My advice has always been on the basis that it is a legitimate licence under law and that you should pay it. But my personal advice is, 'File it and see what happens.'

CHAIR—Have these approaches all been made in writing or have APRA personnel approached some of the businesses?

Mr Reitano—Personnel have come in. When I am talking about small business I am talking about a business with under five staff, including the owner. Sometimes there is only the owner and one other there—often his wife or a part-time girl. Often these guys in grocery stores are operating from 6 o'clock until 8 o'clock at night. It does get a bit boring and having the radio on just helps to pass the time.

No customers have ever come into his shop or into my shop when I have had the radio or TV on and said, 'I have come to your shop because you have the TV or the radio on.' They have come in to buy a specific article and it just happens to be there at the time. If you asked 100 customers over a period of weeks what was on when they went in there, I do not think you would get five per cent who would know what was on—unless you had someone like Pat Cash winning the Wimbledon Open.

We are trying to get a national identity here. When things like that happen, even in North Queensland we like to think that we become part of the scene. We put it on TV so that people have a more unified national spirit. We have been penalised for that happening.

The issue of concern to these people in grocery stores is safety in the workplace. At what price a life? That is a matter of concern to people who have the radios on. As I said, no-one has ever played for the benefit of employees or clients coming through the door. Most people who grab their bit of milk or bread would not know what was on the TV or the radio at the time.

CHAIR—In the case of a grocery store where a TV or radio is on the counter and it is quite obvious that it is not for the benefit of the customer but purely for the benefit of the owner or employee, have APRA pursued those instances?

Mr Reitano—They have written extra letters. I am not sure if any of you people have been in business: the TV is behind them or to the side of them. They can stay at the counter and view it from the corner. It is some distance from the doorway—generally where the shop owner can view it. It has certainly given them a degree of concern that they are going to pursue it. That is why they have come back to me at various times and I have passed on their concerns to various bodies like the QCCI. Most people do not want to break the law. They think they are going to end up in gaol, that someone is going to do that. They are treading a fine line as to what they should do and what they should not do. The approaches they have made are probably a little bit heavy handed. I think there are other ways and means of doing this.

CHAIR—The number of people in those instances who just listen to the radio and television for their own purposes, would they have paid the licences? Would a number of your people have paid?

Mr Reitano—Some have paid. They were coerced. They felt that if they did not they would not be able to operate. I know of one particular fellow—I have heard of this second hand—who does not operate now. I have been told—I was not there at the time—that he picked the radio up and threw it in the bin. This fellow has been operating there for in excess of 20 years. It is instances like this that really cause concern to the poor guy who just wants to get on and do his job. He is not there to break the law. His place is registered as a place of work through the business registration forms. This, as I said, is a nail in their coffin.

They do panic. Most people are a little surprised to see a strange face in the town. And then they are told, 'You have to do this and this. You will be fined if you do not do this.' And they tend to panic. That is where our feedback comes from. They have not been to see my place.

The mayor rang me the other day and said, 'I believe you have spoken to Senator Hill.' I said, 'I have never met the chap. I know who he is.' He said that his bureaucrats said that I had spoken to him on an issue of concern in our shire at the moment. The mayor knows that I have not spoken to Senator Hill, and so does the President of the Cardwell Chamber of Commerce. But someone is telling the senators that we have had extensive consultation with the Chamber of Commerce over certain issues like this. This is what happens.

Unfortunately at the top—at your level—if you received a letter which suggested that you would probably believe it. This is where the lack of consultation takes place. This is part of the process that is going wrong in government at all levels. We are at the sharp end. We want to pay our taxes and pay what rightly needs to be paid. We believe that this particular licence is an impost. Radio stations are already paying that licence. Why should they be penalised and be made to pay more?

CHAIR—What if one of your members is playing CDs or tapes in an effort to provide the amenity for the customers and soothe them into parting with some money? Do you feel that there are any grounds for collecting royalties on behalf of the musicians?

Mr Reitano—If they are having an Elvis Presley night or a dance, fine. But no-one comes into my shop to dance; no-one comes into my grocery store to dance. They might dance if they go out from the newsagency and win the lotto or a scratch it, but they generally do not come to dance. We pride ourselves in Ingham in that we tried to get an Italian festival off the ground. I am wearing the shirt. During the week in which we have that—and I spoke to the Ambassador about this the other night—we promote Italian singing. If we play CDs as an appeal for that particular week, surely we are splitting hairs to say that we should have a licence for that particular thing?

Mr KELVIN THOMSON—The people who are seeking the copyright would say that, if particular works are being used to promote a particular mood or ambience, that amounts to the use of intellectual property. This is a different question from the issue of the radio, where I think there is quite a strong case being made about playing radios for the enjoyment of employees. But, if you have a particular type of shop and you decide you want to play Beethoven and Mozart because that suits your shop or if you play particular mood music for antiques or you play rock and roll for a surf, dive and ski shop or you play whatever fits the image of your shop, the artists would say 'You are fastening onto our work in order to promote your product.'

Mr Reitano—But surely when the retailer buys the CD in the first place, hasn't he paid for that? Where do we draw the line there?

Mr KELVIN THOMSON—They would argue that there is a difference between purchasing a CD for your private use—you go home and play it at home—and purchasing it in order to play it in a public place to assist you to make money. They would argue that there is a difference.

Mr Reitano—I am a furniture dealer. If I sell a lounge suite, and the person I sell it to then sells it to someone else, where do I stop saying that it comes from my shop? Where do we draw the line there?

Mr KELVIN THOMSON—Intellectual property is regarded as a bit more complex than the lounge suite, but we are trying to work our way through just where you draw the line on these things. When you talked about the Elvis Presley night or the Col Joye night, you were alluding to the kind of area that has been raised.

Mr Reitano—I understand that, but this is not happening in shops. We are talking about a business, a retail establishment which operates just in normal shop hours. I guarantee that, if you visited a few places in Townsville this morning and observed, there would have been a radio on there. But I would not have known what was on there, if I had had to go there.

Mr KELVIN THOMSON—I do not disagree with that. Customers walking into most shops are only going there for a brief period of time. Whatever music is playing is of no consequence to them. The music is for the benefit of employees—the people who are there all day—not the customers. I accept that as a proposition, but it can start to look different if you have a large store which sets up a system of piped music and goes to some trouble—rather than just sticking a radio on the counter—or if you are a store like Brashs which retails records, musical equipment or whatever, and the sound quality and the nature of the music you are playing starts to become important in promoting the product. If you have something that is setting a particular theme, it starts to look like you are making use of particular music rather than just passing the time of day.

Mr Reitano—In answer to your query, I make no apologies for the fact that, in the case where you have a festival, business houses do play music. I would be the first to admit that they do: we try to get them to play music, to let the people who are visiting know that there is something on here at a particular time, I would argue that the people who come into our shop then probably still do not know what is being played there. They just want to visit our shop for whatever reason. Maybe the committee needs to address the issue of that playing of CDs, but not when CDs are being played during the basic everyday running of a business. But we are still splitting hairs when we get to the stage where every time you run something, government says, ‘You are going to pay a licence for this, a licence for that and a licence for something else.’

CHAIR—If you were playing CDs for your own benefit at the counter and they could be overheard by the customers, the question of whether that were a public performance would arise. That creates another difficulty.

Mr Hoogsteyns—You raise the example of Brashs. Where they are promoting music—playing CDs to sell CDs for these artists who want royalties from small businesses—are they expected also to pay royalties, et cetera?

Mr KELVIN THOMSON—I do not see any reason why they are not covered by the legislation.

Mr Hoogsteyns—It is absolutely incredible then.

Mr KELVIN THOMSON—I think they would be more likely to be happy about it than a hairdresser who was just playing a radio to pass the time of day.

CHAIR—You do accept the concept of copyright, Mr Reitano?

Mr Reitano—Certainly.

CHAIR—You talked about your lounge. If you had developed, at some expense, a prototype of a lounge, and you had a working model that cured back pain, and you sold one copy of that lounge to a customer, and they then went out and made millions of them and sold them on, you would probably expect a cut, wouldn't you?

Mr Reitano—Yes. I understand copyright as such but, in this instance, copyright really is not the question.

Mr Hoogsteyns—What we are really talking about is not someone copying the chair but 100 people sitting in it. We are not talking about someone making 100 copies of a record and selling it. We are talking about 100 people coming to listen to one record or 100 people coming to sit in the one chair. To me that is not an infringement of copyright.

