



# **HOUSE OF REPRESENTATIVES**

**STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**

**Reference: Copyright, music and small business**

**CAIRNS**

**Friday, 17 October 1997**

**OFFICIAL HANSARD REPORT**

**CANBERRA**

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Members

Mr Andrews (Chair)

Mr Barresi	Mr Randall
Mrs Elizabeth Grace	Mr Sinclair
Mr Hatton	Dr Southcott
Mr Kerr	Mr Tony Smith
Mr McClelland	Mr Kelvin Thomson
Mr Melham	Mrs Vale
Mr Mutch	

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*

CAIRNS

Friday, 17 October 1997

Present

Mr Mutch (Chair)

Mr Tony Smith

Mr Kelvin Thomson

The subcommittee met at 10.31 a.m.

Mr Mutch took the chair.

**CHAIR**—I open this public hearing of the subcommittee's inquiry into the licensing of copyright for the playing of music in public by small businesses. We are a subcommittee of the House of Representatives Legal and Constitutional Affairs Committee. I welcome the witnesses, members of the public and others who are attending this meeting of the subcommittee. 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 Cairns is the second day of subcommittee hearings in Far North Queensland. Yesterday the subcommittee took evidence from witnesses in Townsville. The subcommittee is aware that there is considerable interest in this copyright inquiry in Far North Queensland and in tropical 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 subcommittee today. We recognise that some of you have travelled some distance to meet with the subcommittee today.

[10.32 a.m.]

**ALLEN, Mr William Stephen, President, Atherton Sub-branch Returned and Services League of Australia, PO Box 228, Atherton, Queensland 4883**

**CHAIR**—I welcome Mr Bill Allen. 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 care to make some introductory remarks, Mr Allen?

**Mr Allen**—Unfortunately, I was very short on time to get this submission done up because I just got back to Atherton this week. That was when the president told me that I had to do it. Whilst this might look a little bit negative, I could have given you greater detail if I had had more time. Let me put it this way: we are not worried about payment of copyright, we think it is necessary. The protection of copyright is okay to stop printing or copying for use without the payment of copyright fees.

We think the length of time for copyrights should be reduced to 20 years. I put that in the submission because patents are all covered for about 15 years. I have personal reasons to know all about that—mine finished this year.

Broadcasters will be paying rights for the use by their audiences. We do not think a listener's licence should be re-introduced. Years ago we had licences; we do not have them anymore. It must reduce the sales of the CDs, tapes, et cetera because, on top of the copyright on the purchase, they now also want a licence fee in lieu of, or as well as, the purchase payment for the copyright.

Our reason for using TV and radio—they are our particular ones; and this applies to a lot of people—is to watch sport and get the news, not for music. We do not use our TVs and radios for music at all, but we have been sent a bill.

The other point in our submission relates to charitable institutions. A lot of old people are now denied any right to play their music in the hall. They get the hall for nothing, but they have to pay for their music. It is rather an anomaly when you are trying to do things for old people that somebody on the other side is trying to take it away. Technically speaking, I am quite happy to answer any queries on what I have presented in the submission or what I have just told you.

**Mr KELVIN THOMSON**—Are other RSLs experiencing the same problem as your RSL?

**Mr Allen**—Most of them are in exactly the same position as I am in. I do not know whether you know the RSL set up, but the Far Northern District Branch consists of a group of RSL sub-branches. They have put the onus on me to present this case because I know what they have said at their meetings.

**Mr KELVIN THOMSON**—Yes, but are they all experiencing the same kinds of circumstances?

**Mr Allen**—They are all in agreement. They are very unhappy with the situation.

**Mr KELVIN THOMSON**—What use of music does the RSL make in a typical week?

**Mr Allen**—We do not have any music now. The TV is there and that is for watching only sport. It is in the bar. To have music in the bar of an RSL would be a waste of time.

**Mr KELVIN THOMSON**—APRA, however, has approached you concerning the issue of licence fees?

**Mr Allen**—Apparently they rang all the clubs and asked, ‘Have you got a TV?’ Nearly every club has a TV—two have not, but the rest have. They just said, ‘We will send you a licence agreement to fill in and send back. If you don’t fill it in and send it back, we’ll take you to court.’ That was on the phone. I have with me here a copy of the licence agreement that they sent if you want to have a look at it. No doubt you have already seen one.

I do not think they really have a right to charge a licence to listen. The Commonwealth government used to charge a licence and they took it away as being an anomaly that should not have been there.

**Mr KELVIN THOMSON**—Have you indicated to APRA that the RSL does not use the TV or radio for playing music?

**Mr Allen**—We pointed it out to them in writing. This is the third time they have sent this thing this year.

**Mr KELVIN THOMSON**—Have they responded to that point?

**Mr Allen**—They just said, because we have got a TV set, we have to pay the licence. I have told them we do not use the music. Any music we get will be when we are changing from one station which is showing the races to another station which is showing the football. You might also get it on a TV ad or something in between. We do not want it. They can take it off, as far as I am concerned.

**Mr KELVIN THOMSON**—So what is the present state of your dealings with APRA?

**Mr Allen**—The last thing on the table was where I said, ‘We will leave it now until we take this down to here.’ That was my instruction. We will take it to this hearing first. We will tell them we have taken it here and we will act pending the outcome. They are the directions that I have—although I am a president, I only carry out the directions of the branch.

**CHAIR**—Does the RSL hire out function rooms at which private guests may use music or play music?

**Mr Allen**—They hire rooms for weddings, 21st birthday parties and so on. When we hire the room, that is their function, not ours.



**CHAIR**—You do not provide the acoustical material or equipment?

**Mr Allen**—We provide nothing, just the location.

**CHAIR**—So they would provide their own player or something?

**Mr Allen**—That is right. There is no music or anything played from our point of view.

**CHAIR**—When APRA rang you, did they respond that they would go into legal proceedings because you said, ‘What is this all about? We are not going to pay,’ or did they just offer that advice on the initial contact?

**Mr Allen**—Originally, they did this about six years ago. We pointed out to them that we were going to put in a large screen for the children of member bowlers playing night bowls. We wanted to be able to play all-weather bowls—in fact, it is the only one in the world. We wanted to put that screen up so the children of those younger member bowlers could watch TV while their parents were playing bowls.

I contacted a firm in Cairns for that—it is about \$7,000 or \$8,000—and for suitable TV tapes. I had to ring Winfield’s and cancel it because it was at the time when APRA rang me and told me that I had to pay these things. At that stage not only did you have to pay the \$37.90 or whatever it is at the moment but you also had to pay \$137 for a large screen and \$37 for a smaller screen. We have a cassette player, which we use if our bugler is not available, to play at a grave site. I do not think that has got anything to do with them at all. That is what we use it for.

**CHAIR**—Mr Allen, the RSL is a community service organisation. Is it a registered charity as well?

**Mr Allen**—It is a registered charitable institution. We have raised in the last five years \$400,000 for old peoples homes.

**CHAIR**—So you do not make money for profit?

**Mr Allen**—No, we are not allowed to under the act. No individual can make money out of it.

**CHAIR**—So that does not have any bearing on the attitude of APRA?

**Mr Allen**—In the first instance, six years ago, they said they would think about it and let us know. We never heard from them again for four years and then suddenly it has come on three times this year. They really must be short of money or something, I do not know.

**Mr TONY SMITH**—You have been operating the RSL there for many years I would imagine.

**Mr Allen**—Since 1946 in that location and since 1933 in the other location.

**Mr TONY SMITH**—Have you been associated with the club for most of those years?

**Mr Allen**—I have been president for the last 13 years. I was a committee member before that and I was a member before that. So it goes back a long way.

**Mr TONY SMITH**—So you would be aware of the history of contact between APRA and yourselves?

**Mr Allen**—It has only happened in the last eight years.

**Mr TONY SMITH**—Did they contact you on just the one occasion?

**Mr Allen**—That was the one occasion. When my secretary pointed out to them that we did not have music being played and that it was for old people, whom we did not charge—we do not even charge them for the hall—they said they would think about it and get back to us. They took six years to get back to us. They did not mention it when they came back. They said, ‘We will send the sheet. Fill it in and send the money with it, including \$2 for sales tax’—or whatever it is.

**Mr TONY SMITH**—Have you got any documentation on it at all?

**Mr Allen**—I have not got it with me, but I can provide you with all of it because I keep a copy of everything.

**Mr TONY SMITH**—It may be of assistance to get that background if you possibly could. Then there was no more contact after that until a couple of years ago, I think you said.

**Mr Allen**—That is right. I have a copy of the last one. Do you want to get copies? The scribble on the front sheet is mine.

**Mr TONY SMITH**—So there was no further contact after that letter until this year?

**Mr Allen**—No, this letter is the contact.

**Mr TONY SMITH**—This letter is this year, I see.

**Mr Allen**—The contact was over the phone to my secretary and they asked if we had a TV set in the place. She said, ‘Yes, we have.’ There is no argument about that. She said, ‘We use it for sporting fixtures, we do not use it for music.’ They said, ‘It does not matter. So long as the TV is there, you have to pay.’ I do not believe I have to pay, and I will go to court before I will pay it.

**CHAIR**—Have you sought the attitude of sub-branches of the RSL in other states, Mr Allen?

**Mr Allen**—I cannot go interstate. I can go only to the Far Northern District Branch and then the Far Northern District Branch takes it to the state.

**CHAIR**—You have not raised this issue at that level?

**Mr Allen**—This issue is going through the lot. It will come out through the lot eventually. Once it goes through our branch to the state, the state will automatically take it on to the federal level.

**CHAIR**—Are others paying the licence?

**Mr Allen**—Not that I know of. The push has only just come on and they are all up in arms about it. I think you will find that Bob Katter's office in Innisfail was swamped, because we happen to be in his electorate. He said, 'There will be a committee of inquiry, so you can attend that and tell them what you think.'

**Mr TONY SMITH**—Just to clarify something you said about the music being played at an old people's function. What was that again?

**Mr Allen**—No, the music is not music really. We have *The Last Post*, *Reveille* and *The Ode* on a tape, which we play on a tape recorder at a funeral if our bugler is not available. Sometimes he is sick or he is not in the area, so we have to use something else. It is not half as good.

**Mr TONY SMITH**—They were not seeking to licence you for using *The Last Post*?

**Mr Allen**—No, but they consider because we have a tape recorder that we could take *The Last Post* tape out and put something in if we wanted to. But that is not what it is for. We do not use a tape.

**Mr TONY SMITH**—You said that you believe there should be some copyright for 20 years but not for longer than 20 years. Do you suggest that one means of solving this problem would be to take a small fee out when tapes are sold, for example? It could be a very small fee and then clubs would not have to worry about it.

**Mr Allen**—They wish to get a licence fee from everybody who listens to the wireless in public—not just clubs, but everybody that they can get their hands on. If somebody is standing outside and has a wireless going and if there is a crowd out there, then technically speaking that is in public and they would have to be paying a licence. If they want to charge for what you have listened to over TV or radio, it should be included in their copyright agreement with the radio or the TV station, not with the individuals.

**Mr KELVIN THOMSON**—You indicated in correspondence that it had already had an adverse effect on the branch in a sense that people had decided that they were not going to purchase tapes, cassettes or whatever?

**Mr Allen**—That is right. That was seven years ago.

**Mr KELVIN THOMSON**—So right through that period people have not been purchasing tapes, cassettes, et cetera?

**Mr Allen**—No, that stuff was a complete sound system for the area and for the whole of our club. It would have cost us around \$7,000 to \$8,000 to install it. It was just lucky that APRA sent us this bill before

we got it in, otherwise we would have been in trouble. So the club said, 'No, we can't have it.' We have not had the kids and we have not had the people playing bowls in the evenings because there is nowhere to look after their kids. It is as simple as that. It is an imposition which I do not think is justified.

**Mr KELVIN THOMSON**—This is more a question for APRA than for you, but in terms of using the TV for sporting performances and the like, do you get any indication from APRA as to how the money from licence fees is distributed where it involves sporting performances rather than music?

**Mr Allen**—No, they are only licensing you for the music; they do not licence you to listen to the news or to watch sport like tennis, cricket, football or whatever. It is only for the music that comes on in between. I understand they have even taken up the case with Telecom because it has got music while you wait on the phone. To me that is stupid.

**Mr KELVIN THOMSON**—But you indicate that you are not listening to any music via your TV; you are only listening to the sport?

**Mr Allen**—The only music we get on TV is when they press the button to shift from, say, Australian rules to rugby.

**Mr KELVIN THOMSON**—So it is some of the promotional clips and so on used to jazz it up?

**Mr Allen**—Yes, those jingles or whatever you call them in between.

Resolved (on motion by Mr Kelvin Thomson):

That the document provided by Mr Bill Allen, dated 3 September 1997—being a letter from Jason Island licensing representative of APRA—be accepted as an exhibit and received as evidence to the inquiry.

Resolved (on motion by Mr Kelvin Thomson):

That the submission from Mr W. S. Allen, President of the Returned and Services League of Australia, Queensland Branch, Atherton Sub-branch, dated 14 October 1997, be received as evidence and authorised for publication.

**CHAIR**—Do you have any concluding remarks you would like to make, Mr Allen?

**Mr Allen**—I did ask in the letter, I believe, how they distribute the money. It must be a nightmare because every Tom, Dick and Harry has them copyrighted.

**Mr TONY SMITH**—It is a good point.

**Mr Allen**—I have a nightmare with patents so I can tell you that I have had first-hand information. You have to have solicitors all around the world looking after your patents. Although you have a patent or a copyright, the governments do not look after it. You are responsible to look after it but they have the law that protects you. It costs me a lot of money to look after them. I do not think that they would justify giving the right amount of money to the right person for the right number of discs that they have playing. I cannot see

how they can do it. If they can, I would like them to let me know as I might be able to use it within the RSL.

**CHAIR**—You draw an interesting analogy. Thank you very much for appearing before us today, Mr Allen.

[10.52 a.m.]

**RINAUDO, Mr Salvatore, President, Innisfail Bowls Club Inc, 1 The Corso, Innisfail, Queensland 4860**

**SCOTT, Mr Allan Kenneth, Secretary, Innisfail Bowls Club Inc, 1 The Corso, Innisfail, Queensland 4860**

**CHAIR**—Welcome to the inquiry, Mr Rinaudo and Mr Scott. 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 care to make some introductory remarks?

**Mr Scott**—I made the submission as secretary on behalf of the bowls club. We feel that small clubs such as ours are being penalised. In fact, we do not really make a profit. We struggle from year to year, and this is just an added slug.

I agree with the comments of the previous person sitting here. How can you possibly distribute that money when they collect it? It just seems like an impossible nightmare. In my submission on behalf of the Innisfail Bowls Club I suggested that the fees that they require should be added to the cost of buying the material and immediately all of the work that comes in between is cut out. Add a few cents to the cost of a disc and add a few cents to the cost of a VCR and a TV set.

**CHAIR**—Did you want to say anything, Mr Rinaudo?

**Mr Rinaudo**—No, just to confirm what the secretary has said. This is my first year in the club. It is very hard to manage small clubs. The added revenue or cost to the club of this imposition is probably not much of a hardship but we have a very senior group of members and we use our systems on the basis of talking to them. In the case of TVs, again, it is only for whatever sporting fixtures are available. In other words, there are no members of the public, only members.

**CHAIR**—Just for the record, what is the status of your club? Is it a community service organisation?

**Mr Scott**—No, it is a lawn bowls club with membership. There is a male membership and a ladies membership.

**CHAIR**—Is it a not-for-profit organisation?

**Mr Scott**—It is a non-profit organisation, purely for playing lawn bowls.

**CHAIR**—In your submission you indicate that you have been bombarded with letters from two sources attempting to collect royalties, being the APRA and the PPCA. Could you advise us with some more specifics about the approaches made to you by these organisations? It would also be interesting if you could advise if you understand the difference between the royalty interest that they are seeking to collect.

**Mr Scott**—The Phonographic Performance Company of Australia wrote quite a long letter. They say:

We note that you do not appear to have a licence authorising the public performance of sound recordings.

It goes on at length. It continues:

In most circumstances, you would need a licence from both APRA for the lyrics and music—

that is the songwriter—

and PCCA for the sound recording.

That is the record company and the artist. But the bit that got me was:

We note that you do not appear to have a licence.

They are obviously checking up on us.

**CHAIR**—Had they made a telephone inquiry or written to you previously to this?

**Mr Scott**—No, there has been no approach by word of mouth. It is all by letter. I have since written to them telling them we have removed all CDs and cassettes from our premises.

**CHAIR**—So you have not paid the licence?

**Mr Scott**—No, we have not paid anything.

**Mr KELVIN THOMSON**—Did you remove the electronic equipment as well as the CDs and cassettes?

**Mr Scott**—No, we have not removed it. It is still in the building but switched off. As for the TV sets, I will not guarantee that. No doubt, with the finals of football, someone will switch the TV sets on on the Saturday afternoon.