If we are talking about CDs, what about PC software? If we have a computer sitting in a retail shop right next door to the record player that is playing the record and I am playing a CD that actually has Microsoft Office on it and a customer looks over and asks, 'Can it do this or that?', and you show him what Microsoft Office can do, are you then expected to pay some sort of licence fee for just showing someone what Microsoft Office can do? You are not selling it to them; they are just seeing what it can do. There seem to be so many grey areas to this.

I have another example. In a couple of weeks the Melbourne Cup is happening. Every TV in the country is going to be on. Music will be played through commercial breaks or whatever. There will be all sorts of things being played while we listen. We do not just watch the race. We have a lunch, we have a bit of champers and a bit of chook, and we sit down for a couple of hours to watch the TV. Is everyone in the country expected to pay a licence fee just because they want to watch the Melbourne Cup? That is how ridiculous this thing has become.

I can understand the argument, but the benefit derived by customers very rarely happens in small business. It happens in the Myer stores where you have 25 TVs stacked on top of each other. They do not care; they will pay it. They can afford it. In Sussan shops or other national chains where the music they play is targeted at the market they want to sell to—the young folk or whatever—

CHAIR—Do you have instances also where your people are in big shopping centres, and there is music in the shopping centre? Do they also have to contribute to the payment of a fee on behalf of the shopping centre?

Mr Hoogsteyns—I am unaware of the exact details, but it would not surprise me, given the amount

of rent they have to pay, if there were a contribution to that. We have three shopping centres in Townsville with 100 or more shops, but, in terms of small retailers, I could not tell you exactly what each of them contributes.

Mr KELVIN THOMSON—Would that be part of the outgoings?

Mr Hoogsteyns—Yes. I can tell you that a small shop in one of our retail centres in Townsville paid about \$53,000 a year in rent. I would not be surprised if part of that was a contribution to the promotion, advertising and playing of music.

Mr KELVIN THOMSON—You said there seemed to be a blitz on the northern part of Queensland about 15 months ago. Can you tell us a bit about when that was and why you think there was some specific concentration on this area?

Mr Hoogsteyns—From our perspective, being a state-wide organisation and having regular managerial meetings in Brisbane where we raise issues, I am sure it was 15 months at least but it could have been longer. It was certainly last year—maybe as early as March, from what I can recollect—that we had our first complaints. Certainly, in subsequent meetings in Brisbane where I raised the APRA issue and what we were doing about it on a state basis, the initial response was that it was not happening anywhere other than in North Queensland—including Far North Queensland. My Cairns counterpart would have been the only other one who made a comment. Even then it just seemed to be Hinchinbrook, the Burdekin and the west. It did not seem to be Townsville.

The only gauge I have is the complaints I get when people raise those issues. On two or three occasions we have advertised it in our newsletter, which goes out across the region, saying, ‘If you have a problem, let me know.’ We specifically targeted the APRA side. If anything, PPCA seemed to be affecting Townsville. APRA was affecting the rest of the region. That is the feeling I had. I notice the Townsville chamber is coming in later and they may be able to help you.

CHAIR—I take it that there has been little communication either way between you—as chambers—and APRA. Have they never approached you to explain to you what their purpose is and maybe to seek your assistance?

Mr Hoogsteyns—No. Certainly not from my perspective in the regions. I have raised it at our Brisbane level, and there has not been a lot of feedback.

CHAIR—With APRA?

Mr Hoogsteyns—No, with my organisation. There has been no indication that any discussions with APRA have occurred either way.

CHAIR—So they have not contacted you at all?

Mr Reitano—I have never met an inspector of any sort, unless he came in and did not announce who

he was.

CHAIR—And you have never received a letter either?

Mr Reitano—I cannot recall seeing any letter, no. He had to walk past our shop to go to—

CHAIR—What sort of business do you run?

Mr Reitano—I am in furniture and real estate. We cover about four different—

CHAIR—Your furniture: is that retailing as well as wholesaling?

Mr Reitano—Purely retailing new and second-hand furniture. We have been in the district now for four generations. When I talk about small business, I mean under five personnel in the business. That is why they are so amazed when people come in, and half the time they do not even know who they are. They say, ‘Someone came in here from some organisation about how I have to have a licence for this. Is this a government one?’

A lot of them are convinced it is a government licence. They feel that because it probably has not been explained properly. Then they get a follow-up letter and something else and something else. They are a bit amazed by it all. I purposely spoke to a couple as I was coming down here today, and they just threw their arms up in the air and said, ‘What else have we got to do?’

CHAIR—As well as the recall of goods, do your members use radios and televisions for other emergency purposes?

Mr Reitano—We live on a flood plain in Ingham and we had a flood this year. We had a cyclone that came through Townsville here. Without the emergency service of a radio, and bearing in mind that all telephone communication can go out—it happened this year too that all telephone communication was out for a couple of days—radio can be the only means of contact. This puts an enormous strain on the SES workers.

Unfortunately, I think people did not realise that. I know that some of the council staff did not realise it, because when I went there to check the latest reading and showed them my faxed copy of where the cyclone was and said we were going to have about an 11 plus recording here of the flood level, they said, ‘No, we won’t because we just got one from our automatic thing which said it was 10.’ Before I was out of the office it was 11, and when I got back to the shop it was 12. These people have not been around long enough to know how to warn people. The only way you can warn people is to put notices out over the air every hour. People listen to that. This is critical as a safety issue in flood and cyclone times.

Mr Hoogsteyns—In North Queensland we experience cyclones, and an entrenched part of your cyclone emergency kit is a transistor radio.

Mr Reitano—With spare batteries.

Mr Hoogsteyns—With spare batteries. I would not think there would be too many people out there who did not have that, one way or another, whether it be business or private. Certainly, the first thing we do at work, even in my office, during the cyclone season when we know there is a cyclone on the coast, is to put the radio on. You have it on the whole day. You get bulletins every hour and you do not turn it off, just in case. You want to know whether there are power lines down or roads blocked. Last year, for example, and really for the last four years in this town—and Burdekin and Ingham—we have had cyclones every year that have run up and down the coast. No-one has known what they were doing. You can be listening to the radio constantly for three or four days in a row.

Mr KELVIN THOMSON—That strengthens the case for that distinction between radio and the cassette CD sort of stuff we were teasing out earlier. Radio is a necessity and perhaps should not attract the—

Mr Reitano—If you ask the opinion of the general managers of the radio stations here, I am sure that opinion would be echoed because of the safety factor. How effectively they handled the situation was commented on. Without them there would have been danger to life. There certainly was for a couple of days. Even at the radio station the reports need to be accurate. There are times where there is probably an hour's difference, and an hour's difference can mean a metre of floodwater. That is the difference between whether you can get home or not. I know of a doctor in Ingham whose car was washed away because, between the time he left here and got there, the level had risen. It is critical as matter of safety to ensure that factor.

CHAIR—Do you have any final comments you would like to make.

Mr Reitano—Like many small businesses, we would like to survive, and we want to survive within the law. We want good laws and good government. If laws are changed, they need to be changed for the better, and I think this would be a law that could change for the better. I implore you to change this law to assist business to survive—not to make money, just to survive. Small business is the largest business in Australia, and governments of both persuasions need to address that issue. That is the message I have from my clients.

Mr Hoogsteyns—I would certainly echo that. For the benefit of the sub-committee, in 1996 QCCI carried out a state-wide survey of imposts and burdens on business. In Queensland, for small businesses—we are talking micro: five and less—the survey resulted in an average of \$67,000 per annum in imposts, at around about 42 cents in the dollar. That was all inclusive. It included workplace health and safety, industrial relations actions and certain other licensing factors, but it did not include APRA. APRA or any licensing in this regard would certainly be just another added impost. At 42 cents in the dollar, it is bad enough as it is. We have a red tape reduction task force happening at both the state and federal level. If we have to start looking at things like APRA et cetera, it would appear to be robbing Peter to pay Paul. I will finish up there. That is all I have to say.

[12.22 p.m.]

BARRIE, Mr Douglas Russell, Seymour Hotel, Fulton Drive, Bemerside, North Queensland 4850

CHAIR—Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Would you like to make some introductory remarks?

Mr Barrie—I certainly would. Thank you. I apologise if my introduction seems repetitive with what has already been said here today, but these points I am about to go through affect my business. My wife and I have been running the Seymour Hotel at Bemerside here in North Queensland for the last 10 years. We only knew of APRA's existence in a vague form as having something to do with ticket sales for various live concerts around the countryside.

Over the last 12 months, I have come to know the APRA association more intimately. I have received numerous letters from APRA in Townsville and from their solicitors in New South Wales. Most of these letters have contained accusations, legal threats and an overall content of intimidation. I can see why most small businesses that I have spoken to have paid the licence fee under the pressure of the legal threat.

After throwing out the first circular-type APRA letters as a moneymaking scam, some businesses—myself included—then received more demanding letters. For a short time, we incorrectly assumed that APRA was a government body. This was because the term 'licensing department' appears on the application forms in bold letters at the start of the APRA Brisbane address.

The main argument concerning APRA revolves around the question: when does music played in a public place become a public performance? APRA's interpretation of the Copyright Act is totally biased in favour of financial income for APRA, answering the question with the view that all music played in a small business is a public performance, even if the public area only caters for one or two people. In these situations the music does not add to the small business's income.

Businesses that I have spoken with which obviously do not derive any monetary benefit from the playing of radio, TV and music are the hairdressers where people go for haircuts, general stores where people go for groceries, buses that people ride on to get from A to B and even a sports fishing guide who owns and operates a four-wheel drive vehicle and a four-metre fishing boat. All of these businesses and a lot of other businesses have come under notice from APRA's money-grabbing licence fees.

If music played in public is clearly not benefiting the small business in a monetary sense and is being used as background music to make a happier workplace or to alleviate the staff's boredom, then this should not be classed as a public performance, even when a customer enters the premises to carry out a purchase. The customer does not purchase a larger quantity of goods because there is background music playing; therefore the playing of background music should not attract an APRA copyright licence fee.

TV and radio are blatant examples of APRA's unfair interpretation of the Copyright Act. A music

artist pays a fee to be a member of APRA. When the music goes to air by TV or radio, APRA demands a fee from the respective TV or radio station for the right to play such music on the air to the public. Then APRA demands a fee from the small businesses that play music in their public areas.

Radio and television should be free to air, as they are promoted to be, and, although APRA has its members' music appearing on the air, APRA has already been paid the required copyright fee by the respective media organisations. APRA should not have the right to charge small business people for the right to listen to public notices and news, in their public areas, which may be vital to health and/or safety in times of cyclone, flood and/or road closure.

With regard to my business, I operate the smallest hotel in the Herbert River district and am currently being treated by APRA as if I were one of the biggest. I have had two separate visits from APRA representatives acting incognito and recording my recorded music along with my conversation in my public bar area, without my permission. The attempt at money-grabbing by APRA is further illustrated by the last occasion, on 22 September 1997, when infringement evidence was obtained at the Seymour Hotel. My hotel was open for a period of 12 hours on 22 September. There were fewer than 10 customers, including the APRA representative, during those hours. The day's money takings were \$151.10.

APRA's ridiculous policy—or unjust interpretation of the 1968 Copyright Act—is proven by the actions of the person who, on 22 September, went to the trouble of recording music and my conversation in the public area, but missed one vital point. During this person's time of gathering infringement evidence, the public performance of music was to just myself and this charity case from APRA, who did not have enough money for a tin of Coke. I supplied him with a tin of Coke for the small amount of change he tendered. Later, in conversation, I suspected he was associated with APRA when I noticed a small tape recorder he was attempting to conceal in his hand. Acting incognito and probably thinking he was very clever, this devious person failed to introduce himself as having any connection with APRA.

APRA's intimidation continued via a letter delivered in an overnight envelope that I received just last week. This letter, dated 1 October 1997, informed me of further evidence of infringement obtained at the Seymour Hotel on that date of 22 September 1997 and informed me that APRA remained prepared to grant me the required licence on receipt of my application and payment by 15 October 1997, or legal proceedings would commence without any further notice to me. You have a copy of this in front of you, I think, with the original letter that stated that.

I am concerned about the timing of the last infringement evidence obtained on 22 September at the Seymour Hotel and the deadline of 15 October for my payment to be received by APRA to avoid legal action. This coincides with my submission, to be heard by this inquiry, that was considered in Canberra on 4 September 1997 and today's hearing being held the day after APRA's 15 October deadline for my payment. Am I paranoid or was this an action by APRA to shut me up?

My personal music is not used to attract or keep customers at the Seymour Hotel, and therefore I do not make money from music and I do not have a public performance of music. I will not be intimidated into paying any unjust licence fee. I am nearly finished. It is just food for thought.

After a High Court decision in August of this year our state governments were placed in a position of doubtful constitutional validity in regard to the collection of business franchise fees on tobacco, petrol and liquor. The business franchise fees on liquor affected me personally. If our state governments were not in a position to collect these fees without any doubts, then how is it possible for a commercial organisation such as APRA to demand collection of fees? These fees are said to be collected for the use of products of APRA members from businesses that are not members of APRA and should not be controlled by APRA.

In conclusion, state and federal governments of all political persuasions have declared their intention to foster small business. Small business has been asked how this can be achieved. From my point of view, the removal of small charges and fees that are imposed by the likes of APRA would go a long way to relieving a financial burden, not to mention mental stress.

Resolved (on motion by Mr Kelvin Thomson):

That the document provided by Mr Douglas Barrie be accepted as an exhibit and received as evidence to the inquiry.

Mr KELVIN THOMSON—The music that you play—*Lay Down Sally* and *Knockin' on Heaven's Door*—is that on tapes, CDs, radio?

Mr Barrie—CDs.

Mr KELVIN THOMSON—Have others around here had similar experiences to you or is your experience a one-off?

Mr Barrie—Mine is the most drastic. Most pull their heads in and tell white lies and say, 'We have disconnected it. It is out of the area. We don't have it,' and then nothing happens. But I told the truth. I said that I played it in public for my own personal use and all hell broke loose.

CHAIR—So you would say that the reason for playing music in your business is totally personal and not connected with providing ambience or entertainment for customers.

Mr Barrie—Definitely no monetary gain from the music. Since APRA has made its existence prominent in the last 12 months, the music has been played very faintly in the background or turned off when people are in the bar.

CHAIR—So they would not be able to benefit from it now, and there has been no change in your business due to that?

Mr Barrie—Definitely not.

CHAIR—So people do not come in and congregate to listen to the music in any way.

Mr Barrie—No.

CHAIR—Do you have copies of the original pamphlets that were sent to you?

Mr Barrie—Yes, I do.

CHAIR—Do you have them here?

Mr Barrie—Yes, I do.

CHAIR—Perhaps we could have a look at them, if you do not mind. Have you got them there?

Mr Barrie—Yes. Do you want to look at them now?

CHAIR—We would not mind having a look at them. Did you think this might be a scam or a hoax?

Mr Barrie—Initially, yes—the first half a dozen letters that are not within that folio. It only starts in July or August last year. There were probably three or four before that that just went in the bin as a hoax.

Mr KELVIN THOMSON—Have you had dealings with the Australian Hotels Association in relation to this? Do they provide advice to yourself or others concerning these matters?

Mr Barrie—Yes. Their bulk advice was: ‘Pay the fee. We will be investigating it in the future.’

Mr KELVIN THOMSON—You have taken a more militant position than that.

Mr Barrie—Once you pay the fee you set a precedent. There is no going back.

CHAIR—Have you received anything from any other group collecting licence fees?

Mr Barrie—Yes.

CHAIR—Who are they?

Mr Barrie—The PPCA, which is the Phonographic Performance Company of Australia—the recording companies themselves.

CHAIR—Could you understand why they would be writing to you as well?

Mr Barrie—They are in the shadow of APRA. If APRA succeeds I have to pay the PPCA licence. So it is ongoing.

CHAIR—So you have refused to pay that one as well, have you?

Mr Barrie—I have not answered that.

CHAIR—Can you tell that there is a difference between what they are asking you to pay a licence fee for and what APRA is asking you to pay a licence fee for?

Mr Barrie—I am sorry. Can you make that clear?

CHAIR—I was trying to work out whether you understood why you would have two bodies writing to you asking for a licence fee. Can you understand why one would be asking for a fee and another one asking for a fee? Perhaps you could explain it to us.