**Mr KELVIN THOMSON**—I am sure they will. In your submission you refer to the prospect of adding a charge to the cassettes, CDs and so on to cover it and advance the argument that that would be administratively superior. I must say that my inclination is to agree with that; it sounds as if it would be. The committee has had pointed out to it the fact that there was a scheme to collect a royalty for copyright owners at the point of sale of blank tapes and cassettes, introduced into the Copyright Act some years ago. That was held to be unconstitutional by the High Court in 1993. Not that I have explored this further to see whether there might be ways of constitutionally doing that, but clearly it is not as easy as it looks to simply add something to the cost of the existing records, CDs and so on.

**Mr Scott**—I can fully understand that, but if the High Court can quash such a thing, how can they possibly let this one through? The distribution of the collected monies cannot be easy. They can keep

browbeating us until they get the money. But the distribution of the money, once they get it, seems to an impossible nightmare.

**Mr KELVIN THOMSON**—Yes, I agree with that. The committee has had submissions from APRA on this point and it has asked some questions about the basis on which they distribute the monies that they collect. Nevertheless, certainly in my mind—and I think in the minds of other committee members—there are some ongoing questions. You do wonder about how they can ensure that monies are distributed in a way which represents the intellectual property of the artists and so on. I think that is a fair point.

**CHAIR**—Does the club engage live musical performers?

**Mr Scott**—Yes, probably, on average, once a month in a year. It is only one lady playing a keyboard instrument.

**CHAIR**—So you do not pay for a licence for her?

**Mr Scott**—No, she is a pensioner and we pay her \$50 for an evening's work. It is not much money. We admit that we do not pay for that.

**Mr TONY SMITH**—When did all this trouble start? You have been running the club for years, presumably?

**Mr Scott**—Yes. It is only recently, in the last six months, that we have been starting to get letters. They have probably just found out that North Queensland exists.

**Mr TONY SMITH**—The approach started by mail, did it? You did not have anyone visiting you or anything?

**Mr Scott**—No visits to my knowledge. Any for you, Sam?

**Mr Rinaudo**—None whatsoever.

**Mr TONY SMITH**—Have you responded at all?

**Mr Scott**—Yes, I have responded.

**Mr TONY SMITH**—And the response has indicated that you are not going to use the equipment?

**Mr Scott**—My response was:

Dear Sir/Madam



We have written to the House of Representatives Standing Committee on Legal and Constitutional Affairs, Parliament House, Canberra and are awaiting a reply. In the meantime, all CDs and cassettes have been removed from the building and the electronic equipment unplugged.

Sincerely

A K Scott

**Mr TONY SMITH**—Have you got the original letter there? I am just curious to compare it with this one.

**CHAIR**—Perhaps we could have a look at it, even if we don't table it.

**Mr TONY SMITH**—Have you heard from both APRA and the PPCA?

**Mr Scott**—Yes, we have.

**Mr TONY SMITH**—Do you mind if I have a look?

**Mr Scott**—No. Not a problem—go ahead. I thought you would already have been inundated with those things.

**Mr KELVIN THOMSON**—We do have a number of samples, but it is helpful from our point of view to see different letters, different approaches.

**Mr TONY SMITH**—At the moment, are you saying that in the club you have not got a radio on or a television working?

**Mr Scott**—We have got two televisions: one in the lounge and one in the bar area. The lounge probably gets used once every 12 months by the ladies wanting to watch videos of their own prowess on the green—homemade videos.

**CHAIR**—One of the things we have heard in tropical North Queensland is the concern about cyclones and other emergencies, and it is important that people are kept informed of these events.

**Mr Scott**—Yes. The other television set is switched on in the bar area for news items and, as I said before, you cannot stop them from watching grand finals.

**Mr TONY SMITH**—You have an APRA form here but there is no actual letter from APRA. APRA have not actually sent you a letter?

**Mr Scott**—They have sent me a letter but I have misplaced it.

**Mr TONY SMITH**—Okay. Would you mind us taking a copy of this?

**Mr Scott**—Not at all.

**CHAIR**—What is the latest with APRA and the PPCA? Are they threatening legal action?

**Mr Scott**—In the letter you are about to photocopy they do say that legal action may be taken.

**CHAIR**—But you have not heard anything yet?

**Mr Scott**—Nothing has happened. Since I wrote the letter telling them we have removed CDs and cassettes and unplugged equipment, it is a stalemate at the moment.

**CHAIR**—Have they responded to your letter in any form?

**Mr Scott**—No, not at all.

**Mr TONY SMITH**—I suppose because of the nature of the club and so forth, leaving aside the constitutional problems that Mr Thomson has referred to that I have just only seen myself now, you would prefer a situation where clubs like yours, which are non-profit and community oriented, would have an exemption from these sorts of requirements?

**Mr Scott**—Most certainly. We are a small club. We have 129 men and, as President Sam mentioned, most of them are elderly. I have referred to us as the geriatrics. It is one of those occasions where they say bowls is a young man's sport now, but not in our club. We are the geriatrics of the Innisfail region: 129 men and 72 ladies. So you are looking at 201. That is not a great number, and they go there to play bowls; they do not go there to listen to music.

The only reason we had the CDs on was to keep the barmaids company. We have to employ bar staff, and they have not got any customers during the week, only the committee attending to their own work. So they play cassettes to keep themselves company while they do their chores. Now we have taken them off them, they have taken them home.

**CHAIR**—Have you had any contact with other bowls clubs about this problem?

**Mr Scott**—No, sir.

**Mr TONY SMITH**—Do you have people coming in off the street to the club when there are no tournaments on?

**Mr Scott**—We have occasional visits. We have six poker machines. But that kind of person comes in there to play the machines. They are not interested in whatever music is in the background.

**Mr KELVIN THOMSON**—In Melbourne, where I am from, we are told that Innisfail is one of the wettest places in the nation. I am interested in how many days you get to bowl.

**Mr Rinaudo**—Not very many.

**Mr KELVIN THOMSON**—Not very many?

**Mr Scott**—No, not many. In my folder, that has just gone out, there is a pie chart of the rainfall in Innisfail and 50 per cent of the rainfall falls in January, February and March. Over three months we get half the rainfall.

**CHAIR**—Do they stay inside and drink the beautiful tea that you produce in Innisfail?

**Mr Rinaudo**—They stay home.

**Mr Scott**—They stay home and do not come to the club much. That is why we have music to keep the barmaid company. With the current laws and random breath testing, trade for hotels and clubs has diminished. I remember coming to Innisfail 20 years ago and the bar was always full at 5 p.m. You would have to squeeze in to get a drink. But now at 5 p.m. you would be lucky if you got someone to talk to.

**Mr KELVIN THOMSON**—But the lawn is green though. It does not dry out like some of the Melbourne clubs I know.

**Mr Scott**—Actually, the greenkeeper put the watering system on one day last week for the first time in 24 months, I think.

**Mr KELVIN THOMSON**—More seriously, in terms of weather reports, does the radio provide some function? Is it helpful to know the coming weather for the capacity to play or maintenance of the green?

**Mr Rinaudo**—The wireless station does have a special program for all sports on a Saturday morning. If the football ground is inundated with rain and there is no football, if our greenkeeper rang them up, they would probably put that over too. Our contact is more personal. Bowlers ring in. I might just mention the geriatric club. I think about six to eight of our members this year will receive veterans' badges. That is 70 and over out of about 120.

**Mr KELVIN THOMSON**—Is it a Saturday morning program?

**Mr Rinaudo**—The one I am talking about?

**Mr KELVIN THOMSON**—Yes, that lets people know generally about sporting events and whether they are happening or not due to weather.

**Mr Rinaudo**—Yes. That would be transmitted to people at home.

**Mr KELVIN THOMSON**—I can see circumstances where it is helpful for the club to be monitoring those things and aware of what is going on.

**Mr Rinaudo**—I would like to bring up the point that, being in cyclonic areas, TV is a really essential part of our community. In our club, it is an added feature to inform people. Cyclones do not just happen overnight and people are kept posted about their movements. The keen bowlers may still come to bowls because the cyclone is in Cairns 80 kilometres away and not affecting us, but it could change its mode and therefore you need to warn people.

**Mr KELVIN THOMSON**—Are TVs providing that sort of essential information as well as radio?

**Mr Rinaudo**—You get sick and tired of listening to the little theme tune that is on all the time. They do a really good job and so do the wireless station. That is one of their really good points.

**CHAIR**—The document provided by Mr Allan Scott, which is a letter from Maxine Chisholm, licensing manager, of the Phonographic Performance Company (of Australia) Ltd to the manager of the Innisfail Bowls Club Inc., dated 8 July 1997, is accepted as an exhibit and received as evidence to the inquiry. Are there any concluding remarks you gentlemen would like to make?

**Mr Scott**—I would just like to thank you for listening to our complaint.

**CHAIR**—We appreciate your attending the committee and thank you for your evidence.

**Mr Scott**—Thank you very much.

[11.23 a.m.]

**CUMMINGS, Mr William Samuel, Member, Cairns Chamber of Commerce, 85 Grafton Street, Cairns, Queensland 4870**

**McCONAGHY, Mr David, Member, Cairns Chamber of Commerce, 85 Grafton Street, Cairns, Queensland 4870**

**SLATTERY, Mr Bryan Lawrence, Member, Cairns Chamber of Commerce, 85 Grafton Street, Cairns, Queensland 4870**

**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 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 Slattery**—Not at this stage. I have a prepared statement to read, of which you have a copy.

**CHAIR**—Do you wish to table that or do you wish to read from it?

**Mr Slattery**—I would like to read from it, if that is okay.

**CHAIR**—You are welcome to do that now.

**Mr Slattery**—The Cairns Chamber of Commerce first became aware of problems occurring in the area that is subject to the committee's inquiry late last year when it started receiving complaints from its members. It would appear that the principal problem that has occurred is demands by the Australian Performing Rights Association for payment of fees in a situation where a business leaves an ordinary radio playing in an area that is either frequented by customers or in an area where staff are working. There is one extra problem area that one of our members has asked us to bring to the attention of the committee.

In response to the complaints raised with it, the chamber wrote to the federal Minister for Industry, Science and Technology asking him to look into the matter. I tender a copy of the reply received. This reply left some matters, such as what was a situation of benefit, open to interpretation. The chamber took up an invitation in the minister's response to take the matter further with the federal Attorney-General.

The chamber wrote to the Attorney-General seeking further clarification and suggesting that the Attorney-General send someone to Cairns to explain the legislation. The Attorney-General accepted this offer and a representative from his office visited Cairns in August and addressed a meeting that was organised by the chamber. I tender a copy of the paper explaining the legislation that was circulated by this officer.

As a result of the complaints by members and further consideration of the matter, the chamber wishes to make the following submissions to this committee. The two key considerations seem to be: firstly, the definition of a public place; and, secondly, the question of benefit. The other key question is the degree to

which the business actually goes out of its way to deliberately set up a system to play music or video to entertain customers or, in some situations, staff.

We wish to recommend that the legislation make absolutely clear that where a retail premises simply has an ordinary radio playing, with no special public address or sound extension system installed, it does not represent a situation where a licence is required. This situation has been raised with us by Mr Peter Hodge, the immediate past president of the Atherton Chamber of Commerce and the owner of three mid-range women's fashion stores in the area. Unfortunately, Mr Hodge could not join the group for this presentation. However, he was approached by APRA for a fee payment in this situation and has asked us to present to the committee his objection to requests for payments to APRA in this situation.

We submit that the cost of collecting fees in this type of situation, both to APRA and in the cost of time and trouble to the retailer, exceeds both the value of the fee collected and any incidental benefit that the retailer might derive. Could we suggest that, in this type of situation, any fees that might be forgone would be more efficiently collected by a very marginal increase in the fee levels on radio stations, recording sales, et cetera.

The other retail situation that we wish to present to the committee highlights a difference between the casual playing of a radio and one where a store goes out of its way to deliberately set up entertainment as a part of its business to entertain and attract customers. This situation has been brought to our attention by a Cairns-based store selling clothing, especially to the younger market, through three outlets. It has deliberately installed a sound and video system over which it plays music video clips.

In this case, the firm has paid a fee over many years and it does not object to paying a fee. Originally, it had paid a fee to APRA. However, more recently it has been required to pay a fee to PPCA, the Phonographic Performance Company of Australia Ltd. Currently, it pays fees to APRA of \$700 to \$800 a year and to PPCA of \$1144.57. The company does not wish to record any complaint about the APRA fee. However, it does wish to record a complaint with the PPCA.

It is not the fee itself that is the problem; the company is paying the fee. The problem lies in the insistence of the PPCA on signing a complex licensing agreement document. We tender a copy of the document. In this case, the owner of the stores feels that he could not sign such a document without reference of the document to his solicitors for advice, and he believes they are likely to query some parts of it. He feels that this is likely to cost him a further sum, probably in the order of \$300. In this case, we would like to suggest to the committee that some form of simplified system be introduced that does not require the expenditure of money on solicitors fees.

The next area of concern that has been raised with the chamber relates to radios playing in workplaces. Mr McConaghy and myself are both manufacturers with closed workshops, and it is of concern that simple playing of radios in this situation would incur a licence fee. To take the situation to some lengths, should a trawler operator operating off the coast who leaves a radio playing that he and his crew can listen to, with some perceived benefit in keeping the crew happy, become subject to a licensing fee? Could we suggest that our comments in relation to the playing of radios in a retail situation apply also in this type of situation and that, for the same reason, there is a definite exclusion in any legislation.

That is our submission, Mr Chairman. Mr McConaghy has a couple a things that he would like to say as well.

**Mr McConaghy**—My concern is not specifically with being asked to pay a \$36 registration fee or more, depending on numbers of radios, but the fact that the method that APRA has taken to extract these fees has been one of somewhat bludgeoning small manufacturing businesses. This could amount to small businesses paying millions of dollars for fees which really we do not feel should be applicable.

I first received a notice on 25 July 1996 requesting I pay a fee. I did not answer, I received another one on 8 November 1996 telling me in a straightforward way that if I do not get into it and pay a fee they will be around to do something about it.

I feel there is a lot of double dipping going on as far as radio stations paying licence fees is concerned, and then small manufacturers paying licence fees for radios owned by their own employees, in their own work areas, who want to listen to weather forecasts, current affairs and the like. As far as APRA claims the contrary, this is an imposition on small businesses.

If you take it to another extent, if a real estate agent has his car radio operating while he is taking a client to a house or whatever, he is probably in breach of the law. I think Bryan has covered most of the areas.

There is one other area that I did come across. I am in a dilemma as to what my rights are. The QCCI stated in a conversation that an APRA area licensing representative has the right to enter my factory. On the other hand, the Housing Industry Association stated that this was not the case and advised me to phone their solicitor direct if I experienced any problems.

**CHAIR**—Would you like to say something, Mr Cummings?

**Mr Cummings**—No.

**Mr TONY SMITH**—Does your chamber basically represent small, medium and reasonably large businesses?

**Mr Slattery**—A fair cross-section.

**Mr TONY SMITH**—Is there a general feeling that this has come to the fore of late, or is it something that has been ongoing for a while?

**Mr Slattery**—It has been under discussion by the management committee for around about 12 months or so.

**Mr Cummings**—We first started getting complaints at the end of last year. It is quite possible that there was unrest and so forth before then but we got a number of complaints about the same time, towards the end of last year.

**Mr TONY SMITH**—Do you get complaints from sole operators at all, people such as hairdressers and that sort of thing, very small outfits?

**Mr Slattery**—We do not have a lot of that sized businesses that are members of the chamber.

**Mr Cummings**—We have not had any from hairdressers, but complaints have come in from smaller retailers and smaller manufacturers.

**Mr TONY SMITH**—Getting away from the retailing side of it, have you got people in semi-light industry types of areas who experience these problems as well with their workers listening to radios and things?

**Mr Cummings**—Mr McConaghy is a small manufacturer in building products and Bryan is a manufacturer in the garments field.

**Mr TONY SMITH**—In relation to that, with the summer cricket season coming on us, do you have employees who like listening to test matches and that sort of thing?

**Mr McConaghy**—Yes, but also the weather and current affairs are pretty important in the minds of employees. Music is not the sole reason for listening to radio. Radio is there, more importantly I believe, for current affairs, news, weather updates and this type of thing.

**Mr TONY SMITH**—What do you understand to be the situation if an employee brings his own radio to work, a little transistor radio to work, and plays it where he is working?

**Mr McConaghy**—This happens in my situation. There are about four radios in my factory. None of them belong to me. They are played at a moderate level, and very often they are on different stations. I have signs at the front door saying that this is a factory only, all inquiries are to be made at the office. In my opinion there is no public performance whatever and yet it appears that the law considers otherwise.

**CHAIR**—How about charter boats that operate out of Cairns? Do you have any of those represented in your chamber?

**Mr Slattery**—Not that I know of, Mr Chairman; they have their own associations, their own fishing and game fishing associations. They would probably, more than likely, be part of that, or the tourism association.

**CHAIR**—With respect to businesses that might benefit from the collection activities of APRA, would you have any of those represented in your chamber?

**Mr Cummings**—We certainly have the radio stations as members and we have had one or two people in the entertainment industry.

**CHAIR**—With respect to the radio channels, have they offered you any opinions on the manner in



which the licence fees are collected at the moment?

**Mr Cummings**—No.

**Mr KELVIN THOMSON**—There is correspondence to you from the industry minister in December of last year where he says:

Both APRA and PCCA are currently mounting an awareness and compliance campaign targeting small businesses such as restaurants . . . for licence fees to play music in the establishment.

I suppose the compliance campaign is obviously enough in terms of letters of demand. However, in terms of awareness campaigns and people understanding the basis of this legislation and the basis of copyright and so on, has any of that been going on, or have you had discussions with APRA about those sorts of issues?

**Mr McConaghy**—I have had responses from members of parliament. I have had no response from APRA, except the correspondence demanding payments.

**Mr KELVIN THOMSON**—But have they approached you as a chamber of commerce, or conversely, have you approached them, to say there would be some advantage in an educational campaign or an awareness campaign where people understand what is being done and why? We have had other people come to us and say they think these things are hoaxes and—

**Mr Slattery**—The chamber of commerce has not had any approach from APRA.

**Mr Cummings**—The only thing that did come up was when we organised the meeting for the officer from the minister's office to come up. APRA did ring us from Sydney and offer to send somebody up to that meeting, but we felt that it was superfluous for that particular meeting for them to specially fly somebody up.

**Mr KELVIN THOMSON**—So you have not seen anything from either APRA or PCCA that could be described as an awareness campaign?

**Mr Cummings**—Certainly the chamber has not received anything.

**Mr Slattery**—We are really acting purely on behalf of our members and the complaints that they have made to us.

**Mr KELVIN THOMSON**—On that point of on behalf of your members, do you have members who are involved in music production and performance and so on and might have a different view about all this?

**Mr Slattery**—Not to my knowledge.

**Mr Cummings**—We did have one member who was an entertainer. I do not think that he is a member anymore.

**Mr KELVIN THOMSON**—It has not been the case that you have small businesses in the music industry whose views you also have to pay some regard to?

**Mr Slattery**—No, we have not had that at all. We reacted in disbelief, I guess, when we first found out that this was actually the case. Our representation to the minister for science and tourism and the Attorney-General was to clarify the situation, and the legal situation as it actually stood.

**Mr KELVIN THOMSON**—To come back to this communication issue: APRA has advised us that it consulted with and alerted many industry associations prior to commencing its campaign. Were you one of the associations that they consulted with or alerted prior to commencing the campaign, and were there any discussions held prior to them commencing the campaign?

**Mr Cummings**—I cannot recall anything coming, not even a letter. Certainly there was no intensive contact and, as I say, I cannot even recall a letter coming from them.

**Mr KELVIN THOMSON**—What about the printed material from them? Do you have a view about how effective that printed material is in getting the message across to people? Is it easy or hard to understand?

**Mr Slattery**—I do not know. David, do you have an answer to that?

**Mr McConaghy**—That is about it—this small brochure. There are questions and answers about who has to pay fees and who can get an exemption.

**Mr KELVIN THOMSON**—There are some information sheets around. I note the complaint that you had about the nature of the licence application from the PPCA. It does strike me as very complex, and one would understand people thinking that they would need to have recourse to a solicitor in dealing with a document like this.

**CHAIR**—Is there anything further?

**Mr TONY SMITH**—I am trying to be devil's advocate here, looking at the other side of the coin. What do you say to the people who are the struggling artists and performers who have written songs who say that this is their copyright, their artwork that is being played and that they should be rewarded in some way for it?

**Mr Slattery**—I thought that they already were with the royalties that were paid to and via the recording studios and the radio stations. In this particular case, the radio station really chooses what is put on, so it is a bit of a lottery as to which one gets a benefit from it on that particular day or another particular day. At the moment it would be some ridiculously low percentage of businesses that have actually been approached by APRA and, therefore, are likely to be paying a fee. If there were a need for that, there would be a much better way to approach it.

On top of that, employees in a closed factory are taxpayers, just normal people and part of the

community, and they have an entitlement to listen to radio, whether it be their own radio at work, or their own radio at home. I think that it is drawing a very fine line. I do not begrudge the artists themselves legal and proper copyright and reward for their efforts, but I think that in this particular case, our argument is that the definition of the public place is just going a little bit too far.

**Mr KELVIN THOMSON**—Some of the stuff in your submission here is very helpful in trying to draw distinctions in terms of the evidence that we have heard. It certainly strikes me that it is very different where you have a mechanic in a garage playing the radio to keep him company through the day, as compared with Coles Myer engaging in a very substantial use of music to create a particular atmosphere for their store, or indeed, other types of stores which might regard particular music programs as helpful in attracting and retaining customers and giving the store a particular flavour or mood. Those things do seem to me to be different.

You have recommended that radio should not be the subject of licences. What about if someone goes on and then uses cassettes or CDs? It is not just turning on the radio and taking potluck with whatever is being played there, but they have got to—

**Mr Slattery**—Select the music.

**Mr KELVIN THOMSON**—Yes. They have got a cassette player, or something.

**Mr Slattery**—It is not an in-depth opinion; it is my personal opinion that that could quite easily be included in the fee paying structure—that is, people that are actually selecting that particular type of music for that particular situation. But the main thrust of our argument is: do two mechanics in a workshop make a public place, or do 20, or 50, or 100?

**Mr KELVIN THOMSON**—Do you have a view about this issue of music being played for the benefit of employees, as compared with customers? Do you have a view about whether your businesses, by and large, are playing their music for employees, or for customers and, if so, does that make a difference?

**Mr Slattery**—Again, it is a personal opinion. I have not previously considered it—and Bill might like to comment—but I think that there is a difference. Obviously, by the representations we made on behalf of one of our members, most people would agree that if you deliberately install a sound system, or a system to project the music obviously to everyone who is entering the shop, then there would be a case. I would not like to really go further than that. There certainly would be more of a case than for individuals who have a radio on the counter for listening to in the times when the shop is empty, or they are doing other business.

**Mr Cummings**—The important thing with the whole business is the degree to which it is being deliberately done and targeted to the customer. There could be situations where a firm really does use entertainment for their employees, but I think that it would be more likely to occur in a retail situation where there is a deliberate setting out to provide an entertainment background in the particular store. As we have recorded there, in that case, the retailer was quite happy to pay a fee.

**Mr TONY SMITH**—You can get down to really fine distinctions, as in the case of someone working

underneath a truck, or something, and he has got the radio handy. Only he might be able to hear it, and only just. So you have got these degrees of whether it is turned up, turned down, or half way, and it is bound to produce inequity if you are just going to say, 'We see a radio; there is a fee.' Do you agree with that?

**Mr Slattery**—I do agree with that. Part of that inequity is, as I suggested before, that there is a small percentage of people that have probably been caught in the web and the large percentage of people that are out there in business. There are some 7,000 businesses in the Cairns area, and I would suggest that less than 10 per cent of those would even be aware that they are breaching a law. And if they did, they would be in a complete uproar if they understood what the full meaning of the law was.

**Mr KELVIN THOMSON**—I have got to say on this issue about whether it is being done for the benefit of employees and customers, that the reason for raising this is that some businesses are saying to us, 'This is not being done for public benefit at all. People come into the store and shop and leave within 10 minutes or 15 minutes. It is of no consequence to them what music they hear in the meantime. They are not interested in that. The music is here for us because we get bored when no-one else is in the store—or it is for the benefit of employees.'

But the purist APRA view, if you like, might suggest that that does not matter. If you are deriving a benefit from playing that, then some sort of copyright ought to apply. If you really think that the music is of no value, then switch it off. So you do have to have regard to that.

The other point I make about the situation with regard to employees is that there is probably a difference between a mechanic having a radio switched on in the workshop and Ford or Kodak, with hundreds of employees, installing a sound system for the benefit of the employees and going to some trouble about it. You start to think that the work of those artists is being put to very deliberate use.

**CHAIR**—Thank you, gentlemen, for appearing. You were asking about the progress of the committee's inquiry into this matter. We have had hearings in Perth, Canberra, Hobart, Townsville and now Cairns. We will be having more hearings in Canberra, Sydney, Darwin, Melbourne, Adelaide and Brisbane.

The report will be drafted in the period from December to March 1998, so there is a bit of flexibility there. If there is any further information you would like to forward to the committee, you are invited to so. Thank you very much for your attendance today. It is much appreciated.

Resolved (on motion by Mr Kelvin Thomson):

That the material presented to the subcommittee by the Cairns Chamber of Commerce, and the annexures thereto, be accepted as a submission and received as evidence to the inquiry.

### **Luncheon adjournment**

[1.31 p.m.]

**STEVENS, Mr Thomas, 3/34 Minnie Street, Cairns, Queensland 4870**

**CHAIR**—I welcome witnesses, members of the public and others who are attending this meeting of the subcommittee. Mr Stevens, in what capacity are you appearing before the committee?

**Mr Stevens**—I am appearing in a private capacity. I have an interest in the subject because of my background and my profession. It is the area in which I practise as a solicitor.

**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 care to make some introductory remarks?

**Mr Stevens**—Yes, certainly. I have been involved in the music industry since I was about 14 years old. I am now 47, which makes it a very long time. My family has had a musical background. My sister is a composer. I was a musician myself up until I was about 20. I then got out of the area for a short time and studied law and, as soon as I finished my law degree and went into practice, I was fortunate enough to get into a law firm in Melbourne which had a very large music industry clientele. I have managed to maintain that area of practice for the last 17-odd years.

I have divided loyalties to some extent because I appreciate that, if it were not for organisations and collection societies like APRA, the composers of music would be very unlikely to see any royalties for public performances. APRA's charter, as I understand it, is to collect public performance royalties in Australia and throughout the world by virtue of its international affiliations. Their job as the absolute owner of the copyright in the public performance—and we are talking about APRA rather than the other organisation which owns the copyright in the recordings themselves—is to exploit that copyright which is assigned to them by their members.

I generally agree in principle with the whole concept of collection by these organisations. However, it has been a matter of concern to me—and this criticism is levelled at APRA all the time—on how they divvy up the money. I think they collect some \$33 million in Australia annually. Although we are dealing specifically with the right to play music in retail stores, I just wonder where that money goes and whether or not most of it is being distributed to people who are already very successful and extremely rich.

I would, from a social perspective, perhaps like to see some of the money being distributed to the less well known, the less successful people in the music industry. It is a very difficult industry and only a minute proportion of the people in the industry actually make a decent living out of it. That is one aspect.

As far as the shop owners are concerned, I believe that the fee that is being asked is very, very small. It is in the order of \$50-odd, I think, annually. This should be considered as just another overhead. But at the same time, especially in Cairns, where the retail industry is suffering a dreadful crisis at the moment, I can understand that, for every shop owner who is required to pay any additional fee simply for the privilege of opening the doors, all of these fees accumulated are just a burden. So I can understand their concerns about

it.

The other thing that concerns me also—this was expressed by a client only yesterday, at a meeting I had—is that at the moment this very small fee in Australia is really subject to what APRA says it wants to charge. We have got the process of the Copyright Tribunal. There are arguments over the amounts of royalties. An application could be made to the tribunal but that is a horrendously expensive exercise, as far as I know. The tribunal is not used very often and, when you have got huge resources as APRA has, it is just basically a lawyers' picnic. In America, I am told by a reliable source only this week, the amount of royalties charged to shop owners is approximately 12 times what is charged in Australia. So one is concerned about where that might be going as well.

There is one other issue that I would like to raise. I have a client based in Sydney that is actively involved in the recording and publishing industry but of late has devised different, novel means of marketing recorded music. In the most recent projects that that client has been involved in, spending hundreds of thousands of dollars in these projects, they insist that their composers are not members of APRA. That is for the simple reason that they see themselves in a position where they can market their music in various different ways to people who are not prepared to pay public performance royalties at the same level that APRA charges here in Australia and the levels charged by the affiliated societies overseas. They see a huge gap in the market and they do not want their composers to be members of APRA for that very reason, because it restricts their ability to do deals.

**CHAIR**—Are clients getting much as an overall proportion of their income from fees collected by APRA?

**Mr Stevens**—In my experience, it is very small. I have a number of clients who just cannot wait for their APRA cheque to turn up. One in particular I can think of is a jingle writer, for want of a better expression. He is a composer, he writes advertising music, and every time his ads appear on television in the national capitals he gets a royalty. Every time the jingles are played on radio he gets his royalties. It is very, very lucrative for him.

On the other hand, I have a client here in Cairns who is enjoying considerable success at the moment. His career has only recently taken off, but he is now in a very comfortable position and he would probably be earning somewhere around \$100,000 a year, for the first time in his life, from his endeavours in the music industry. It is quite an extraordinary thing to do that sort of business in music. His annual royalty cheque from APRA is only about \$800. So that is a very small part of his business.

**CHAIR**—Why would that be? Of what nature would his business be?

**Mr Stevens**—It is not so much as a composer, I suppose. He is a member of APRA; he does receive composers royalties. But it is possibly—only possibly—due to the fact that APRA is not allocating to him his reasonable share of what he should be getting. That is one possibility. The monitoring system that APRA uses I am not sufficiently familiar with to comment about. It is widely criticised. How can you possibly know who should be getting what, just by taking samples from what is played on the radio and samples from what is played on the television, et cetera?

But, overall, it is considered to be highly desirable by virtually every composer. It is hard to say to a composer, 'We have a recording project on here at the moment. We do not want you to be a member of APRA and you are going to have to resign if you want to be part of this project'. It is just one of the done things. Everybody joins. It is a recognition of their art, so to speak, and it is a source of royalties which could possibly be very lucrative in the future, depending on how it is managed.

**CHAIR**—You have not found any backlash from people that might use bands and so forth in their venues on the basis of the APRA approaches or fees?

**Mr Stevens**—As I understand it, every promoter is required to pay a royalty to APRA. Suppose I am going to promote a live event in Cairns—in fact, there was a controversy here fairly recently when we had a fundraising concert attended by some very well-known performers. It was a concert for the young Aboriginal fellow who got burnt. I cannot remember his name.

**CHAIR**—Tjandamurra O'Shane.

**Mr Stevens**—Yes, Tjandamurra. I understand from the newspaper reports that it was suggested that APRA should waive its fee because it was a charity; the event was raising money for charity. APRA, it was reported widely in the local paper, refused to do so because it was not satisfied that it was a truly charitable event, that all the money was going to go to charity. There was a certain commercial aspect to it, therefore one had to pay royalties.

With every promoter there is a backlash. The first time I got involved with this issue was back in the mid-1980s, when the very well-known Australian promoter Kevin Jacobsen, for whom I was acting at the time, protested very vigorously against the fact that he had to pay some \$60,000 to APRA for the Bruce Springsteen concerts. He saw that he had already paid Bruce Springsteen a fortune. Why should he pay APRA fees, with the money flowing back to Bruce Springsteen? He wanted to challenge the whole basis of APRA's monopoly at that time and was prepared to do so if he had the support of other promoters. The cost of doing so was prohibitive, unfortunately for him, and he ended up paying up. Otherwise, they were going to close the concert down.

I am not being critical of APRA here. They have a job, as they see it, to collect public performance royalties from whatever source they can find, whether it is a telephone now or whether it is a public performance in the park or a nightclub venue or in a little shop. Their job is to collect those royalties for the benefit of their members. I am sure that they will say that they distribute those royalties fairly and evenly to those who deserve it.

**CHAIR**—Did you say a telephone?

**Mr Stevens**—In a recent High Court case it was held that a public performance included on-hold music over a telephone.

**CHAIR**—Are APRA collecting fees for that?

**Mr Stevens**—Absolutely. It has recently been upheld by the High Court.

**CHAIR**—I am not sure that they are actually collecting fees for that, though.

**Mr Stevens**—They sued Telstra over the issue and won. There is another way of marketing records as well which has recently been developed; that is through these little interactive display kiosks that you find outside music shops. These kiosks allow people to come up, view the range on sale and press little buttons through which they can listen the music they are about to buy. That is public performance as well, in my view.

**CHAIR**—We just want to get a citation for that case you are referring to.

**Mr Stevens**—I cannot think of it offhand. In fact, I do not think it is reported yet; I have just read articles. I could certainly get that to you, no problems. In fact, I have got an article in my office which I can fax through to you this afternoon regarding the issue.

**CHAIR**—Thanks, we would appreciate it.

**Mr Stevens**—Telstra argued that it was not a public performance because it was only to one person at a time, and that sort of thing.

**Mr KELVIN THOMSON**—You mentioned in your statement a concern that copyright royalties go to already successful performers and that it might be desirable to encourage money or royalties to go to encourage less successful musicians or performers, which does strike me as having some merit. I am wondering how you would do that if we thought that that was a worthwhile direction in which to proceed.