Mr Barrie—Basically they are greedy. But, clearly, APRA represents the artists and the PPCA represents the recording companies. So the recording companies cannot get royalties or copyright for records played until APRA succeeds in getting payment for their music that is played. Without the music and the artists appearing on the airwaves or in public places, the recording companies are not being aired, are they?

CHAIR—Have other people to your knowledge been receiving notices from the PPCA as well?

Mr Barrie—Yes.

CHAIR—Are they perplexed about the fact that they are getting two sets?

Mr Barrie—For sure. But when I speak to them I explain the difference—if I pay one, I have to pay the other.

CHAIR—Are they tending to pay them both or are they refusing to pay them both?

Mr Barrie—PPCA is done in such a primitive way with a terribly cheap typewriter that most people are treating it as a hoax and rubbish. It is usually spoken about in a joking manner, whereas APRA is more professional with its forms and documents. It comes across as a government form.

CHAIR—So far you have ignored the PPCA letter and you have not received any follow-up letter.

Mr Barrie—I think I am up to the third and final demand.

CHAIR—Has anybody, to your knowledge, been pursued further by the PPCA?

Mr Barrie—Not personally. Most people get their second or third demand but it does not seem to go much past the third demand. I have heard nothing for six months.

CHAIR—This has been most helpful to us, Mr Barrie.

Mr Barrie—Can I just grab my notebook to make sure I have covered everything?

CHAIR—Okay. You are welcome to make a final statement.

Mr KELVIN THOMSON—You raised the issue of the business franchise fees and if state governments cannot collect them where would that leave APRA legally. There is in fact a different issue there. The states are prohibited by the constitution from levying customs or excise. The Commonwealth has exclusive power over those sorts of fees. So the High Court decision was that those particular business franchise fees—tobacco, alcohol, petrol and so on—were outside the states' constitutional authority. So it is different here. Mind you, I do get the impression that there are some unresolved legal issues around about what constitutes public performance and all sorts of things that do not seem to have been tested through, so the legal status of some of these things may well be unclear.

Mr Barrie—I did only throw that at you as food for thought. It does not affect me personally. It just irritates me that this is happening.

Mr KELVIN THOMSON—Somebody might bring this scheme down in a screaming heap just as business franchise fees were brought down in a screaming heap, but that is another matter.

Mr Barrie—You used the correct word there anyway; it is a scheme. It is a very clever scheme that was instigated initially by a team of lawyers and solicitors that I think should be invested at the birth stage rather than at this stage here.

I would like to answer a question that you asked earlier about the North Queensland interest. APRA established a licence rep in Townsville some time early last year. It is obviously a need to justify that position. The spraying of licence fee documents to small businesses started at around about that time—May, June, July of last year. Service stations do not seem to have been hit in a particular manner but grocery shops, vegetable outlets, hairdressers and small hotels seem to have been targeted. I cannot answer the question why there, but they are the people I have spoken to.

CHAIR—Mr Barrie, have you been receiving any support from chambers of commerce in your endeavours to fight this?

Mr Barrie—No. Actually we have felt very lonely until we heard of this hearing. So that gave us a little bit of energy and enthusiasm to do what we have done here. We were getting set for a Federal Court action actually.

CHAIR—Thank you very much for attending. We appreciate that.

Luncheon adjournment

[1.43 p.m.]

HEMPTSTEAD, Ms Lorna Rosemarie, Vice-President, Townsville Chamber of Commerce Inc., PO Box 1114, Townsville, Queensland 4810

PEDLER, Mr Gary, Manager, Townsville CBD Promotions, Townsville City Heart Traders Association, PO Box 2074, Townsville, Queensland 4810

POWER, Mr Richard Thomas, Chief Executive Officer, Townsville Enterprise Ltd, PO Box 1043, Townsville, Queensland 4810

CHAIR—Welcome. Although the subcommittee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. If you would like to make some introductory remarks, we would appreciate hearing from you.

Mr Power—We support the Townsville Chamber of Commerce, which is the lead agency from our point of view, in this inquiry. Townsville Enterprise Ltd appreciates the opportunity, however, to comment further. Perhaps I should give you a bit of background into Townsville Enterprise.

As I said earlier, we are the peak regional development promotional organisation charged with responsibilities covering economic development, leisure tourism, conventions, special events and lifestyle issues in this region. The organisation has over 500 members. Its board is made up from local government statutory authority representatives, and civic and business leaders from the region. Its funding comes from local government, state government, statutory authorities and a broad range of private enterprise organisations—which contribute about 50 per cent of the total funding for the organisation.

The issue of copyright proved a rather vexed one for our members. Indeed, the paper that I have submitted today gives more detail, and I will provide a precis of it fairly quickly. What underrode most of the comments and most of the feedback we received was uncertainty and confusion. The understanding of the role of APRA and the PPCA certainly came to the fore. There was a great deal of uncertainty about the meaning of the words ‘in public’. For instance, did a radio or television in a room in a motel constitute ‘in public’ or, as the moteliers put it to us, in private rented accommodation?

The music broadcast by radio stations and then relayed throughout motel reception areas was questioned as double dipping by the licence collection agencies. There was also uncertainty regarding the difference between the relaying of a radio or television signal, the playing of a portable radio by an individual employee and the playing of specific music from tapes and CDs throughout the premises or parts thereof.

I will address the terms of reference very briefly, starting with item 1(a). We believe there is an absolute need for an appropriate campaign simplifying the law and the circumstances which would be applicable to individual cases. With regard to item (b), I provided by way of an example a small supermarket based on the number of speakers as opposed to a motel based on the number of speakers in the different

rooms. There was obviously a considerable difference when you consider the number of general public—employees or customers—that would be exposed to music through those sources.

With regard to item (c), again, the overriding factor was double dipping. However, I must say there was some sympathy for licence fees associated with direct playing of CDs and tapes as opposed to television and radio replay. I think it would be fair to say that no-one objected to performers of music, writers or lyricists receiving some kind of remuneration. Under item (d) there was a very loud and clear message from our members to keep whatever happens simple.

With regard to item (e), the majority of members are not aware of the tribunal and, in many cases, are not aware of the detail of the law—APRA or PPCA—and their functions. Item (f) is obviously of concern but, given the confusion which surrounds the implications of the law and its application, that needs to be clarified at some time. Throughout all of our discussions, no-one advocated disregarding the law and the rights to collect some royalties. But I have to reiterate that the overriding concern was confusion and that, if something is to be done, it must be kept very simple.

Ms Hempstead—In order that we do not keep repeating ourselves, we three have had a pre-meeting conference and I will put on the record that the Chamber of Commerce does concur with everything that Townsville Enterprise has said, and that, too, is very much reflected in our membership, which also totals well over the 500 mark. There is quite definitely a feeling amongst our membership that there should be a very clear definition between the re-broadcasting of radio in the workplace and the use of professionally created music in the form of CDs or tapes. Again, our members were happy, once I had explained to them—as I come out of the arts industry—exactly what APRA and PPCA money does. They said, ‘Is that what it is for? Oh, it actually goes back to pay the people who created the music’. People do not have a problem then.

I really would stress that there are two separate sets of problems. One is that APRA and PPCA—and particularly APRA because they are the people who have been campaigning most actively up here to be paid money—have given no indication of what it is all about. Many businesses have disregarded the letters. We have had two scare campaigns up here recently. For instance, people have been asked to give their bank account number to this company in Nigeria and they would put money in their bank account, and people have been silly enough to do it. A lot of people regarded the APRA letters as yet another example of, ‘Oh, yes, this is going straight into someone’s pocket for some scam in Sydney.’ So I think there is that issue most strongly, which is lack of information and lack of understanding.

The second issue relates to re-broadcasting of radio in the workplace. The two stations most listened to up here are both regional stations and not national stations. The average ratio of talk to music is 60 per cent talk to 40 per cent music, in the main body of the day, and 70 per cent talk to 30 per cent music, in the breakfast slot. This is a time when a lot of manufacturing and warehousing types of industries are starting up at 7.30 in the morning. Those were the figures supplied by the regional ABC. Therefore, we would argue that being able to listen to somebody talk, which does not earn that person royalties, does not necessarily need to be licensed or paid for.

There is another issue which I think is particularly important in northern Australia and that is, during the cyclone season, the radio is a mandatory method of informing the regional community about the state of

the weather. It is also the mandatory method of shutting a town down. Police and emergency services cannot ring every business. The broadcast goes out 'We are now inviting everyone to go home'. That is also important.