**Mr Stevens**—I notice that with the other collection society we are dealing with here—I cannot remember its name—

**Mr KELVIN THOMSON**—The PPCA.

**Mr Stevens**—I first heard of the PPCA about six months ago. After being in the industry all my life, I had never heard of them. I saw an advertisement which appeared in a law journal that said that if you are advising small business clients, you ought to be advising them that they must pay royalties for the playing of CDs in shops. I then wrote to them and said, ‘What are you all about? Who are you?’ It turned out that one of the directors of the company is a good friend and client of mine, so I was somewhat embarrassed.

I noticed in their constitution the way this organisation distributes the royalties equally. It is much easier to identify the people who are going to get the royalties in this case because there are only so many producers of recordings. They distribute proportionately to artists, recording companies and whatever but they also have a trust fund. How that trust fund is administered, I do not know, but I suspect that they allocate a certain amount of money to the trust for administration by the trustees to a certain class of beneficiaries in accordance with need. That is one way of doing it, but it has to be arbitrary to some extent.



APRA would collect this \$33 million every year. What proportion of that goes to Michael Jackson, who owns the Beatles catalogue, and do they need the money? I have to ask that question. It seems to me that these people are already obscenely wealthy. I would like to see some of that money distributed to institutions promoting the arts. The Rock Eisteddfod people, for instance, could be beneficiaries of that to encourage them.

The whole philosophy of music legislation in Australia in the last 20 years has been through compulsory licences to encourage the Australian produced product rather than just importing music. Back in the 1960s they introduced legislation—it is still in effect today; it is under review, I understand—relating to this compulsory licence business. Once a record is released, anybody can then re-release it as long as you pay the statutory royalties. In 1969 we had B.J. Thomas release *Raindrops keep falling on my head* in America. Before it actually hit the streets here, we had Johnny Farnham's version which made him a fortune and the record company a fortune.

That is great to have that idea of fostering the Australian industry and I support it whole heartedly. I like to see the industry encouraged and I think it has paid off to a large extent because of the number of international successes we have got who probably would not have got a start. With this huge amount of money being collected by public performance societies—I suppose this is the socialist coming out in me—I would like to see the money directed towards those people who really are showing promise in the country, who are showing merit and encouraging the industry rather than sending it off to the Michael Jacksons of this world who are so fabulously wealthy they do not need it any way.

**Mr KELVIN THOMSON**—And it was the socialist in me who asked you about it.

**CHAIR**—I am sure the socialist in you gives major discounts to your fees to struggling artists. I don't know how you make any money.

**Mr Stevens**—I most certainly do. I subsidise my artist clients to a very large extent. The reason why this committee contacted me in the first place is because I give my time free to the artistic community of Cairns through the Arts Law Centre. I also charge my small budding artists a tiny fraction of what I charge my multinational ones. They subsidise the poor ones; don't worry.

**Mr KELVIN THOMSON**—Can you take us through this matter you raised about people who are asking that composers not be members of APRA?

**Mr Stevens**—I think it is probably best to relate it back to the particular circumstance. The client has a series of albums out in the marketplace today doing extremely good business. The client was approached by an American chain store that wanted to spend about \$30,000. I cannot remember the figure but it was a very large amount of money to buy this music, which is very distinctive, to be played through their hundreds of stores throughout America, the only condition being that they did not have to pay public performance royalties.

They wanted to avoid the \$50 a month fee multiplied by 600 stores. For that, my client could have done an extremely good deal. It is very lucrative for his artists and composers. However, he was not able to

do so. So now he has actually found composers who are prepared to do another series of very distinctive albums with the same theme. I am being general because I do not want to identify the people concerned; it is their business. This is precisely what is happening at the very moment and I am directly involved in this.

They have identified composer performers who are able to record this very distinctive music in a series of 12 albums which they will then be able to sell to people in Australia, Europe and America and say, 'Don't pay the royalties to the collection societies. Pay it to us and we'll supply you with the music and you'll get very nice theme music for your stores.' I suppose this undermines the argument to some extent that APRA has got an absolute monopoly. The composers do not have to be members of APRA. They generally do become members because they consider it highly desirable, and I support it, but there are other ways around it.

The muzak thing that happened with the elevators in large buildings is where that was derived. It was terrible music. You are going to say, 'Let's compete with the public performance collection societies throughout the world and produce music that can be used alternatively.' The other thing that the shop owners can do is turn the music off. They presumably have to get music from other sources and this is going to offer another source.

**Mr KELVIN THOMSON**—The other thing that you raised in your opening remarks that I wanted to ask about some more was that incident involving Tjandamura O'Shane. On the face of it, it sounded awful—way over the top. Can you tell us how that was ultimately resolved?

**Mr Stevens**—I believe it was resolved amicably. In fact, I think that the newspaper headline reporting here in the *Cairns Post* was typically hysterical. I think it was blown up out of all proportion. I understand that there was simply a disagreement with APRA or an inquiry made by APRA. This is reading between the lines. The inquiry was made by APRA legitimately: we want a public performance fee like we charge to every other promoter in the country. The promoters here are saying, 'This is a charitable event.' APRA has said, 'Convince us it is a charitable event and we'll waive our fee.' They did not do that properly and that is why it got into the newspapers and there was a terrible hullabaloo about nasty naughty APRA insisting on charging a public performance fee for a charitable concert. I am sure it was sorted out.

**CHAIR**—Do you mind if WIN-TV film some of this? Do you have any objections to that, Mr Stevens?

**Mr Stevens**—Not at all.

**CHAIR**—In that event, you are very welcome to film proceedings.

**Mr KELVIN THOMSON**—So ultimately it is your impression that there were not royalties paid in the case of that?

**Mr Stevens**—It is my understanding that they sorted it out amicably and I believe that it went ahead. It was a genuine charitable concert. I do not believe it was wrong from APRA's point of view to ask the

question of the promoters, 'You've got people coming from all around Australia apparently, giving their time for nothing.' Everybody supported the concept. I think it was a legitimate inquiry.

**Mr KELVIN THOMSON**—Are you aware of any interaction between APRA and the legal profession concerning some of the legal issues that are around in terms of this? People have been bowling up to us with concerns about what the legal position really is—what is a public performance and things of that nature. APRA is asserting that certain things are required which give rise to licence fees and others are querying whether that is legally the case and so on.

**Mr Stevens**—I am in the very happy position of being on good personal terms with the chief executive officer of APRA. If I need to have any input or ask any questions, I just contact Mr Cottle, who contacts me back immediately.

I know that other people have concerns. For instance, I had a Cairns solicitor from a prominent large firm here contact me a couple of years ago to express the horror he had just experienced. APRA had demanded that he pay hundreds and hundreds of dollars for music to be played in his hotels. He had an interest in three or four hotels in northern Queensland. APRA had contacted him and said, 'If you want to play music in this hotel, you're going to have to pay us the fee.' I believe the fee for hotels is considerably higher than for small shops—perhaps a few hundred dollars a year; I cannot be sure.

I explained to my colleague in the legal profession that APRA is the absolute beneficial owner of the public performance right. I said, 'If you want to use music, you have to pay the fee. If you don't like that and you go ahead and do it without paying the fee, APRA will sue you. They will take you to the High Court if necessary to prove the point because they have had constant problems trying to work out what is or is not a public performance.'

There are dozens and dozens of cases—APRA is one of the greatest litigants this country has ever seen—working out what is or is not a public performance. There are old cases going back to the 1940s with the leagues clubs in Sydney, where you had the argument about whether or not the actual performers of music were performances in public, because it was a private club. At nearly every turn, APRA wins.

**Mr KELVIN THOMSON**—So would you say that in the case of a mechanic in a garage playing a radio that that is a public place?

**Mr Stevens**—I believe that there is no doubt that this is a public performance in a shop. If you are playing music to employees in a workplace, it is a public performance. I am sure that the courts have so held that. I am sure Mr Cottle would be able to clarify it.

**Mr TONY SMITH**—But not in terms of the vagrants, gaming and other offences legislation in Queensland on that public place thing. I am sure there is law on that which would contradict that issue about the fellows in the garage—maybe it is a different area of law to which the tests are applied, I do not know. But, certainly, that does not seem right to me.

**Mr Stevens**—I am afraid I do not follow the question: I was talking about workplaces.

**Mr TONY SMITH**—You were saying that it is regarded as a public place. There are all of those cases under the vagrants act, which you may be aware of, where they talk about what a public place is. I am sure it would not fit in with that line of cases.

**Mr Stevens**—Possibly that is the case. I cannot comment on that because I am not familiar with that legislation. I do not have much to do with it.

**CHAIR**—We have had submissions from people in tropical north Queensland who are concerned that, because they have to pay attention to cyclone warnings, and other emergency situations, they have to use radios and televisions in their place of work for a specific purpose. Perhaps there is an element of keeping themselves occupied with listening to something but it is not for public consumption. Do you think it is fair that they should pay a fee for their personal use in those instances of the radio and television or even for their staff?

**Mr Stevens**—I think that is a very extreme example.

**CHAIR**—We have had it raised quite a lot.

**Mr Stevens**—I have heard the argument and I thought it was a very extreme emotional example of a very unusual circumstance, and a very limited circumstance, where you have a workplace that never ever plays music but thinks that because a cyclone is approaching—we did have one that hung around for two weeks earlier this year but that is most unusual—they have to listen to every broadcast. I believe it is a nonsense argument.

**CHAIR**—Do you think it is fair that the small shop owner who is listening to a radio for their own entertainment, and not in any sense for the entertainment of customers or clients should be expected to pay a licence?

**Mr Stevens**—In theory, you have got a one-person shop or a two-person shop where the music is being played for no other purpose, just for background for the worker, and it is not there to create some sort of ambience for the shop and that sort of thing. I suppose it is an argument that it is not fair. The question is to be determined. However, whether it is a public performance is a question of law and there is plenty of law on the subject.

**CHAIR**—What about the situation where licences are also being sought from RSL sub-branches which are pursuing charitable or community service type activities, do you think it is fair that they should have to pay licence fees for providing a TV on their premises?

**Mr Stevens**—I think any licensed club has to be regarded today as big business. They are taking and making lots of money. They employ lots of people. It is just another workplace. It is like saying that the VFL should be excluded from the Trade Practices Act because it is not conducting business.

**CHAIR**—But what if they are not-for-profit organisations?

**Mr Stevens**—You are suggesting to me that all non-profit organisations should be excluded from the APRA royalty provision, is that correct?

**CHAIR**—We have even had submissions today from not-for-profit organisations who have complained quite vigorously about having to pay licence fees.

**Mr Stevens**—I agree with the general principle that, if it is a non-profit organisation and it is not for the personal gain of the members, they should be excluded from some charges, fees and what have you—maybe they should be excluded from paying rates. If it is a commercial operation in any sense, I disagree with it. If it is a commercial operation, they are in the business of making money. They might be making money for the benefit of the members, and nobody gets money back in their pockets, but they like getting wealthy and a wealthy club provides facilities for all the members. They are engaging in commercial activities and they should be paying.

**CHAIR**—Are you concerned that some of these organisations have told us that they are now turning their TVs and radios off because of the threat that they might have to pay a licence fee? Would that concern your clients in terms of their public image, and the promotion of their music and their industry?

**Mr Stevens**—I do not think it would concern them too much, and I think it is an overreaction.

**Mr TONY SMITH**—But surely the licence fees, the royalties from that, are a pittance compared with the sale of records and surely it cuts both ways. If you encourage people to buy the records and tapes, and so forth, you are going to make a lot more money out of that than the pittance you get from the licence fee. It cuts both ways that argument, does it not?

**Mr Stevens**—It is just another source of income from the public performance rights.

**Mr TONY SMITH**—But you are forcing those little clubs to desist with that activity. On the other side of the coin, you are putting at risk clients who are seeking to sell those products to the marketplace. You are cutting off a market source. Do you see how it cuts both ways?

**Mr Stevens**—Are you saying that people in the clubs that decide that they do not want to have the music broadcast are less likely to be exposed to the music and therefore less likely to buy it?

**Mr TONY SMITH**—I am saying that the more exposure you get, the more possibility you have of making much more money than just getting a pittance from a licence fee.

**Mr Stevens**—There are two different issues here. One is the selling of records, which is the major commercial part of the exercise, and the other is the copyright and the music and that bit of the copyright which is the public performance right. There are lots of things in the music industry which appear to be unfair, and unreasonable and one-sided. It is perhaps difficult to justify in individual circumstances but I do not believe a collection society such as APRA can function properly unless it is able to make these charges across the board.

**Mr TONY SMITH**—It cannot function at all because its whole bureaucracy depends on what it can collect.

**Mr Stevens**—Yes.

**Mr TONY SMITH**—And that is one of the other problems. Let us go to the question of this High Court decision. Are you familiar with this decision in the case of Australian Tape Manufacturers and Commonwealth of Australia 1993, 176 CLR? Do you know that case?

**Mr Stevens**—Refresh my memory. I may have read it.

**Mr TONY SMITH**—I only saw it today. This was the case where amendments were introduced to the Copyright Act which in effect tried to levy some royalty, some amount of money, at the time of sale of CDs and cassettes. The High Court ruled that that was unconstitutional. Do you know the background to that?

**Mr Stevens**—This is the blank tape case, is it not?

**Mr TONY SMITH**—Yes.

**Mr Stevens**—It was ruled unconstitutional. I am sure your colleagues in Canberra would probably be better able to answer this question than I am. The record manufacturers and the publishers derive their income from the sale of records. There have been decisions made in the courts about the situation where I can go into a shop and hire a CD and at the same time right next to it I am offered for sale a blank tape. It was argued that this was authorising the infringement of copyright but the court held that it was not.

The reality remains that, for every record that is sold, there is a blank tape or a tape recording or multiple recordings made of that tape for domestic use. As a matter of policy, the federal government, as I understand it, introduced legislation to say, 'We are going to recognise this fact of life.' Every single person who is interested in music out there in the community infringes copyright every day because they make tapes. They preserve their old records. It does not happen so much with CDs but certainly with the old fashioned discs that wore out. What you would do is you would buy your tape, and make another tape so that you keep your pristine tape. When you wear that tape out, you then make another one. They recognised that this happened and they said, 'Okay, we will introduce a blank tape royalty.' It was a levy on top of the cost of the blank tape and the High Court held that that was a tax that was unconstitutional and ruled it out. The theory was good.

**CHAIR**—With respect to the collection of licence fees for the playing of television and radio, wouldn't it be simpler to collect those fees once from the television stations and the radio stations rather than going to the end user and seek to do it there?

**Mr Stevens**—I think it all goes back to the fact that APRA is not constituted by legislation. It is an organisation of private individuals who have banded together for the purpose of collecting royalties. The way it works is it receives the public performance right, and it will exploit that public performance right in every possible manner and every possible way it can.

The only way to get around the problem, as you see it, is to legislate and to say, ‘Okay, APRA, we recognise the need for your existence. However, we are going to regulate your activities by saying that since you have got such a broad way of collecting royalties, and it is a monopoly organisation and we have no way of knowing whether you are going to act capriciously or unreasonably, we are going to legislate to govern your activities.’ That is the way around that problem, if it is perceived as a problem.

But, as I was saying, the essential point is that the public performance right is a very broad right. In the recent case about broadcasting through the telephone on call waiting that has been held to be a public performance. That is just another way of APRA collecting royalties. And it will continue to find ways of doing it while ever it can. It may be considered as a matter of public policy that this is administratively cumbersome or unfair against charitable institutions or small shopkeepers or whatever and that it just creates too much dissension. Everybody will complain about paying APRA royalties, but the people who are in receipt of them do not complain.

**CHAIR**—But you can also see the problem, can’t you, when maybe a grocery store owner is confronted by someone from an organisation known as APRA seeking a licence fee and shortly thereafter another representative or letter arrives from another group called the Australian Performing Rights Association? Quite often the response, that we have been given evidence of, is that one of them must be a fraud.

**Mr Stevens**—You have got two organisations doing very similar things. Some of my clients that I have been dealing with in the last 15 years still cannot understand the difference between the public performance right and other rights. We have got the public performance right subsisting in the recording and the public performance right subsisting in the music. The concept is very difficult for some people to grasp.

One thing that you have just mentioned to me perhaps could be looked at. I do not know how the APRA fees are structured, but it seems to me that if you have got a supermarket that is employing maybe 20 or 30 people and that supermarket is paying \$50 a year, it does not seem fair to me that the local sandwich shop has got to pay the same thing because it has got music in the background. Maybe the fee ought to be adjusted to take account of the turnover of a particular organisation.

But with all of these collection things, it is arbitrary. It is very difficult to make an exception for every single one or reach a separate type of agreement. Maybe it should be on a percentage, like with concerts. With rock and roll concerts, for instance, the fee is charged on a percentage of the actual gross receipts. Therefore, if it is a big, very successful concert, there is lots and lots of money involved. Imagine what the public performance fees would have been for the Dire Straits tour, which happened in about 1986, where everybody in Australia went—the Prime Minister, every premier—

**CHAIR**—I was not there.

**Mr Stevens**—You weren’t there? I think there were 17 concerts in a row in Melbourne—they just sold out and sold out. Just imagine what the fees were! For Bruce Springsteen, which was a short tour that I have personal knowledge about, it was \$60,000. There must have been millions involved with the Dire Straits tour. I was happy to be in a position to advise the support act, which was the Sundowners, on how many

songs they should try to jam into a set.

**Mr KELVIN THOMSON**—The more they played, the more they were paid.

**Mr Stevens**—Exactly.

**Mr KELVIN THOMSON**—There are two things I want to ask for your comments on. They are propositions which other witnesses have put to us. One is that we ought to clean up the definition of public place, that there ought to be some legislation which makes that clear.

**Mr Stevens**—I think it is the definition of a public performance, not so much a public place. The courts have been asked to define what is a public performance numerous times. There should perhaps be an analysis of what the present state of the law is and maybe it should be adjusted by legislation.

**Mr KELVIN THOMSON**—Yes. The second proposition is that where retail outlets or workplaces simply have a radio or TV the licence fee concept ought not to be applied in those circumstances. The distinction is with CDs, cassettes and other types of music.

**Mr Stevens**—I can understand that. What that will do is simply deprive APRA of one source of its revenue. Maybe they will accept that without an argument. I doubt it, however. There is an argument to say that this is really so minor. They would say that that is reflected in the fee—it is only \$50 a year.

**CHAIR**—Thank you very much, Mr Stevens. We appreciate your attending today and we are grateful for that.

**Mr Stevens**—It is a pleasure.



[2.11 p.m.]

**CHAPMAN, Mr Ian Edward, Steering Committee Member, Tropical Australia Recording Artists Association, c/- Post Office, Trinity Beach, Queensland 4878**

**COLEMAN, Mr Pearse Alexander, Steering Committee Member, Tropical Australia Recording Artists Association, c/- Post Office, Trinity Beach, Queensland 4878**

**HARRIS, Mr Russell, Interim Chairperson, Tropical Australia Recording Artists Association, c/- Post Office, Trinity Beach, Queensland 4878**

**CHAIR**—Welcome, gentlemen. Do you have any comments to make on the capacity in which you appear?

**Mr Harris**—I am also appearing in the capacity of musician, songwriter and small business person.

**Mr Chapman**—I am an entertainment agent in Cairns and the surrounds and I have an interest in some of the CDs produced locally. I am also a small businessman concerned about the situation.

**Mr Coleman**—I am a composer, a recording artist and a small business operator.

**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.

Before I proceed, I want to ask you whether you have any objections to representatives of WIN Television filming today's proceedings. Does any of you have any objection? Since there are no objections, you are welcome to proceed. Would you like to make some introductory remarks?

**Mr Chapman**—As we have said, we are here as representatives of an association recently formed in Cairns. To give you a bit of background about our association first, we have got together to hopefully cover the marketing aspect of the music industry up here. We have had something like 32 locally produced CDs done here in the last 18 months, all of which get to a certain stage and then run into brick walls on the marketing and airplay side, which is one of the reasons we are here today. Hence, the association was formed.

We all, in one way or another, have an interest in this business, either through moneys that we have put in or as singer-songwriters. Hence, from our side of the desk, we think the APRA fees being levied are more than fair. As financiers and entertainers, songwriters and performers in our own right, one of the very few ways we have, as independent producers and singer-songwriter composers, of getting a return on the moneys put up is via the APRA royalties paid. Obviously, the larger the APRA pool, the higher the royalty paid.

One of the objects of our association is to try and increase the amount of airplay of our tropical Australian artists, obviously with a view to increasing, firstly, our direct sales, and obviously with a view to increasing the royalties that the composers and songwriters, and the various people playing on the albums, receive on an annual basis, or sometimes biannual basis.

From our own point of view, and the people we represent through our association—I think you can see that we have a fairly strong view on the APRA side—it is pretty well unanimous that whilst there might be a small public relations problem with the way APRA go about collecting it, we think the fees that are collected are warranted. As I say again, it is one of the few ways available to independent producers—by that, I mean not tied to the larger record companies, which is very difficult to do from up here because we are so remote—of getting a collection or getting the money back that has been invested.

I do not have the figures in front of me, but I can assure you that the money that has gone into the production of the CDs here, locally, in the last 18 months is a heck of a large sum. We are talking hundreds of thousands of dollars that have gone into the local community. I guess, in some ways, the levy of these fees on small businesses is just one way of the local community paying back—if you want to look at it this way—some of the investment that has gone into the community here by the artists involved and the people that are backing them.

**CHAIR**—Do you other gentlemen have anything to say now?

**Mr Coleman**—No, not at this stage.

**Mr Harris**—As it goes on, yes. We will expand on the points.

**CHAIR**—Some of the submissions we have received reflect a concern from small business owners, particularly about the playing of radio and television quite often for their own use or maybe for the use of their staff. Also, we have had submissions indicating that, particularly in tropical Far North Queensland, there is a concern to be able to keep an awareness of bulletins with respect to cyclones and other weather events, and other emergency situations. Do you think it is fair that once a radio station and television station has already paid fees, presumably, small business people in this situation have to pay a further fee to APRA?

**Mr Chapman**—I think it is a matter of who is deriving the benefit of our artists' work. Is a benefit being derived here? If you look at the radio and TV station, they are in this for a profit. If the music is assisting them to sell more advertising—they have a bigger demographic and they can charge more for their advertising because they have got more people watching or listening and the music is contributing to that—they are deriving a benefit and, yes, a fee has to be paid.

Then you have the situation that you have just mentioned, where that music is being listened to by whomever. If they are deriving a benefit from it in a business sense, be it either financial or even productivity, surely, yes, there would be a licensing fee to be paid. They are using the talents of our members, or, if you like, any composer or musician, to benefit their business in some way. Whether they are sitting there listening to a cyclone warning and that is the only time they play the radio, I am not to say. I cannot comment on that, I am sorry. But if it is just in a small business sense that they are in some way

deriving a benefit from that music, yes, I believe a licensing fee is warranted, over and above the one already paid by the TV or radio stations who are deriving their own benefit in some financial way. If they were not, they would not be in the business.

**CHAIR**—You said you had heard some concerns about the manner in which fees had been collected and the public relations side of this whole exercise. Have you been approached at all by APRA to assist in the dissemination of information and the education process?

**Mr Chapman**—I did not say I had heard anything. I said that maybe APRA have not gone about it the right way. I, personally, have not been approached. One of the members of APRA Brisbane recently briefed us at an association meeting on some of the problems they were experiencing in the collection of the fees. We are all aware of how the public feels.

I could just give you an instance. Recently, Mr Coleman and myself attended a local chamber of commerce meeting called by the chamber which asked all small businesses concerned about what we are discussing here today to attend. Pearse and I were the only two from this side of the fence. The rest were all small business people from around town who, at the start, were quite vocal about APRA's approach, not wanting to pay the fees and not understanding what they were for. Pearse and I explained the situation to the best of our ability, having been briefed by the gentleman that came up from APRA, Mark Ghiradi.

Once it was explained, the feeling of the meeting changed totally. It was, 'Okay, now we can see what it's about. Probably that is due and reasonable.' In some ways, it is just a matter of education. Whether it is a government function or an APRA function or we have to get involved in it, I do not know. A lot of the problem here is just the ignorance of the situation. People just do not understand what it is for. Once it was explained properly, generally our experience was that the response was, 'Okay, we can understand it. It seems quite reasonable.'

**CHAIR**—Would you be concerned that we have had evidence given today by representatives of social clubs and organisations, such as the RSL, who were very concerned about approaches to them for these licences? These are non-profit organisations. Would you be concerned about the backlash to the industry because of the offence taken by these associations to the approaches by APRA and the other organisation?

**Mr Chapman**—They are only non-profit organisations inasmuch as they do not return a dividend to their membership. They all make a profit, otherwise they would not be in business. Is it fair to say, 'We're a non-profit organisation; therefore we're not going to pay our liquor licensing fee or poker machine licensing fee'? They may be a non-profit organisation, but they are not a non-expense organisation. They have to pay expenses. They are running a business; they are a commercial operation. The Yorkeys Knob Kindergarten social club that is running a chook raffle to collect \$5 a week to pay their postage should not have to pay that.

**Mr TONY SMITH**—But they are caught by it.

**Mr Chapman**—They are. In my view, they probably should not have to be. How do you administer that? Whose nightmare is that going to be? I do not know. I do not have an answer to it. All I am saying is,

if it is a commercial organisation, such as the RSL or the bowling club, they are all paying their other government licensing fees for various other things they have to be licensed for. This is just another licensing fee. It is a small fee too. It is not an exorbitant fee at all.

**CHAIR**—With respect to the television and radio, the bowling club said they were turning them off and no longer using them for that reason. They did not feel that they should have to pay a fee for the use of television and radio. That seems to one of the sticking points. It is that medium that they are concerned about.

**Mr Chapman**—If they are going to be that dogmatic and deprive their members of that enjoyment over \$37, I do not think I would want to be a member of that club anyway. As far as affecting what we do, independently, it would have absolutely no effect on us in any way, shape or form.

**CHAIR**—A previous witness did say that the fees in America were significantly higher than the fees here. Some people might be concerned this is the thin edge of the wedge and that fees could rise in the future.

**Mr Harris**—Obviously, market forces will drive what the fees are. That is why we are having this hearing now. But we have not only got radio. You have been focusing on radio here. The terms of reference include playing of cassette music and CDs in places like doctors' surgeries or places like that where there is a benefit being derived from recorded music.

One example may be Tony O'Conner's music, which is relaxation music. It is used for a specific purpose of relaxing patients before they go into a doctor's surgery or for putting people in a certain frame which a business has in mind. It is part of the package that they use to try to increase their profits or get the desirable outcome that they want. If music is used from that point of view, to my way of thinking there is some benefit being derived from it. So why should a small fee not be paid? Fifty dollars a year or whatever the fee happens to be, for a business that may be turning over half a million dollars a year, does not seem very much. It is a way of compensating the authors of that particular work.

**CHAIR**—The fee is already paid by the people that produce the CD.

**Mr Harris**—What fee?

**CHAIR**—To the artist.

**Mr Harris**—What public performance fee has been paid by the people that produce CDs? There is no public performance fee paid.

**Mr KELVIN THOMSON**—A much stronger intellectual property argument applies to the CD or cassette type case than to radio and TV. That is one of the reasons we have been asking—

**Mr Harris**—It is all tied in with this one argument here. It is all tied in, isn't it? The terms of reference of the inquiry are small business based. Whether that is by people listening to radio, or whether it is

by some other medium—it may be listening to it off the internet or something like that—there are lots of different ways of people being able to gain a benefit from other people's work.

**Mr KELVIN THOMSON**—In my mind there is a distinction between something like the Tony O'Connor example, which I think is quite a good example, where the intellectual property argument is strong—a particular shop sets up an ambience in order to sell particular products; his music suits that and he is being picked out and his work is relevant in that context—and the very different situation of a store which has stuck a radio on the counter because there are not enough customers coming in to pass the time of day. In my mind there is a difference between those two situations.

To follow that on: we have been getting submissions, including submissions this morning from the Cairns Chamber of Commerce, along the lines that this should not apply in the areas of TV and radio. That is because, firstly, the intellectual property argument is weakened—radios are just playing a vast array of different sorts of music—

**Mr Harris**—Then the easy way to do that would be to find what percentage of music is being played on radio, in terms of the total content of radio, and just levy a fee in terms of the percentage of music content played. Then that goes to APRA as whatever the fee might work out to. That is a simple way of doing that.

**Mr KELVIN THOMSON**—Nevertheless, it does not seem to me that the radio is being put on in the shop to attract customers. If a customer comes into the shop in order to purchase something, it is neither here nor there to them what is on the radio. They do not have the faintest idea what is going to be on the radio when they come in there and it does not influence their decision to enter the shop.

**Mr Harris**—I would take exception with you on that. For instance, some of the FM radio stations play a majority of music content and people sometimes make decisions between putting an FM radio on and putting a CD player on. A lot of times there may be a very fine line between what the FM radio is playing and what the latest, greatest hits CD is playing. So you have the situation where you have got to make a definition of, maybe, formats like 4CA, for instance, or whatever, where you have a high content of news and stuff like that, as opposed to the FM stations being played. Who is going to decide all of that?

**Mr KELVIN THOMSON**—I am accepting that in some cases the type of music that a shop plays will be quite relevant to their desire to attract customers. In other cases it strikes me that what they are playing on the radio probably has very little to do with customers and a lot to do with what that person likes to hear themselves—what their own musical tastes happen to be. So there is that issue about intellectual property being weakened.

Secondly, there is the issue of double dipping. Where the radios and so on have paid a licence fee in the first place, there is this concern that people are being expected to pay a second licence fee to broadcast the same music. Then there is the issue of radio as an information medium, which has been talked about here in the context of cyclones, weather and so on.

**Mr Harris**—It seems that there are a lot of complex things to decide. Ian has a view on the double dipping.

**Mr Chapman**—As Russell said on your first point, it would be an absolute administrative nightmare. Who is to decide who is doing what? We have got a situation now where everyone gets caught in the net. As Mr Smith was saying, even as I mentioned the small kindergarten, everyone gets caught in the net. I would not have the faintest idea how you would go about categorising everyone. The costs of collecting it, I think, would far outweigh the—

**Mr KELVIN THOMSON**—The proposal that gets advanced is that the licence fee should not be payable in relation to radio and TV. That is, licence fees would continue to be payable in relation to cassettes, CDs and so on.

**Mr Chapman**—On everything else, but nothing for radio and TV?

**Mr KELVIN THOMSON**—Yes, that is the argument that gets put.

**CHAIR**—Presumably the radio and television companies pay a fee when they pay for the broadcasting rights.

**Mr Chapman**—There is a royalty collected on their play list, which I think is just a sample.

**CHAIR**—If they were also FM music stations, presumably they would pay a bigger amount than if they were a news station. And that is easily determined on the basis of their program schedules.

**Mr Chapman**—Off their program list, yes, I agree. But as far as the double dipping goes, as I said before, who is deriving a benefit here? The radio station is deriving a benefit. The idea is to play the music to get a larger audience, to increase your demographic so you can charge more money for your advertising. If you are not doing that, you are out of business. So they are deriving a benefit. If the business that is then receiving their signal by radio or TV is also deriving a benefit, a fee should be paid.

As Mr Thomson was saying, there are some cases where you have to listen to cyclone warnings. Is that the only time anyone plays a radio? I do not think so. Anyway, it could be a case in point. Or you just might be putting it on because you are standing there bored.

**Mr Harris**—For most of those people listening to cyclone warnings, it is going to be a personal thing anyway. It is a time of emergency anyway. Really that is a superfluous argument, having to listen to—

**Mr Chapman**—During the last cyclone, Cyclone Justin, which went through here earlier on this year, businesses were advised to pack up and go home. I do not know who was working on that Saturday morning. I certainly was not; I was sitting at home waiting for the cyclone to go over my head. I think most people who had any brains were doing the same thing. So business would not have been opening and thriving, listening to cyclone warnings then. Everyone was sitting in their house waiting to see what was going to hit.

It was only a category 2 cyclone that came over, as it turned out; it was not that serious. But imagine if it was anything more serious. The local drycleaner is not sitting down there with his radio going, pressing someone's shorts. He is sitting at home with his bloody door battened down, with the rest of us, hiding under

the tables.

**CHAIR**—I think the whole point is that it is a community service and it is a community information bulletin.

**Mr Chapman**—Yes, sure.

**CHAIR**—Some people feel a need to be kept informed of what is going on.

**Mr Harris**—It gets down to this: if there is a certain amount of community information on a radio station, just base it on the amount of music that is being played on the radio station. They have got figures for that.

**Mr KELVIN THOMSON**—The argument is that they cannot afford not to have access to a radio. So, at some points in time, many radios in this area—and, indeed, in other areas on other grounds—will play. It is not as if they are being played solely for music or other purposes; they are saying, ‘We need to have access to this.’

**Mr Harris**—Of course they do. For a week or two a year, hey, nobody is going to complain about that—listening to cyclone warnings and the like, listening to community announcements. You do not walk into one of the big leagues clubs and hear the radio going, do you?

**Mr KELVIN THOMSON**—Since we have started doing this inquiry we have, actually. We have been noticing it everywhere.

**CHAIR**—There are a lot of people that might want just to listen to the radio; they do not want even to listen to the music on the radio. But they do not get the choice if music punctuates every second sentence. They feel offended at having to pay a licence for something they are not using it for.

**Mr Harris**—Are these people individuals, or are they business people?

**CHAIR**—Well, that is what they are saying. The major submissions we are having are over this point, that they are using it for their individual information purposes or for the occupation of their staff. In that sense, it might well be ambient music in the background or whatever. But staff often bring the radios themselves to the workplace, in factories and so forth. But these all attract licence fees at the present time.