In terms of workplace health and safety, re-broadcasting, whether it is radio or recorded music by a central system, is infinitely more desirable than each person bringing in their own walkman, clipping it in and placing their earplugs in their ears to hear their own station, for two reasons. One is that, if they choose to have it at an unacceptably loud level in the workplace, they could be doing themselves damage. In the event of a hearing loss, is there a possible claim by some vexatious person against the employer? That has never been tested, so it could be a tedious problem. Also when individuals are listening to their own music, you have no control. If you have a central system and you wish to make an announcement to your staff or if there is some sort of emergency, you flick the main switch and say, 'We will now evacuate the building' and you know that everybody, including the people in the toilets, has heard. I will rest my case there.

Mr Pedler—As you have already heard, a lot of us have a distinct overlap in our roles, so a lot of the areas have already been covered. Probably the best that I can do is to go into some specific areas. My background, before this job, is that I was with the Darling Harbour Authority and I was responsible for sound systems there, including installation of major sound systems, and I have had a theatre background before that. So I have had experience with copyright in various forms in the past. Putting it into its local context, our association runs a sound system which covers the whole of the Flinders Mall area. We also put on live music and we also represent the businesses in the area.

Checking through our records as far as playing music in the mall, that was originally contracted through a company called Soundcom and they, in theory, paid all royalties for us. I have got documents here on things like final notices from people like APRA, who then came along and said, 'Hang on, you owe us fees' and all that correspondence goes to and fro on 'Why do we owe you fees? Why APRA, when we are already paying Soundcom for PPCA' et cetera.

One thing that comes out quite strongly is that both organisations work very independently. I can find only two instances where they make reference to the other organisation in any correspondence. Quite often—and this was the same experience in Darling Harbour—where we have paid APRA fees for years, another organisation comes along and says, 'Hang on, that is not sufficient; you have to pay us as well.' When you actually look at it, there is very little difference on the surface as to why you should pay one and not the other. In the case in point here, for live performance, we usually consider that as being our APRA fee but, in reality, we also pay APRA for our recorded music.

With the PPCA one, although that, in theory, relates to recorded music, in most cases where there is a live performance, there is also a recorded component. So again, you are paying up twice. Why there are two organisations is very hard to understand when, effectively, everyone has to pay both anyway. As I said, both organisations work very independently and do not seem to make much attempt to say, 'Hey, there are two of us and you need to pay both.' For instance, in a letter from APRA, the Commonwealth Copyright Act 1968 states that, where copyright music is played or performed in public, authorisation must be obtained from the copyright owner. The authority takes the form of an annual licence issued by APRA. There is no reference to any other fees et cetera. As I said, this is quite common in most of their documentation. That is where all the

problems come from, with businesses in the area. They do not understand why they are paying twice and it is creating a lot of friction.

It is interesting that the businesses have no problem about paying a fee. I was talking to one business and they were quite proud of the fact that they paid both fees. They see that as a status symbol—the fact that they know what fees to pay to run their business. On the other end of that equation, I was talking to another businessman who scratched his head and said, ‘I have all these letters. What does it all mean?’ I explained some of it to him and he said, ‘Forget that. My stereo is going home.’ Some of them are quite happy with the situation and, in fact, they support the fact that they have to pay fees but they say, ‘Can you make it simpler for us? Can you make it easier to understand? That is where a lot of the problem is coming from.

One case which has come up here is that PPCA talk about charging by the speaker. Yet we have a document here saying that they are charging by the square metre. In Darling Harbour, we had a system which had over 500 speakers in it. It was put in that way because the latest technology works on an array speaker system. Their approach was to charge by the speaker, so the changes in the technology meant that the costs went through the roof. Yet suddenly they are saying here that they will be charging by the square metre now. They seem to be changing, depending on where they are and what they are trying to charge.

My experience with both organisations is that they seem to be working their way outward. They have started with the areas where they can get the maximum recovery. For instance, in most of the documentation here, they are singling out particular industries and businesses where they want to recover fees. There is actually no difference between those businesses that I can see and the business next door other than that those are the businesses where they see they can recover fees at the moment. It comes back to the basis of what is in public and how far are they going to take this recovery of fees? Does it go down to the stage where you are charging a motor mechanic for having the radio on in his business? Is there a point where it actually stops? I can see no clear line at the moment where I can explain to a business ‘No, you are outside the line’ or ‘You are inside the line’.

CHAIR—With respect to that, have you ever been approached by APRA or the other group to assist them in their campaign?

Mr Pedler—I have had no approaches to assist them in any way. As I said, from the documentation we have, we have been treated as just another organisation that needs to pay fees.

CHAIR—Have you been approached at all?

Ms Hempstead—No, in the Chamber of Commerce, we approached APRA. Because I had dealings with APRA in another life, I took it upon myself, as vice-president of the chamber, to approach APRA. We had a meeting up here with representatives from Brisbane. We had a very open and frank discussion about their appalling method of approaching businesses—in the chamber’s view—which had never been asked for a licence before. Their one-page letter says, ‘You are a business. You have a sound system. You owe us money. You have 28 days to pay or you will hear from our solicitors.’ Attached to this letter is a page of explanation.

We had a long discussion with APRA, because I am very sympathetic to the needs of artists personally, about the need for a public relations campaign in the regional media that everyone reads. They went away and said, 'Yes, that was a really great idea.' They understood that perhaps they had a somewhat of a bull at a gate approach and apparently took that on board.

The chamber's next newsletter to members carried quite a lengthy article that I put together, explaining what happens to the money. We had good feedback from our members saying, 'Thank you very much. We now at least understand what it is all about.' They then understood that they owed the money. To our knowledge, there has been no regional campaign in regional media initiated by APRA or PPCA to explain this. I have had no dealings at all with PPCA. It has been APRA that has been most aggressively hunting the money within this region.

CHAIR—They say that you owe them money but they have only ever asked for current year fees, haven't they?

Ms Hempstead—Yes. It is in the sense that you are now due to pay money.

CHAIR—There was no suggestion that they were claiming for years past.

Ms Hempstead—No, they were not trying to claim back fees. But one business in the mall who happens to be a member has been there for 40 years. They have never paid an APRA fee. They did not know they had to pay an APRA fee. They get a letter out of the blue and the business owner just automatically assumed it was a scam and threw it away.

CHAIR—Who pays for the music you play on behalf of the mall? Do the shopkeepers make a contribution to that APRA fee?

Mr Pedler—We are funded by a council levy on the business owners in the area, plus membership from members of our association. Effectively, you could say that that is what is paying for the set up. We pay a company called Soundcom to provide music and, in theory, to pay those fees. That was the original way it started. That means we are in the unusual situation where we are paying the PPCA fees before we are paying APRA. It was not until APRA came around recently and said, 'Excuse me, you owe us fees for sound systems and all the rest' and we said, 'Excuse me, they have already been paid.' It then had to be checked and proved that those fees were being paid. It was an interesting situation because they argued the fees already paid only covered recorded music and because we also had live performances we had to pay them all again.

CHAIR—Are you saying the subcontractors you bring in pay those fees?

Mr Pedler—Effectively, the subcontractors were paying for the recorded music but then APRA came round again and said, 'You are also playing live music, so you need to pay for that as well.'

CHAIR—Were you bringing in bands?

Ms Hempstead—On a centre stage area.

Mr Pedler—It meant that at the moment we pay APRA through our Soundcom component but we also pay APRA direct. We pay PPCA through Soundcom. In effect, we also pay PPCA direct because that does not cover the situation if we play music on the stage. It just gets further and further out the further you go.

A classic example was at Darling Harbour when we were performing at a fireworks show. There is copyright on the original music. That music was recorded from a CD and transferred to a tape and there are royalties on that blank tape. The fireworks company pays APRA and PPCA and Darling Harbour pays APRA and PPCA. So you have four hierarchies of royalties to two separate organisations for one tape that lasts for three minutes and plays at one fireworks show.

CHAIR—I suppose you do not play music in the lifts.

Mr Pedler—We do not have lifts. Also bear in mind that the music we are playing is being played into what is very much a public area in this particular context and there are no charges associated with it. It is just to give background music. That system is also available to play those emergency announcements which were given before—we will turn it on to radio so people can hear any announcements about cyclones, et cetera.

CHAIR—What sort of money are you talking about in terms of the fees you pay to those organisations?

Mr Pedler—In total we are talking about a few thousand dollars but that is talking live entertainment as well. In some cases the component is quite small and you wonder why they bother collecting it. But, as I said, by the time you put all the bits together it becomes a reasonably large fee. Without looking through my notes, I could not give you an exact figure.

Mr KELVIN THOMSON—There are a couple of suggestions in your comments about the value of or the need for an awareness campaign, the issues involved in playing music in public and an awareness about the licensing system. In terms of getting a campaign like that up and running, where does the responsibility lie or what has happened to suggestions that that ought to occur?

Ms Hempstead—I would argue that it lies with the organisation wishing to collect that money to establish their bona fides with the people from whom they wish to collect it. Certainly, in the case of this region where letters from APRA have been arriving within the last year for the first time ever, it is not at all surprising in my view that they are treated with a degree of scepticism.

Mr KELVIN THOMSON—Have you done anything in terms of advising your members about this and what the legal position is as you see it?

Ms Hempstead—Yes. The Chamber of Commerce carried quite a lengthy article in one of its newsletters. If you wish to see a copy, I will arrange to send one in. I did not think to bring one with me. It

was just a very straightforward factual newsletter that said, 'You are getting letters and this is what it means.' I will arrange to send one in.

Mr KELVIN THOMSON—Yes.

Ms Hempstead—The discussion with APRA was that, yes, they agreed that they needed to improve their public relations.

Mr KELVIN THOMSON—But you were saying that there was not any follow up.

Ms Hempstead—No.

Mr KELVIN THOMSON—What would you see as being an effective campaign in this region to get those issues across?

Ms Hempstead—For instance, the *Townsville Bulletin*, which is our regional daily newspaper, six days a week, has a business section. It devotes a fair amount of it to regional business issues; it does not just regurgitate what comes in on the wire nationally. It also has a weekend entertainment section called 'The Good Guide', which focuses on aspects of entertainment.

If APRA had approached the *Townsville Bulletin* with a media release that related to the business payment, they would have published it in the business section. If in 'The Good Guide' perhaps a couple of weeks later they had done an article on what happens to the money when it gets into APRA and how regional musicians who have commercial recordings will access that, they would immediately have got two bites of the cherry with absolutely no problem at all. I would say that would be equally true of the smaller papers up and down the coast.

Mr Power—There are 6,000 businesses in this region. I should have thought that it would not be too difficult or expensive to have a letterbox drop—a couple of A4 pages simply explaining the system, the law, and the individual's responsibilities. That is not an expensive exercise. I am sure that would then work in other areas. Once you have set the parameters—again, I would stress the keep it simple system—I am sure that would go a long way to allaying the fears and concerns of a lot of the businesses. I would support Lorna's comments. The only contact we have had is through the chamber and through this inquiry. Other than that we have had no approaches at all.

Mr KELVIN THOMSON—Townsville is an area with a lot of tourism based small businesses. Do you have any feel for this having an impact on the tourism based businesses and, if so, what would that be?

Mr Power—The concern with tourism, in speaking to operators, was again double dipping, and one or two were quite emotional about having to pay twice. Even though those fees may seem small—and we were talking at that time about \$50 and \$60, not large fees—they said that they felt they were paying twice. Again, the question came through: what is a public place? That seemed to be the debate. Why should you be paying for a speaker in a room in your establishment? Is that a public place? Their argument was that it was not a public place. It was more the confusion and uncertainty, rather than the fee itself, and this effective

double dipping, particularly when they relay radio signals or TV.

Mr KELVIN THOMSON—It was a discussion we were having this morning. There is a difference between someone putting on a radio to enable employees and so on to have a more interesting work day than they would otherwise have and—let us say on the tourism theme—someone wanting to replay music which creates a particular ambience, so they then go after particular tracks or records which will create that feel about the theatre or museum, or wherever it is that people are walking through. I think there is an intellectual property argument in relation to that situation, whereas in the first example it seems doubtful to me that there is.

Mr Power—There was not a great problem with a licence fee generally from the industry. What they were concerned about was the double dipping, two fees, and what fees applied and how they applied. That was the underlying concern. I do not think we got the feeling from any of our members that there was concern about the fact that they needed to pay something for the work that someone else had done. I think that emerged right across the board.

CHAIR—With respect to the tourism industry, I know that boats take people out to the reef and so forth and some of them are quite small. Have you had complaints from them that they have received letters asking them to pay a fee?

Mr Power—Not directly. Some of them are very small businesses and they may not have yet been at the end of the chain that Gary was talking about. Some of the larger operators have been approached, yes.

CHAIR—And they have paid the fee?

Mr Power—In one case, yes; in some other cases, no.

CHAIR—These are some of the big boats you are talking about?

Mr Power—Yes.

CHAIR—Do they have television sets?

Mr Power—They have television sets and basically they are on while they are out there. There is also piped music. One operator has basically said to us, ‘What do I do?’ He has a speaker system in his car and he runs a small business on the beach. He plays the radio and CDs through his car sound.

CHAIR—What is his business?

Mr Power—He runs activities off the beach.

CHAIR—Music is an essential accompaniment to that?

Mr Power—One would argue it is not. I guess his argument would be that it is part of what he does.

My suggestion to him would be that he would need to look at fees.

CHAIR—With respect to the big boats, they would have multiple television sets and piped music. APRA would argue quite strongly that that is the ambience that is being created for their customers, whereas I imagine with a small charter, the little boats, they might play a radio which is also an essential tool for warnings of tides and typhoons.

Mr Power—Again, an operator might take out 10, 15 or 20 people and an operator may take out 300. They are completely different operations, completely different levels. In one case, you would have one speaker; in the other case, you would have one or maybe two speakers or, if there are three decks, maybe four speakers but certainly not 24. It comes back to the comment about the supermarket and a motelier. One would have a lot more traffic. If a motel room has 40 rooms, it will have 40 speakers. A supermarket would have 10 speakers, but the motel would probably have two occupants maximum per room. If we are charging on a per speaker basis, there is a lot more exposure in a small supermarket than a motel.

CHAIR—For usage?

Mr Power—Yes, for usage.

Mr KELVIN THOMSON—I might just make a couple of interim comments in response to issues that Mr Pedler raised in his letter. He talked about issues for consideration and asked:

Can a clear definition of what constitutes a public gathering for the purposes of copyright be determined?

It does strike me, listening to witnesses and so on, that this is an important and uncertain area. It does strike me as a task for this committee to have a go at answering.

You then mention the issue of who is representing whom and whether a simpler single fee system of collecting fees can be devised or include public rights in the cost of the records and so on. I guess the answer at this point is perhaps. It is one of the issues that we have to consider.

Similarly, you mention a final issue about whether radio should be exempt from further copyright fees as materials in the public domain and the double dipping idea, which has been raised by a number of witnesses. Once again, that is something we as a committee will have to look at.

CHAIR—If I were a small business person, what would be the difference between the licence fee I would pay to the Australian Performing Rights Association and the fee I would pay to the Phonographic Performance Company? Can you explain to me, Mr Power, what the difference would be?

Mr Power—The fees for one would cover, obviously, radio and television. The fees for the PPCA would cover, as I would see it, the replay of music off CDs and tapes.

CHAIR—What would you say about that, Ms Hempstead?

Ms Hempstead—No. The copyrights relate to the original music, the artists who play it and the method by which it is recording; in other words, the company who produces the actual physical disc or tape.

CHAIR—What would you say it is, Mr Pedler?

Mr Pedler—APRA effectively relates to the artists who produce the original work. That does not mean its recorded form. It could be in a written form. It could be verbalised. It does not matter. Say I sing ‘Happy Birthday to you’, that copyright belongs to me if I invented it. That is what APRA is about.

When you actually translate that into recorded form, whatever that is, that copyright then belongs to the person who produced that recording, whether that be a recording company or a musician who recorded it and then distributed it himself. That is what PPCA is about. That is the separation, as I understand it.

In the case of APRA, if anyone else sings that song, the money goes back to that person who wrote the song. In the case of the recording, if anyone plays that recording, the money goes back to the person who produced the recording. Obviously there is an overlap there because someone wrote the song that was recorded.

CHAIR—Yes.