**Mr Chapman**—Consider a factory situation where a staff member brings a radio in and is contributing to the ambience and, I would assume, assisting productivity. If it has the reverse effect on productivity, whoever owns the factory will be saying, ‘Do not bring the radio in, please. You are all sitting there listening to the radio, you are not working.’ But if it is contributing to their ability to perform better, therefore a benefit is being derived and a fee should be paid. I do not care who brings the radio in. The boss makes the decision. If he does not want the radio there, they do not have the radio. If productivity goes down, he is better off paying his 30 bucks and letting them bring the radio back in, surely.

**Mr Harris**—It is such a small fee.

**Mr Coleman**—I think also on every building site around Australia you would probably find two or three radios blaring out, which is contributing to the productivity of those blokes. If there was no radio there, I guarantee they would be up in arms.

**CHAIR**—There is also the other argument that it decreases their attention to their job and decreases their productivity, I suppose.

**Mr Chapman**—That is the boss's decision—turn it off, take it away.

**CHAIR**—If you can supervise them out in the field when you are not there.

**Mr TONY SMITH**—If one song is played on one station in Cairns in one year, how much does the artist get?

**Mr Harris**—Probably nothing; it depends on when APRA does their checks. They do a two-week period where they will check what is being played on air, and it will be a sample. The only way that small artists like ourselves get any return from APRA is that we have to fill out a return. If we know that our song is being played on a certain radio station, we will contact APRA and say, 'We believe our song is being played X number of times.' We usually contact the DJ who has been playing it, or the radio station, and say, 'It has been played. Can you check the records?' They are usually good enough to do that. Otherwise, it just goes on a sample, generally across Australia, from so many radio stations of what is being played, and the pool is distributed like that.

**Mr TONY SMITH**—That is a really haphazard thing, by the sound of it.

**Mr Harris**—It is a very small amount.

**Mr TONY SMITH**—Okay. Some music is so bad that writers and performers should pay the radio station to play it.

**Mr Harris**—I beg your pardon. In whose opinion?

**Mr Chapman**—Yes, who is the music critic?

**Mr TONY SMITH**—There is some music that is so bad—people say that.

**Mr Harris**—I could ask everyone of you what you think is bad music and we will get a different answer back.

**Mr TONY SMITH**—But the market is the test, you see.

**Mr Harris**—Which market?



**Mr TONY SMITH**—The buyer's market.

**Mr Harris**—The buyer's market? What—4CA's market or Hot FM's market? Which market?

**Mr TONY SMITH**—We used to have the Top 40 once. That was the market for testing how many people were buying the records to determine where the song was in the Top 40. We do not seem to have that any more because music seems to be so dreadful these days that—

**Mr Harris**—That is your opinion.

**Mr TONY SMITH**—It is an opinion of Paul McCartney as well.

**Mr Harris**—That is two people. Can you subpoena him?

**Mr TONY SMITH**—Do you know a better songwriter? Do not get me wrong—these views are the views that we get put to us as well.

**Mr Harris**—By a few people who write in to you.

**Mr TONY SMITH**—You have to take all views into account. What I am saying is this: why should an organisation which has the support of legislation get money for a lousy record compulsorily? Why shouldn't it be the market that determines these things?

**Mr Harris**—I think this is an absolutely stupid argument, Tony, I really do. If you ask every individual person in this room, you will have as many different answers as there are people in this room on what they think is good music. It is just ludicrous, it really is, when it comes down to that, because there are so many different markets in Australia at the moment and so many different markets in the world. There is the country music market, there is the R&B—you just have to look.

**Mr Chapman**—There is pop contemporary, there is classical, there is techno—

**Mr Harris**—There is our local market too. If you listen to other critics they may call our local market bad, but there are certain people around this area that like listening to local music and support the local industry as well.

**Mr TONY SMITH**—The problem I had was one comment by Ian. That was that you are looking for a return for investment. But in every other area of life, you get a return for investment on quality, on what you produce that is accepted to a market. You cannot get a return compulsorily despite the quality, I would have thought.

**Mr Harris**—You have to convince the radio station to play your song and then you get a return from there. If people want to play your song in their surgeries, or whatever, then you are entitled, I would think, to a return there.

**Mr Chapman**—Tony, the thing is that you just do not produce a CD, walk into a radio station and it goes on air. That does not happen. Out of the 30-odd I mentioned that have been done up here in the last 12 or 18 months—and from 30 CDs we are probably talking, say, 300 songs—you could count on one hand the number of songs that have actually been played here locally on 4CA. So to actually achieve airplay is a huge win to start with.

That is not necessarily going to sell CDs for you. The biggest market we have for selling CDs is at live performances, which is not really entered into here. The royalty that comes back from APRA for the one song you might achieve airplay with is worth its weight in gold, to be quite honest, because it is so hard to achieve and just to give that away is not in our make-up.

**Mr TONY SMITH**—Can I come back to the point that you have to look at the submissions we are getting from small business. It is a big issue in my electorate and it is probably a big issue in other electorates. We are getting a lot of pressure from small business saying, ‘This is just outrageous, these bureaucrats coming in here, into my one-person hairdressing salon, and telling me what to do.’

Surely the object of the exercise, particularly with local artists, because I am all for Australian artists, believe you me, is getting that airplay. Your object must be getting that airplay so people can say, ‘Hey, here’s a great Aussie song, go and buy it’, and you tell your mates, not have bureaucrats hammering on doors of small businesses. Because you hear it you go and buy it. My businesses are saying they are not going to have radio because these bureaucrats are coming in. Therefore, you are denied that little market that can exponentially grow.

**Mr Harris**—I do not believe that point of view for one moment. To increase the local content airplay the government can immediately start by making sure that radio stations within Australia play local product and immediately you can forget the parallel importing and focus on the multinational bloody companies that are making the profits, not the small guys like us who have to spent \$40,000 on their first CD, as I had to. The local industry does not get any support like that.

There are so many artists in Australia struggling out there who have to finance demos for their songs first up, and then they have to finance going into studios. It is not just this airplay on radio, it is the song writing aspect and the public performance aspect. There are so many different areas to it and you have to battle through all of them. It is a bit more than the average small business operator has to deal with in a lot of cases to wade through that. There is very little government support along the way for any of that. They slashed Aus Music this year and last year when that was starting to work. Really, this government has a lot to answer for and this will be just another kick in the guts to the musicians if you go too hard on this one.

**CHAIR**—But how much money, seriously, do struggling Australian musicians get back from APRA? The evidence we have received so far is that the cheques are very minimal.

**Mr Harris**—In my case I got a very nice \$600 cheque last year. Thank you very much. That went straight back into financing my next song.

**CHAIR**—So it represents a very meagre proportion of your income, I would imagine?

**Mr Harris**—But it is necessary. I believe it is necessary to foster the song writing ability of Australian artists. It is a very necessary part of that.

**CHAIR**—If you are only getting \$600 back—

**Mr Harris**—Some people get \$3,000, or whatever.

**CHAIR**—maybe we should be looking at the distribution of funds as well because I would imagine the bulk of the money would go to major recording artists and so forth and a lot of those people reside overseas.

**Mr Harris**—Sure, but that is taking the communist point of view now if you want to do that. Really, it is, to do that—

**CHAIR**—No, no.

**Mr Harris**—If somebody is doing well on the Top 40 and their song is at No. 1, fair enough, they get the lion's share of whatever their distribution might be for that week or two that they are on there. The distribution, the way APRA does it, is fair because if you are not on the Top 40 then you fill out your form and say, 'I have been performing my songs at these venues.' You put that in and you get your royalty back at the end of the year. That is a fair system.

**Mr Coleman**—They also recover their royalty from that particular venue. The hotel has to pay an APRA fee and part of that fee goes back to paying Russell for his performances on Friday night on a set date because he has performed his songs and he will get a cut out of that fee. That is all derived from that particular—

**Mr TONY SMITH**—But will Russell get the fee, the 1c or 2c fee, from the playing of his song in my hairdressing salon in Brendale? Will you get the 2c from my hairdressing salon?

**Mr Harris**—Yes, we do.

**CHAIR**—I think the administrative cost of collecting the money is too high because you are only talking about licences that are only a few dollars and you have to send letters and everything else.

**Mr Harris**—Yes, but across the length and breadth of the nation it goes into a pool. People write down that this song is being played on radio and then you get that little bit extra on top of what normally comes back from APRA, and that goes back into the industry.

**CHAIR**—Do you not think it would be better to collect all of this in a simpler form from the radio stations and television studios?

**Mr Harris**—Are you going to up the licences for the radio and television?

**CHAIR**—That would be the interesting question. That is one of the proposals that is being put, which is that the fees derived across the board from all of these little players are causing a lot of angst.

**Mr Harris**—But then the individual person is paying for the business owner's advantage. You get an individual person then paying for a business owner's advantage, do you not? There are a lot of other arguments that come into it once you start doing that. The general population has to pay for a certain segment of the population's benefit. Do you get what I mean?

**CHAIR**—You mean the—

**Mr Harris**—Small business operators are having a problem with this at the moment. Is it fair to ask the whole population to finance that?

**CHAIR**—It would not be the whole population, it would be the radio stations and the television stations. It would not make us friends with those particular players either to put this point of view, but it is an argument.

**Mr Chapman**—Obviously, if it could be done—

**CHAIR**—It would be a simpler way of doing it if you are going to collect fees.

**Mr Chapman**—How you would do it, I do not know. I would not have a clue how you would work out who has to pay what, so I could not comment on it.

One of the artists I represent last year collected a little over \$5,000 for APRA, which represented almost 10 per cent of his yearly income. It can be quite a fair percentage of what they earn. He is just a local recording artist. It will probably be similar this year, although we have had a little bit more airplay due to the CD coming out. But, as Russell said, we might not get anything from that, even though it was played quite substantially over a three-month period.

**Mr KELVIN THOMSON**—Do you have a feel for whether that comes from the public performances of their music, or is it radio based?

**Mr Chapman**—Yes, you do get a split up. When you get the cheque it is split up.

**Mr KELVIN THOMSON**—So, in the case of a \$5,000 cheque, what would it roughly be?

**Mr Chapman**—I cannot remember offhand. The majority of it was for live performances, there is no doubt about that.

**Mr KELVIN THOMSON**—Live performances of their work?

**Mr Chapman**—Yes. The other is just mechanical royalties and what have you. But we are just starting out in this. This is the first time we have actually achieved airplay with one of the artists.

**Mr Harris**—Very limited airplay on maybe one or two radio stations.

**Mr Chapman**—Prior to that, a video recording had been done of one of the songs and had been picked up and played on Sky Channel. A few bits and pieces came from that for concert performances and what have you. So it is split up over a range of different performances but the APRA part of it, be it a live performance, mechanical royalty, radio, television or whatever, does form a fair whack of some of these people's incomes.

**CHAIR**—Would you support a proposition that some of these people on the mezzanine level should get a better cut out of APRA's takings? I would imagine that the information coming in from the bands and so forth would not be fabulous because you have to fill out all these forms, whereas the major recording artists would all be listed on the schedules of radio and television. Would there not be an argument for weighting the distribution a little bit in favour of up-and-coming artists?

**Mr Harris**—Maybe it is weighted that way at the moment. There is room for both government and possibly APRA to support. I know APRA has programs to support up-and-coming songwriters. That is who and what APRA is dealing with—songwriters and the songs. The public performance of those songs is a different thing again. You have, for instance, the PBCA. I have not seen a distribution from them; I do not know what they are up to at the moment. There is copyright in the recordings themselves.

The distributions from APRA could probably well do with a government boost back into Aus Music. Maybe there is an argument for APRA to spend more time fostering budding songwriters. Certainly, there is hardly any support given to it at the moment around the country. Aus Music was starting to do that but, like I said, that funding got cut and we do not see any of those programs up here.

**CHAIR**—The alternate argument is that, if you are small businessmen yourselves, you would not want the government to be propping you up. You would be wanting to get your legal and proper recompense for the work that you have produced, which is what you are seeking to do.

**Mr Harris**—Certainly, if there is a government contract out there to provide maybe education services or something like that. Come on, let's be real. The more support government can give small business in this country the better. There are an awful lot of grants out there where the returns to the economy are very dubious. We certainly do not see any of those. We have hard, concrete commercial music in a lot of cases that we are putting out up here. We get very little support.

**Mr TONY SMITH**—The only thing I was going to say was, in terms of the amount of money involved, you must of course bear in mind that that \$35 or \$37 is on top of every other fee, charge, levy, administrative expense and government regulation that small business has to put up with. So, while it sounds small, when you add it up with everything else it is horrendous. It is just another—

**Mr Harris**—This would be a good example of the way government could partly fund that levy, or something like that, to put some back into the song writing of Australia and into the music business of Australia.

**Mr Chapman**—It also depends on the business. I had a supermarket up here seven years ago. I was actually quite surprised when we set it up. I went into the council and various government bodies here trying to find out what licences I needed. In fact, there was not one. I did not have to have one single licence. There was no money that had to be paid for anything to open that business, except of course the registration of the business name. There were no licences. The only fee that I had to pay in the end was the APRA one. That was it. That was the only licensing fee I had to pay for that business.

**Mr TONY SMITH**—You would find a few more now, I am afraid.

**Mr Chapman**—That was 1994, so it was not that long ago. There was nothing for health, there was nothing for cigarettes, there was nothing to sell this or sell that or any requirement. There was not one licence. But if I wanted to have the music in the shop, which we did, it was \$30 or \$32. That was the only licensing fee we needed. So, in some instances, your argument does not hold water. But it does depend on the business.

**Mr TONY SMITH**—It does. The message you get is the one that you have to take on board; that this is yet another slug on top of everything else and it is the last straw for many people.

**Mr Coleman**—Is there any particular category of business that is complaining?

**Mr TONY SMITH**—The most complaints I have had are from the small hairdressing type salons, the one-barber or two-barber type place; the little hardware shop, where the bloke has the thing going out the back while stacking parts; and the bloke in the one-person garage repair shop who is under the car—that type of thing.

**Mr Coleman**—It is a fair minority, is it not?

**Mr TONY SMITH**—But there are a lot of those little businesses—panel beaters.

**Mr Coleman**—But it is not a large amount of businesses, is it?

**Mr TONY SMITH**—There are in my electorate. I have hundreds of businesses like that in my electorate.

**Mr Chapman**—Why don't they try turning the music off for a month and see what effect it has?

**CHAIR**—We will not make any comments about that.

**Mr Chapman**—Just see what effect it has. Is productivity affected? What happens to the business? When the bloke is getting his hair cut, does he comment, 'What's happened to the music here today? Why isn't the music on?' 'Oh, because I am too bloody lousy to pay my \$30 APRA fee.' 'Oh, well, I'm going down the road in future.' See what business he loses. It is a pretty easy survey to run.

**Mr TONY SMITH**—It is a civil liberties thing.

**Mr Chapman**—I understand that it is a civil liberties thing. You should be allowed to do this and you should be allowed to do that. We all wish we could do things like that but, unfortunately, we cannot.

**CHAIR**—Thank you very much for your evidence. We much appreciated your attending today.

[3.10 p.m.]

**MORGAN, Mr Kevin John, Proprietor, Composer, Bluey Morgan's Drum School, 5 Fallon Close, Brinsmead Glen, Queensland 4870**

**CHAIR**—I reconvene the subcommittee of the inquiry into the licensing of copyright for the playing of music in public by small businesses. I welcome Mr Morgan, members of the public and others who are attending the meeting of the subcommittee. Mr Morgan, would you like to address the committee?

**Mr Morgan**—Everyone has known me as Bluey for 20-odd years, so I go under that name. I was phoned by the committee in Canberra and asked if I would like to appear here, because I have been a very outspoken person on the rights, shall we say, of composers and musicians for many, many years. I have been a musician in this town alone for about 22 to 23 years. In that time, I have been employed as a DJ many times on radio, many times as a live DJ, as a live musician, as a live performer, and as a composer many times.

Over the years, I have discovered a lot of bickering amongst musicians, especially the composer-type musicians—I will not say 'the musicians who just play anybody else's music', but the composers—who do not seem to be able to get the rights that they deserve. Mainly, my big fight has been with records, as in vinyl—I suppose you have still got some. I have. I still think they are better than CDs. With regard to the price of a CD in this country, it would cost only \$1.14 to make one. It seems that everybody else seems to be making all these dollars on top of the cost of the CD, and the composer still gets only \$1.30 from the price of a CD. I find that quite ludicrous.

That is another issue, I know. The issue is that I have read the *Hansard* from Perth and I have read the *Hansard* from Canberra, right through, and I find a lot of the comments from the small business associations pretty ludicrous when they say, 'We do not wish to pay extra money, after the licensing fees have been paid by radio and television, to have that music coming into our business.' That is a known thing with small business since small business began. Nobody wants to pay anything to get a business up and running. I know I do not. But I have a small business—I have a drum school—and I pay APRA fees when I am using CD players to teach my students. If I do not use anything, then I do not pay. It is as simple as that.

On the point of what they say about businesses not wanting to pay, but, if they have to, wishing to pay once, I agree with that totally. I agree with some of the comments to the standing committee about there being too many collection points, as in APRA and the other mob, and there are all these other small associations. I think that they should all be disbanded. There should be one body governing the lot. It would be much simpler.