Mr Pedler—In theory, the APRA fees can be absorbed into the recording because someone has actually paid a licence to make that recording back to the artist. At the moment, they are arguing they have only paid the licence on that recording being played in private.

CHAIR—I think you have made your point. Unfortunately, I am still a small business person who is still very confused. I appreciate your efforts in trying to explain that to me.

Mr KELVIN THOMSON—There has been some discussion about the motive for playing the music, whether it is being played in public for the benefit of customers or whether it is more for the benefit of employees. I wonder whether you could indicate in terms of some of your business what you think the motive is—I understand it might vary from place to place—and, secondly, whether you think that makes any difference in terms of this copyright or intellectual property issue.

Mr Pedler—It is a very important issue in that I think that is where a lot of the problems have come from, separating whether it is a public performance or for private use. If you are running a coffee shop and you are playing background music so people can relax, sit down and have a coffee, I do not think those businesses really have that much of a problem with paying a fee for the use of that music.

If you are a retailer sitting in your shop waiting for customers and you are playing the same song while you are waiting for the customers and a customer comes in, is that music for the customer or is it for you to listen to while you are waiting for the next customer? Who determines that? At the moment we are getting all these letters from organisations saying, ‘We determine that. We are saying: you owe us fees.’

How do they know? Unless they actually go into that shop later and say, 'You have turned your radio or your music off,' there is no way of measuring that. That fear of someone coming around in six weeks time to check and then take them to court because they left the radio on is where a lot of the problems are coming from.

Ms Hempstead—From the point of view of the chamber of commerce membership, which is mainly the manufacturing, distribution and service areas rather than the retail area, we would see the playing of either recorded music or radio as definitely primarily for the benefit of employees.

Mr Power—We would generally support that position, because the two are distinctly different.

CHAIR—As there are no further questions, I thank you very much for your attendance today. We really appreciate the effort that you have made, and we appreciate the feedback that you have given us from your constituency.

[2.21 p.m.]

SCHONFELDT, Mrs Mary Lou, Administrator, Townsville Community Music Centre, PO Box 1006, Townsville, Queensland 4810

CHAIR—Welcome. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as the proceedings of the House. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Would you care to make any introductory remarks?

Mrs Schonfeldt—I have made some notes. I hope you will excuse me for reading from them, but in this way I will be more organised than just stating some of my thoughts. I want to make it clear that I am representing not primarily my views but a combination of views—my own views and other people's views. I would like that to be understood.

I will read you what I have written. I do not know much about the issue of copyright royalties for music played in small business. However, I have tried to consult with people in the region who I felt may wish to comment. Unfortunately, not everybody has responded, and this is partly attributable to the shortness of time available. We only received the information on 23 September. I know that it was nationally advertised. However, for whatever reasons, people were not very aware of it in Townsville.

Some of the composers and musicians to whom I spoke are members of collection agencies, such as APRA, and are in agreement with the various licensing and collection processes in place. Others are not members and do not necessarily fully understand the role of these agencies. Many of them are concerned at the prospect of possibly alienating the small business sector. Possibly it would be a good idea for the collection agencies to try to implement education and recruitment programs to inform those people who stand to benefit financially from the activities of these agencies.

Another comment made by some of these people was that royalties did not constitute a major part of their income. So they were not too concerned about the issue. However, as an important principle is at stake, I feel they should be concerned if not for themselves then for the prolific musicians and composers whose livelihood is and can be affected. Each of you have the comments from Peter Gore-Symes and a copy of a letter written by Dr Bill Laing on behalf of Mango Jam. I feel that he makes some good points there. Would you like me to read from that letter?

CHAIR—We have a copy of the letter. I can authorise it as a submission if you would like.

Mrs Schonfeldt—I would appreciate that. I feel that one is important because he is both a small business proprietor and a manager of two local folk bands.

CHAIR—In that event, I will ask Mr Thomson to move that the submission from Dr William T. Laing, the Manager of Wattle 'n' Gum Bush Band and Managing Director of Laing Exploration Pty Ltd, Townsville, be received as evidence and authorised for publication.

Resolved (on motion by Mr Kelvin Thomson):

That this subcommittee authorise publication of the submission of Dr William T. Laing.

Mrs Schonfeldt—I will touch on some other suggestions. I do not know whether this is relevant, but some people have suggested that organisations such as our own should commission and record works from local musicians and composers, give them a single up-front payment and make them available for small businesses. However, I feel that there are many problems involved with this. I do not think that is a very practical suggestion.

APRA have sent me information relating to the small business licensing project, and I do not feel that the amount of fees imposed is unfair, particularly as they are tax deductible. They are a very minimal amount. I think that, if any small business is unable to afford those amounts or sees such amounts as an imposition, perhaps they should not be in business. I have not seen the material that was sent to small businesses. Whilst I am not able to comment on what was sent, I know that complaints have been made.

Another area to which more thought could be given is that of producing information packages, stressing the possible benefits to the community and the economy that results from the payment of these fees by small business. If small businesses really feel that music does not have a value, why do they continue to have music in their working and sales environments? There must be some perceived value in the use of music. It is an aspect used to create what you see as a pleasant environment for their clients.

My last comment is not directly related to this inquiry, but I feel that it has some relevance. I think it is very important that the royalties go back to all of the composers and musicians whose works are performed. I know that it is very difficult to set mechanisms in place, and that the paperwork is very difficult. However, we pay a set percentage of our gross admission fees to APRA and, because many musicians are not very efficient with their business affairs, they do not tell APRA that their work is being used. Therefore, they are not getting the money back. What I would like to see to benefit Australian music and musicians is to have effective and workable mechanisms put into place so that the money goes back into the industry and so that our industry grows. In this way we can encourage local culture and local music. We will see our own small business music industry grow.

CHAIR—Thank you. Do you have any examples of artists who are getting money back from APRA and the sorts of quantities that they are getting back?

Mrs Schonfeldt—I have spoken to a few people in the region and even for the most prolific of those in the region it does not represent a huge amount. However, they are pleased to get it back. There was quite a mixture of feeling: those with APRA see it as important to them but others do not realise the value that is there. They are ignorant of their rights as composers.

CHAIR—Have you got any idea of what proportion of an income the returns from APRA would be for those people that are self sufficient?

Mrs Schonfeldt—Some of them might be getting cheques for \$20 or \$30 each time but it varies quite

considerably. I do not think the amount is a critical one because if a principle applies it has to be applied fairly because if you say it does not matter because it is only \$30 it might make a difference to somebody else whose work is far more widely used.

CHAIR—So you do not think it might be being eaten up in administrative costs by sending tiny little cheques? You do not think there should be a threshold of \$500 or \$600 or \$1,000 before you start sending cheques out?

Mrs Schonfeldt—I am not really sure. I do not know what else you could do. Maybe APRA could think of other strategies where the money went back into a general fund to benefit the industry rather than sending them small cheques which they do not see as big but they would have to nominate that as an option. I do not know a lot about the whole issue. Possibly, there could be something of that nature, I am not really sure.

CHAIR—Have you ever been approached by APRA to assist in the distribution of information about what they are doing?

Mrs Schonfeldt—No. I have not been approached by APRA. I feel that it would be good possibly to hold seminars, particularly in regional cities such as Townsville, and maybe dispel some of the ignorance and fear. If small business people were approached differently they might not feel about it as they do.

CHAIR—Would you be able to explain to the committee what the difference is between the Phonographic Performance Company of Australia and the licence fees that they collect, and APRA?

Mrs Schonfeldt—APRA licences the public performance of music whether it is played live or whether it is recorded music. I have not had any dealings with the PCCA.

CHAIR—You do not know what they licence?

Mrs Schonfeldt—I do not know a great deal about them but they licence the broadcasting of music: is that correct? I am not sure. I am ignorant of the PCCA because it has not come within my ambit.

CHAIR—But you are involved in the music world?

Mrs Schonfeldt—I am involved in the music world but more with live performers and live performances.

CHAIR—You can imagine that there might be some difficulty for a small business person in understanding the difference between the two licences?

Mrs Schonfeldt—As you say, if a person working in the industry is unable to explain to you adequately the role, it would be even more difficult for others, so I think maybe people need to know a little bit more about it.

Mr KELVIN THOMSON—You mention in your evidence circumstances where you pay money automatically to APRA whether performance based or for whatever reason.

Mrs Schonfeldt—We pay a percentage of our gross door takings to APRA.

Mr KELVIN THOMSON—Then you talked about the composers not notifying APRA and therefore potentially not receiving the money.

Mrs Schonfeldt—When people's music is being performed, the mechanism is that they are supposed to advise APRA, as the members of APRA advise APRA that these performances are taking place and then therefore they get royalties back from that.

Mr KELVIN THOMSON—If they fail to do that, does that potentially mean there is a windfall gain for APRA, that money is passed to them and is not passed onto the composers?

Mrs Schonfeldt—I am not sure what happens to the money that is not claimed. I could be incorrect, but I think it just means that more of the share that is available then goes to other people. I do not think APRA is retaining it for itself. I do not think it is going into any sort of slush fund. I think it just means each person claiming gets a greater share of what is there.

Mr KELVIN THOMSON—Yes. How does a person whose music is being performed necessarily become aware that their music is being performed? It occurs to me that a group could be performing somebody's music without notifying them about it.

Mrs Schonfeldt—They could be and I suppose groups should always be advising them of the fact. There are many loopholes—

Mr KELVIN THOMSON—Would it not be more straightforward and get around these problems better if groups were to advise APRA that they were performing somebody's music and therefore the fee would be payable to APRA? If APRA is told at the same time whose music is being performed, whose work it is, then it is on APRA to pay it out, rather than on a composer or somebody else to become aware of this.

Mrs Schonfeldt—I would be very happy to provide copies of all of our programs. We keep copies of the programs throughout the year and we list what is being played and who the composers are. I should imagine most performers, most organisations that are performing works, should be doing similar things. They should have some sort of listing of what they are playing. I would happily provide such information if it would ease the processes for APRA and ensure that composers do not have to inform APRA of when the music is being played.

Mr KELVIN THOMSON—Can I ask what is your response and the response of those of your members you have contacted to the small business position on these things? If I can summarise it crudely, it is that it is a pain in the neck, that it is costly in time terms as well as money terms and that the value of the music—it would be acknowledged that the music is of value, otherwise as you point out, they would not be doing it—is limited and personal and not fundamental to the business and so on. Would you have a reaction

to those sorts of concerns?

Mrs Schonfeldt—I suppose our members would have a rather biased and one-eyed view as they are directly involved in music—creating it and promoting it. Therefore, they see music as an integral part of our lives and I think all of our people would feel that there is real value in music. One of our members, Peter Symes, did make a comment. He said that he disagreed with what he called aural wallpaper. He said he did not, as a musician, like it—

Mr KELVIN THOMSON—He is not alone!

Mrs Schonfeldt—I guess most of us hate elevator music, but I think that if there are pleasant sounds, that if it is not tinned music, most of our people would feel that it would be conducive to the operations of the small business.

Mr KELVIN THOMSON—That it is adding value?

Mrs Schonfeldt—That it is a benefit.

Mr KELVIN THOMSON—To come at this in another way, the letter from Dr Laing which was put forward as an exhibit concludes by saying:

We submit that small business should be required to pay a royalty on music played in their business environment.

Can I ask, in relation to radio, what is your response to the argument that this represents double dipping; that radio stations have already been required to pay copyright licence fees and that for somebody else playing the radio to have to pay a further fee represents a second go at it?

Mrs Schonfeldt—I cannot understand that. However, I feel that small business people should be looking towards the common good and looking towards growth of all small business sectors and this is part of growth in a small business sector. As business people they should see that those are benefits going back in.

Mr KELVIN THOMSON—Just to go back to this question of information which you and others have touched on in evidence: in getting the message across better, whose responsibility is it? Is it APRA's or the small business organisations', or is there a role for centres like yours to get a better understanding of what is expected and why?

Mrs Schonfeldt—If our role in providing it did not create a huge financial burden, and providing it was either a very low cost activity or something which we got some assistance with, we would be very happy to do it. We would see it as a very important part of what we are doing, to disseminate this sort of information. I am sure that other similar organisations in other areas would be happy to do so, too.

I think that this is possibly one of the kernels of the problem—that there has not been sufficient information distributed and people do not really understand. As I said, both small business operators as well

as the people within the music industry do not really understand the implications and I think education is important. I do not know where the money will come from because all of these things are very expensive. We all tend to say somebody has got to pay for it but ultimately I do not know whom we see as paying for it.

Mr KELVIN THOMSON—Yes, the reason I ask is that there does seem to be a theme coming through from witnesses about the need for more and better information—the need for an information campaign and the question of who is going to do it.

Mrs Schonfeldt—As I said, we would happily do that within our financial limitations. We would do the best we could. For instance this was something at short notice but I said, okay, I will distribute it to the two people that are concerned and try to get feedback. We see that as being very important in what we do.

Mr KELVIN THOMSON—How much music is out of copyright?

Mrs Schonfeldt—I really do not know. For instance, there is some music—I am thinking about when we wanted to perform some Noel Coward pieces for something some time ago and we had a lot of problems in getting hold of the music because Chappel had the rights and they are in England so it was a very complicated process. Often music goes out of copyright but then people purchase the copyright again so it could be quite old.

Mr KELVIN THOMSON—Where do they purchase a copyright from if a copyright expires? How do they do that?

Mrs Schonfeldt—I am not sure of that. I could not tell you.

Mr KELVIN THOMSON—We can pursue these things elsewhere.

Mrs Schonfeldt—Music goes out of copyright but there are some things that, although the writers or composers are long dead, are still under copyright.

Mr KELVIN THOMSON—I just wonder whether that is something that can be said to small business: that if it is something that particularly troubles them, they should find music which is out of copyright. Or is that not realistic in terms of what music is and is not subject to copyright?

Mrs Schonfeldt—It may be realistic, but, there are even cases of some of the traditional works where people have copyright over arrangements of those works. So people might think that it is free of copyright but it is not.

CHAIR—I was not quite sure why you are paying money to APRA. Is that because you are paying a licence fee to APRA for performances?

Mrs Schonfeldt—That is because we are having live performances of music.

CHAIR—You are actually paying a licence fee?

Mrs Schonfeldt—We are paying a licence fee to APRA, yes.

CHAIR—I see, okay. I understand that.

Mrs Schonfeldt—As performers of live music, or as promoters of performances of live music, we pay them.

CHAIR—How much would you be paying, do you think?

Mrs Schonfeldt—We pay 1 1/2 per cent of our gross door takings. Most of our concerts are on a fairly small scale. We had about 50 concerts last year and there were audiences of, depending on where it was and what it was, anywhere between 30 to maybe 300, which are quite small audiences. I am not exactly sure, but I think we might have paid APRA about \$330 last year as a proportion of our door takings. We are a shoestring operation. We run on very spare budget. As you know, arts organisations tend to run on a shoestring. This is why I am saying that I think that small businesses are being rather greedy because our operating budget for this year is about \$150,000. Most small businesses would be far in excess of that and we are paying \$330-odd and they are kicking at paying \$37.

CHAIR—It would not be available for you to get an exemption because you are propagating music on behalf of—

Mrs Schonfeldt—I do not really know. Maybe I should go, cap in hand, and ask.

CHAIR—I just thought you might because—

Mrs Schonfeldt—What we do with our concerts, because the market is small up here, is enter into profit-sharing arrangements with our performers. We do not offer them—

CHAIR—So, you are not a non-profit organisation then?

Mrs Schonfeldt—We are a non-profit organisation. What I was leading on to say is that we have a concert and whatever the door takings are, out of them we pay a small percentage to the venue, pay our expenses and, of whatever is left, 80 per cent goes to the musicians and 20 per cent goes to offset our administration expenses. In many cases, that does not come anywhere near covering our real time in wages or the resources that we have used. But, once again, we see that as part of our role in promoting music in North Queensland. So the musicians are getting the bulk of that money. The profits are not going to us. Or, they are going to us, but we are paying them back out again.

CHAIR—Thank you. The subcommittee very much appreciates your attendance today. We thank you for it; you have been of great assistance to us. Thank you for your attendance. Before we close, we will need a couple of resolutions.

Resolved (on motion by Mr Kelvin Thomson):

That the submission from Mr Richard Power, Chief Executive Officer of Townsville Enterprise Limited, dated 15 October 1997, be received as evidence and authorised for publication.

Resolved (on motion by Mr Kelvin Thomson):

That this subcommittee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 3.00 p.m.