I think that the people concerned, especially Mr Cottle from APRA, had a lot of good things to say. But he also had some contradictory things to say. They all seemed to be, the agencies especially, too much endowed with powers, and I think they are in their own self-interest. Most of the associations, including APRA, are very self-interested and not really for the composer-musician.

I do, however, disagree with the idea of having to pay a licence, extra, for having a radio in your



workshop. But, then again, they must define the workplace. I noticed in both *Hansards* that the reference to hairdressers has been brought up. Being in the music industry for 25 to 30-odd years, I have had a lot to do with hairdressers—and a lot of them—on both sides of the fence. I have gone out with a few, and I have had my hair done for many years by many different hairdressers. Believe me, they do not listen to the radio for the specific purpose of listening to the radio. They have music playing there specifically for the customers, to lull that customer into another sense, whether it be of wellbeing or excitement, so they pay extra, get a better haircut, or pay more for shampoo. It is all part of business.

Why cannot small businesses agree to pay \$37 a year, or whatever the price is, to have a CD player there? It is a tool for their business. It is a definite tool used for business, for entertaining, and for getting the public to succumb to buying more. It is used in supermarkets, and I disagree with them complaining about having to pay. Small business should be looking at every form of tax deduction they can get. It is just another tax deduction. Put it down on the tax bill.

The next thing is boredom in the work. I firmly believe that if you are bored with your work, you should get out. If you really need that radio there, and you need that CD player there, then I do not think you should be in business. I do not think you should have a job. This is why the productivity in this country is down 80 per cent or something, because too many people listen to CDs.

We love it. It is great because they are buying CDs, but no-one is doing any work. Do you know what I mean? They are listening too much to the music, and they are complaining. It seems to be that the people who are actually doing most of the complaining are the people at fault.

**CHAIR**—They are probably listening to talkback radio. That is why they are complaining so much.

**Mr Morgan**—Not hairdressers, definitely. And definitely not pharmacists. Pharmacists could listen to talkback radio and get their prescriptions wrong. We could use the analogies of all these different businesses, the businesses they have mentioned in both *Hansards*: hairdressers, pharmacies, a few other people, the panel beaters. If panel beaters are listening to Jimmy Barnes singing ‘Star Hotel’ or something, they are turning cars over, listening about them ripping down a star hotel, they could, all of a sudden, hit a panel wrong. That is extra productivity time.

There is too much emphasis on the music being played in the workplace when, in fact, a workplace is for work, not for music. If you want to play music in the workplace, I believe you should pay. But the workplace should be defined, and defined clearly.

I have been an advocate of this for years. I have written to papers; I have had radio shows, talkback shows of my own, and everybody I interviewed, including a couple of people here—I have interviewed Mundy and Turner, and most of the artists—have the same thing to say: they are getting ripped off blind; they really are.

People love having all these tools for their business. They love having the music; they love having the posters; they love having the videos. In the bank, they are playing videos to make you stay longer to get a loan or something. But who gets paid? The poor little composer is still getting only this much of the egg. I

think they should cut the egg in half and give half to the composer: if there was no composer there would be no music. This is the thing they are forgetting.

You can play muzak all you like, but it is still musos doing it. There are musicians writing that muzak. They are putting it out for you to shop easier, sleep easier, all kinds of reasons that they do the music. But, to the businesses who use music in the workplace to keep their employees happy, if they are not happy without music, I say, 'Get new employees.'

If a person who has a production house, for example a production nursery, wants his plants to grow better, sure, play music to the plants, not to the people that are planting the plants. We all know that music makes plants grow better—until you put Jimmy Barnes on; then they will die. I am getting off the track a bit, but the thing is that defining music—

**Mr TONY SMITH**—So there is bad music, Mr Chairman.

**Mr Morgan**—Yes. With regard to defining music in the workplace, the workplace was not designed for music. Music was designed to be played to the public in concert halls, arenas—all sorts of places—theatres—but not in the workplace. You do not see a band going to a panel beater's shop and setting up and asking, 'Where do we sit? In the corner here? Are you guys right? We're just going to play some music.' They confine it down to a CD.

I think playing a radio in the workplace is a necessity to a lot of people up here, especially in this area. I do not know what it is like in the cities—I hate them—but up here, they need to know what is going on. There are a lot of people that just work, work, work, and hardly ever see their home. They want to know what is going on with the weather; they want to know, of course, what the fishing report is—everyone does up here. You need the radio for that, and the radio is programmed by programmers who play the music and they have already paid.

A business that just has a radio to listen to the sports and the weather and the little bit of music should not have to pay again. I do not believe it should. But I believe that if people, such as, hairdressers, pharmacists and doctors in their surgeries, have got CD players there, and they are playing specific tapes of recorded music, whether it is prerecorded or recorded by themselves at home—which is illegal, but we all do it—you cannot be caught for that. But the thing is, if you are playing CDs or tapes in a business, then you should pay because it is a tool of business. It is a product for business.

**CHAIR**—Thank you. You would win a lot of friends amongst the witnesses we had this morning because their major gripe seemed to be the question of radio information. They were also concerned about television information that is being used purely for their own edification and information.

**Mr Morgan**—Yes. If it is not a television musical show, most of the music is recorded in what they call soundtrack beds to be sold to the television studio to put behind commercials and things like that.

**CHAIR**—So would you apply the same rule then to television? If you had a television in your—

**Mr Morgan**—I do use a TV.

**CHAIR**—If it were behind the counter, just for you to keep up with the news and information, and so forth—

**Mr Morgan**—I would say that it would have to be exempt. Mind you, you are going to get a few people that bend the rules on both sides of the fence and those people, when they do bend the rules, will get caught. But if you are, say, a one-person hairdresser, or a one-person chemist shop with no other staff, and you are just sitting there and you have got a TV in your back room, not facing the clientele, then I do not believe that you should have to pay. But if you are facing it towards the public, and you are using that as a tool to bring the public in and entice them to stay—and in 97 per cent of cases, that is what it is used for, they all know that—that is different. They put muzak into the supermarkets to make you stay a little longer. You say, ‘I like that song. I will go up this next aisle now,’ and that is what it is all about. It is strictly marketing, and I have been in the marketing game for a long time.

But in the case of a person who has got, say, a coffee shop and is serving coffee out there and it is just a one-man operation, or a one-woman operation and the public does not derive the benefit of that broadcasted music—it is only for him in the back—I believe that that person should not have to pay.

I know that it disagrees with a lot of what I have read here, but I think the people in Perth—where Mr Cottle was, I think, the APRA people—were a bit over the top. In the case of the small business people, they were very much over the top. So, as it is, they are at loggerheads. The small business people, I believe—after having run a couple of small business—would all like to pay less and get more. It is a natural human thing to do—you want everything for nothing and you want the profit for yourself, as well. I disagree with that. I think that if it is a tool used for your business, in whatever capacity, you should pay extra.

**CHAIR**—So, for instance, the committee had lunch today at a sort of coffee shop where they had, I think, three—

**Mr Morgan**—Speakers?

**CHAIR**—No, television screens. Presumably, they were there for the benefit of customers.

**Mr Morgan**—Then they should pay.

**CHAIR**—So, even though that was television, you think that they should pay?

**Mr Morgan**—Yes.

**Mr TONY SMITH**—Pay for what? We could not hear the sound—I could not, anyway.

**Mr Morgan**—You could not hear the sound. If it only broadcast for the daily shows and the TV and the news, then I don’t know, it is a grey area. But if they are using that TV to play videos of music, yes, most definitely, they should pay a copyright.

**CHAIR**—This is one of the problems because with the technology—you are talking about radios—you can now slip a CD into your radio, and that makes it—

**Mr Morgan**—CD in your radio, yes. This is the argument which made me write that thing to the paper. All the small businesses were up in arms, and petty little people were writing letters. I do not say that the people were petty, but there were petty ideas. They were saying, ‘I have got a radio and what happens if I want to play a CD?’ If they want to listen to a radio, why not just buy a radio? If they really want the radio, they will buy one without the CD—and there are millions of them, really.

**CHAIR**—Probably, because they live up on top of the shop, or out the back, and it is the only radio they have got, so they bring it out to the shop and put it on the counter and it is a CD, as well.

**Mr Morgan**—I was involved with APRA many years ago and I got out of APRA because I did not like the politics. I became a live performer and did not worry about composing any more. But one of the things that they argued about was that if a person has a business and he deliberately sets up a CD player, or a record player or cassette player, and he has speakers in that room where the public are gaining the benefit from that music, for whatever purposes, and there are lots of purposes—they all have their own little hidden agendas—they should pay. They should pay because they are actually enticing that public to stay there and sample their wares—whatever they are and whatever that business may be. In the case of a panel beater’s shop, that is another grey area. There are too many organisations like APRA and the PPCA and little organisations that have their own little rules. They should all be disbanded. I think that there should be one organisation. I do believe it should be government run. It should not be a private organisation. It is the only way you will get something partially honest.

**Mr KELVIN THOMSON**—In my mind, isn’t the distinction between the radio and television the fact that they are putting on a menu which the person does not choose in any sense?

**Mr Morgan**—That is right.

**Mr KELVIN THOMSON**—The CDs, cassettes and music videos, on the other hand, are where people are choosing the menu and clearly making use of the work of the composer, and deciding that they want that composer in their workplace for some reason or another. Listening to you and to other witnesses, it strikes me that there is a case to be made for a distinction.

**Mr Morgan**—There should be.

**Mr KELVIN THOMSON**—On the one hand, the licence fee should not apply, but on the other hand the licence fee should apply.

**Mr Morgan**—There should be a distinction made, and I think that there will be. If there is a distinction made, and they go to legislation and they make a law saying ‘blah blah blah’, and another law saying ‘blah blah blah’, you are still going to get people who are going to break the law. But if it is put in the right context as a tax incentive for a business, most of them will probably get rid of their radios. They will say, ‘We can play these CDs if we pay this fee and it can be taxed.’ Why would they not want it and

why are they all complaining about this? This is what blows me about.

Small businesses are too worried about all the trifling things, and are not worried about getting on with the job. As I said, music and business do not mix, believe me. I have been in the music business too many years and they do not mix. I have been in as a labourer and a tradesperson, and I have worked in places where one bloke will have his radio and then a fight starts because this guy does not like this song. It is ridiculous. It does get out of hand.

**Mr KELVIN THOMSON**—You get Tony Smith along and there is a fight over the music quality.

**Mr Morgan**—But if it is the radio, and there are a lot of small businesses that do use radio in their workshop, that is a grey area. But in some cases, the public enter a lot of the workshops, anyway. For instance, there is a place over there where you can get your car tuned. It says on the back wall, ‘Public are not allowed to enter the workshop.’ But when you go in there, there are more public than there are workers. So they are not going to stop you. It is just a sign to stop idiots stealing things. But I think that some of those workers derive a benefit.

**Mr TONY SMITH**—This argument seems a bit attractive to me: there should never be licence fees where businesses are playing radio and television because in that situation there is a concept of advertising involved, and there is the concept of the actual thing itself being advertised. The artist is going to make much more money out of records than out of lousy APRA fees. Who has not been in a store and thought, ‘What a song. I have got to find out what song that is. I have got to get that song’?

**Mr Morgan**—Definitely.

**Mr TONY SMITH**—So the benefit for that outweighs the detriment, and the political detriment, from businesses who are complaining, especially the little businesses that are saying, ‘I am listening to this radio for myself. I am the barber here, no-one else.’

**Mr Morgan**—Right. In that case, I do not think that they should have to pay.

**Mr TONY SMITH**—What about the wider concept that artists should take the pragmatic view that there is so much hassle from collection and all this sort of thing, as far as radio and television is concerned in places of business, that it is much better for us to get our product out to a wide market than to have businesses saying, ‘All right. If you are going to charge me for them, they are off; we are not playing them.’

**Mr Morgan**—Yes, I guess that is a good argument. But I do believe that the majority of businesses would not do that. For a little while maybe they would, for a month or so, until boredom set in. As it says in here, everybody seems to be bored. I have never had a bored day in my life.

**Mr KELVIN THOMSON**—We are not bored today.

**Mr Morgan**—Exactly—you are just board members. I find the argument about boredom in the workplace unconvincing. One of the representatives said, ‘If I am getting bored in my home doing the

housework . . . ' I do not find housework boring, because I do it too quickly. I just get it over and done with, out of the way—and then spend all day, probably, listening to the radio. But in the home, no, she should not have to pay. She could not draw the line.

Let us look at small business—people who want to have a business, people who just do not want to work for a job plus. They just say, 'I have had enough of the boss. I want to go and work for myself. Okay, what do I need if I work for myself? Am I going to have a shop? Am I just going to sell things and have a deadpan shop?' There are a lot of them around, and they do quite well. But you will find, for a majority of the people, what I have found in 20 years. I have found, with so many people listening to music in a work situation, that their productivity is close to zero. It slows down. You stop when you are in the middle of something because you have got to sing this chorus. Then it is, 'Oh, back to work.' You know what I mean. It cuts productivity. I was involved in the union movement in Melbourne quite a deal—I was very outspoken on that too; that is probably why I left. They came up with this—

**Mr TONY SMITH**—Mr Thomson would be interested in this.

**CHAIR**—It is a long way from Melbourne.

**Mr Morgan**—It was just before Bob Hawke got to be Prime Minister. The argument was that the unions were going to have a big strike because inflation was up and they finally worked out—but they did not believe it after they had worked it out—that the job was taking too long because of nattering here and having a counter lunch there and 'Listen to this song' and that. The price of the job goes up, so does inflation. I was told, 'Oh, no, you can't say that to a union,' so I left. I had just had enough. I came up here and found the same thing amongst small business. It does not matter where you go.

**CHAIR**—Just to go to another aspect: we have had a complaint from a sub-branch of the RSL, who took great offence at the fact that they had been approached to pay a licence fee. They submitted that they were a not for profit organisation serving the community, and they felt that they should not have to pay this fee.

**Mr Morgan**—Maybe not. I would disagree with the RSL. I have know the RSL up here; I am a member anyway, ex-air force. They are self-promoting. I would not say that they are non-profit; they are self-promoting and they always complain about just about everything, anyway. They have a lovely restaurant out the front, it faces the public, the music is playing there, you are walking past. Who is going to see a lovely setting, with nice ambient music there, and say, 'Let's go and eat'? The case rests. I think they should pay. There are all these situations.

I see in here that there are a lot of people who are not APRA representatives but who say that they are. I have never heard of that yet. There are businesses complaining that they have been sold this APRA thing, they have got to pay, and a month later another mob comes around. And then a month later another one comes out and he is actually the real APRA rep. I am thinking that is triple dipping. Well, sure. Because there are so many organisations you are open for trouble straightaway.

**CHAIR**—There are two legitimate ones.

**Mr Morgan**—One legitimate one is all you need—the right one.

**CHAIR**—Or perhaps if they got together and had one approach?

**Mr Morgan**—Yes. That would be a brilliant idea but they cannot do it. I do not know why. It is just jealousy, ego, who knows.

**Mr TONY SMITH**—Forget the RSL for a second, because sometimes it does conjure up images of quite big lots of money rolling in from the pokies and so forth. What about the little struggling clubs you get around the place? In my electorate, for example, I have got the Pine Rivers Bears Rugby League Club, a very little, struggling, battling club. Is there any argument there?

**Mr Morgan**—It depends on whether they are using the music to promote or, shall we say, to drag the customers in. Suppose they are using good music to entice. If you are using a product—it does not matter whether it is music or an elephant—to entice the customers in, I believe there is a prerogative that they should pay a fee.

**Mr TONY SMITH**—All they do there is drink beer. They are not interested in music.

**Mr Morgan**—And probably they watch television. That is so in the public bar, but if you go to the lounge bar it is a different situation—piped music and so on.

**Mr TONY SMITH**—I am talking about just the TV, radio type thing.

**Mr Morgan**—The TV-radio thing I still think is a grey area. It should be controlled in some cases, because you will see some businesses that will turn around and say, ‘Okay, we can’t have any speakers separate, and we can’t have CDs and tapes, so we’ll go and buy a TV. We’ll stick it on SBS and listen to the test pattern,’ which is brilliant—great music all afternoon. They have better music there than on the radio. I have the test pattern going all the time. I turn the picture off and just listen to the music. It is great. But that is in my private home. I have a television that I use for my drum school and a video player, for which I pay a fee to APRA—I think it is just about due again anyway—and cassettes and CDs which I play to my students. That is part of the business. I have no hesitation about paying the fee because I am using it as part of my business.

I think everybody should pay in that situation, but not in the case of a radio if you just listen to radio and probably watch a bit of television for the news. It seems pretty funny that you are going to have a TV on all day anyway, when the news is only on at 11 o’clock and 6 o’clock. But they still want the TV on; they cannot miss the theme show from the Simpsons or they cannot miss this and they cannot miss that. They have got to have it on. In that case, to me it is still a grey area. It should be discerned by the people who decide. If we get a governing body in the end, it should be up to them to reset the rules.

There are too many rules, too many regulations; each organisation has its own set of rules and they clash. Because of that small businesses, I do agree, are suffering—not badly but they are suffering—from double dipping and triple dipping. I do believe that happens, but it would not happen if there was one

organisation.

**Mr KELVIN THOMSON**—I have two quick matters. One is the issue of distribution of APRA royalties. I guess there is a little bit of concern or an issue about the extent to which these things are distributed to the most deserving people, if you like, and a little bit of scepticism about them heading off to Bob Dylan and whoever.

**Mr Morgan**—Exactly, yes.

**Mr KELVIN THOMSON**—Do you have any thoughts about whether distribution could be improved, and how?

**Mr Morgan**—Yes. The whole system sucks, for want of a better word. I have been involved in receiving royalties, and I find that I get more royalties from TV commercials than I do from playing on CDs and writing songs. It is a bit silly. If the APRA is an Australian performing rights association, then those royalties should go to Australian artists. What in the hell are they doing overseas? They send them overseas because we have only about 18 to 20 per cent local content on all radio stations.

In contrast you have got community radio, which I did for quite a while. Community radio does a fantastic job of promoting local artists and Australian artists, albeit they promote a lot of overseas ones. The emphasise is on community. I was talking to Sharon a little while ago. Every month we used to have to fill out our sheets and I would make sure that, when we knew that month was coming up, I did play all Australian content on the show—no bootlegs, nothing else, just Australian content. Most of my colleagues at the community radio here did the same.

I would very much doubt that in that month the fees that were paid to Australian artists went up. Yes, something should be done about that, most definitely, especially when I have written quite a few commercials for local TV and you get a \$1,500 cheque or something for doing the ad, but every time they use the ad and it is played, or if you play that music live, APRA will pay you.

But you have to put it down on your sheet of paper every month and send it in. There are a lot of people that will not do that and they are not deriving the benefit. It is their fault for not filling out their sheets. But I believe that all the people that do fill out their sheets are not getting an even slice of the cake.

**CHAIR**—Thank you very much, Mr Morgan. We appreciated your submissions today and thank you for attending.

**Mr Morgan**—Thanks very much.



[3.40 p.m.]

**MANNOCK, Mr Mark Ritchie, PO Box 287, Ravenshoe, Queensland 4872**

**MUNDY, Ms Catherine Jeanne, PO Box 47, Machans Beach, Queensland 4878**

**TURNER, Mr Jay, PO Box 47, Machans Beach, Queensland 4878**

**CHAIR**—Welcome. Do you have any comments on the capacity in which you appear?

**Ms Mundy**—I am a member of APRA. I am a singer, a songwriter, a musician, and a full-time performer, both live and recorded.

**Mr Turner**—I am a singer-songwriter. I have my own publishing company and I have owned my own record company in the United Kingdom. I am not a member of APRA at the moment but I am a member of an affiliated organisation in the United Kingdom called the Performing Rights Society. I cannot become a member of APRA until February because I do not get my full residency until then but I shall become a member as soon as I do. I am a full-time performer and a recording artist.

**Mr Mannock**—I am songwriter, composer, musician and also a music educator. At various times in the last 17 years, I have had more emphasis on one than the other. Currently, I seem to be doing it all at once. I am a member of APRA and I also own a small music production company.

**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. I now invite you to make some introductory remarks.

**Ms Mundy**—I am a self-employed person in a business partnership with my husband. Our business and our living is writing, arranging, recording and publicly performing our music. Our music is our product, particularly our performance of it in public and selling the recordings we make of it. We invest a lot of money, time, training and talent in our product, as do many other composers and songwriters, like Mark here, especially to build it into a business that can make a full-time living.

When our product is used by other businesses, we would appreciate being treated fairly and lawfully by being paid for the use of our product. After all, businesses pay for the use and benefit of all other items and services involved in their businesses, and equally expect to be paid for their products and services. We pay for the services and goods that we use. We also deal with the subsequent paperwork that takes our time away from music making and, legally, if we have used a product in our business, we cannot ask the owners to waive the fee for its use.

As Bluey said, no piece of music that you hear or see being played would exist if somebody with the skills to create such a work did not create it. Therefore, it becomes the creative product of that creator. This is their product, just like any can of beans that is created by any bean canning company. If an outside party

wishes to use the can of beans created by this company, perhaps to sell in their store or to make a bean stew, they will need to make an exchange for the legal right to use the product in the form of a monetary payment, or they can just take it without permission and hope that they do not get caught shoplifting. So to with the product of music.

Simply put, if a party outside the creative ownership of the product wishes to use the product, they make an exchange for the legal right, the permission, to use the product. APRA, as the representative of the copyright owners of musical work in Australia, offer an easy, time, cost and paperwork efficient method of obtaining permission to use music publicly. As you know, the fee for the use of CDs and tapes is \$56 a year; for radio and television, it is \$37 a year. These costs are all tax deductible, as part of business expenses. This amounts to a few cents per day for unlimited hours of use of a musical product that is created, recorded and owned by somebody else.

I do not believe that this is exorbitant, when, for example, the use of mobile phone technology, such as I use in my business, costs over \$200 a year, even if do not make a call on it. However, I do use the technology. It takes messages for me and gives me a contact when we are on the road. The product is owned by another party, so I do not argue with them when they send me my monthly bill. I accept it as part of the expense of running my business—the fair and legal exchange for the use and benefit of someone else's goods. I do not believe the mobile phone company would waive the fee if I said to them that their service did not actually benefit my business that month or if I said that their bills were increasing my paperwork burden. Certainly, paying for their product means that I do not have to go out and create mobile phone technology every day, which would be a much greater burden.

Composers and songwriters are small business people, too, and have the right to be paid for the use of their work. The law needs to continue to support the rights of the highly skilled and often undervalued people who create the music that we take for granted every day.

**Mr Turner**—I agree with her.

**Mr Mannock**—I agree with her, but I have got my own little spiel, too. I have got copies of this. Would you like your own personal private copies? I have got a copyright on all of those in case you want to issue them. While I appreciate that small business in Australia—and particularly in the north—is under pressure and that every additional cost is a burden, as a composer and a manager of a small musical production company, I am also running a small business. I would regard myself as a very experienced musician and composer, having played, written and recorded music throughout Australia, including a great deal of my time in the main centres of Melbourne and Sydney. My work has been performed through a variety of media, including television, radio and live work. I also have a music degree major in composition.

Even with this experience, to make a profit in my business is extremely hard and, like many others, I am continually subsidising my business with outside income in order just to survive. Payments for work for a composer are infrequent and often seem minute compared with the outlay of time and effort involved in the creative process. The days of writing a hit song in your bedroom in 20 minutes on an acoustic guitar are gone. We are playing in a different field now.

The financial outlays for a modern composer can be very substantial. Computer, keyboards, amplification and demo recording equipment entail an outlay of tens of thousands of dollars. This equipment frequently needs to be updated to keep pace with the market. To actually record music to a finished broadcast standard is extremely expensive. My last album cost in excess of \$18,000 to produce. Yet despite a great deal of airplay and some very positive industry reaction, I am yet to see one single cent back in profit.

Part of my work at the moment is to encourage young people to be involved in music. Their passion is great as so often is their talent. In times of great youth unemployment, it is wonderful to see the enthusiasm of these kids. However, I do find it hard sometimes to encourage these young people into a field of employment where profits are so small—if they exist at all—and the work is so consuming. To make it even harder for these musicians and composers of tomorrow would be an injustice.

While I accept that I work in a very competitive industry, I ask for no favours. But I do ask that I am paid for the work I do, as would a plumber or an electrician. If a business wishes to use my music to enhance the atmosphere of their premises, I am happy for them to do so. However, as I would not ask for a free haircut from a hairdresser or free treatment from a dentist, I also would not expect them to use my work free of charge. The argument that to have one's music played is free promotion is all very well. However, a musician's life is littered with experiences of being told to play somewhere, or having their music played somewhere, that is good promotion or good for their career. I cannot count the number of times this has happened to me when, at the end of the day, I have seen the profits go to someone else, while I walk away with nothing.

Like many musicians and composers, I frequently do shows for charity. I am, and will continue to be, happy to do these as long as it is for a charity, but I am not happy for my work to be exploited under the guise of promotion. I know you cannot see or touch my work, but you can hear it. If you listen closely enough, you can hear the countless hours that go into each song. All I ask is to be paid a fair price for my work.

**Ms Mundy**—Are we allowed to comment on points that were brought up in the last discussion?

**CHAIR**—Certainly, that would be of benefit to us. Would you like to make a comment on the previous evidence?

**Ms Mundy**—You were talking to the RSL subcommittee this morning.

**CHAIR**—Yes.

**Ms Mundy**—And they were saying that they were a non-profit organisation, so they did not feel that they should pay for the use of music in their premises publicly. But surely they pay for the tables and the chairs that are in their premises. They also pay for the pokies. They pay an alcohol licence, surely, to sell alcohol; otherwise they would be doing that illegally. Why should they not pay for the use of another product which is a business tool?

**CHAIR**—That is a good point.

**Ms Mundy**—I say that they should.

**CHAIR**—Just from memory, one of the arguments that they used was that it was not being used for entertainment. It was being used for information. I would have to go back and review the evidence they gave. It will be in the transcript, which you might be interested in perusing. They were using television and wireless to view sports and news programs. They were not using it for music. They were making that point about the use of television and radio.

**Mr Mannock**—Did they turn them off between the news and sports programs?

**CHAIR**—They might well have wanted to—I am not sure. Their evidence could be made available to you, if you are interested in pursuing that. That issue has been raised and it was raised by the last witness. We have received a number of complaints that relate to the use of radio and television in the workplace and the information needs of the owner-proprietor, where they are the sole employee of a small business.

**Ms Mundy**—Is that public? I think Bluey was discussing that, too, and saying that, if that is for the private proprietor's use, then that is not for public use. But if it is being broadcast to the customers, then it is being used as a tool of the business.

**CHAIR**—They are being charged a licence for that sort of use at the present time.

**Mr Mannock**—Except when it is being played, say, in a fish and chip shop, or something, where the public as well as the owner can hear it.

**CHAIR**—Sometimes it is, but they claim that is an inadvertent flow-over of the music. They are really using it for their own purposes behind the counter not for the enticement and edification of the customers.

**Mr Turner**—Actually, when it comes down to it, a business is a business, and regardless of which side of the counter you are on—if there is a counter involved—music is being used to enhance the ambience of the situation. Therefore, it is either being used to make the workers feel a little bit better or it is being used to help the public feel more comfortable in the situation that they are in. Under that circumstance, it is a tool of business and, regardless of anything, it seems to me that they should be paying for the right to have that tool.

**CHAIR**—What about the problem of what might be perceived as a bit of a backlash from these people because, as members, we have received a number of complaints from these operators?

**Mr Turner**—In terms of what?

**CHAIR**—In the sense that they are not complying with the requirements of APRA. They are not paying the fees. They are saying, 'We're going to refuse to pay.' That will then entail litigation and proceedings and all the rest of it.

**Mr Turner**—If they have not paid so far and they are not going to pay, then we are not going miss anything. Secondly, if they are required to do so by law, then they will breaking a law if they do not pay for it. Therefore, I would have thought they would be more encouraged to pay for something that is legally correct.

**Mr TONY SMITH**—This is your problem, with respect. I think you have got a very myopic view of this issue, if you do not mind me saying so. I have people from small businesses—I cannot speak for the others—who say, ‘All right, if I am going to have these bureaucrats hounding me to pay this fee, there will be no radio and there will be no television.’ I am talking purely about radio and television now. The biggest profit for you is not in lousy fees from APRA; it is in selling your product. I have been in shops where I have heard a song on a radio and I have said, ‘Right, I am having that song. Which one is it?’ and I will find out—I will ring the radio station and buy that song. If businesses are going to say, ‘Right, I am not having the thought police and the bureaucrats in here telling me what to do. I have a little one-person hairdressing salon. I am the hairdresser and I listen to the music on the radio’ then you are potentially depriving yourself of people who will buy it. And that is where you will make your money, not from lousy APRA fees. Do you see what I am saying?

**Ms Mundy**—I understand what you are saying.

**Mr Turner**—I think you actually have a misconception about the whole thing.

**Mr Mannock**—I heard you say something similar before. I have heard this argument so many times in my life from so many different sorts of people. As I said in my statement, I end up with far less than you think I get from these situations. So many things have been there to help my career or promote it. Not that many records are sold playing in fish and chips shops. There are occasions where it happens, but the only place I could see your argument standing up in a substantial way is where someone is in a record shop, your CD is being played, and they then buy it.

I am very thankful for my APRA cheques. They provide a good Christmas sometimes for my family that otherwise may not happen. I can count on that. I know it is there. I do not think it is microscopic.

**Mr TONY SMITH**—There is an argument both ways. As politicians, we have to balance the people who are saying ‘We do not want this happening’ against your interests. In order to effect that balance, haven’t we got to say, ‘At the end of the day there must be a balance’? We cannot have business people saying, ‘We are not paying \$37. Therefore, we are turning off our radios, we are turning off our TVs, that is it.’ You miss out, they miss out. They will still carry on their business, but they are not paying their \$37.

**Ms Mundy**—We will still carry on our business and we will still sell our CDs. We do not depend on hairdressers to sell our CDs.

**Mr TONY SMITH**—You have hundreds of hairdressers in my electorate only, hundreds of small businesses.

**Ms Mundy**—How many of them are playing my music and selling my CDs for me? Honestly, I am

the best promoter of my music. As a self-employed musician, I promote my music. I do all the management work. I am the one who sends my promotional packs around the country. I am the one who records and pays for my product. I will be the best person to sell my CDs. I sell them by performing the music, by being out there and showing it to them.

To invert that, talking about balanced views, when I go to my hairdresser she does a really good job. It is a bit long at the moment, I know, but she does a great job. It is due for another cut. I have gone out on the streets and people have said, 'What a great haircut; who do you go to?' I have said, 'I go to Nikki at Stratford; here is her number.' They go to Nikki at Stratford. She gets more business from me walking around with her haircut. I do not go back to Nikki and say, 'Nikki, I think I should get my haircuts for free because I am promoting your hairdressing.' That is exactly the same as asking, if I have music playing in my business, my customers are enjoying it and it adds to the ambience of my business—it would be a really dead and boring place if the music was not playing—why they should not pay for that, just as much as I have to pay for the haircut that promotes her hairdressing, because you say that it promotes our work?

**CHAIR**—What is the difference then? Some people find it hard to understand. When you make a CD, you get a remuneration from the CD, don't you?

**Ms Mundy**—How do you mean?

**Mr Turner**—Not unless it sells.

**CHAIR**—But if you sell it. People have this conception that when they buy a CD the artist is being paid from that and from every CD that gets sold.

**Ms Mundy**—If it is through a record company, after the costs have been recouped for its recording.

**Mr Turner**—I think there may be a bit of a—

**Ms Mundy**—But we do not do it through a record company. We are independent.

**Mr Turner**—We do not do it that way. Having said that, whichever way you get recorded, basically the money has to be provided for you to be recorded. These people are complaining about what is coming out through major record companies in the main, because that is what they hear on the radio. If you go to a major record company, they will say, 'Fine. We think this product is marketable. We will lend you \$40,000 at premium rates, 26 per cent per annum. When your record, after all of our marketing, exceeds that in sales net revenue to us, then you will start getting some small percentage back on it.'

Basically, all you have done is taken out a huge loan. They have taken a punt and you have taken a punt. At some point or other, if you are lucky—if the radio promotion works, if the distribution gets together at the same time—and the many factors involved come together at the right time, you may get money from it. You will have to go out and tour. Those costs are also added to the problem. Then you get money if the track is played over the radio. That is royalties for airplay.

**Ms Mundy**—To the songwriter.

**Mr Turner**—Yes, to the songwriter, not necessarily to the performer. There is a great deal of outlay that goes on before any profit is made. Under those circumstances it is odd when people look at a CD and say, ‘This only costs \$1.’ Yes, that piece of plastic costs only \$1 but to get it to that particular point where it is packaged attractively and is being played on the air, there are hundreds and thousands of dollars involved. And that is not counting the number of hours that you have spent as an artist developing and writing. Remember, not everything you write gets to be recorded, and not everything you record ever gets on the radio.

You have a minute proportion of what you do as an artist out there in the workplace. People are listening to it. They say, ‘We don’t want to pay for this. Why should we pay for this? It is on the airwaves. It is free, isn’t it?’

**CHAIR**—I was interested in your UK background, Mr Turner. Does the Performing Rights Society in the UK operate in a similar manner to APRA?

**Mr Turner**—They do. They have managed to put in place a couple of pieces of legislation that you do not have over here. APRA, to look at it from this point of view, has got some advantages over the PRS. However, they do a very similar operation. Basically, whether it be live or through the radio medium or through the television medium, the PRS will collect royalties on behalf of Australian artists who are being played over the air in the UK, or over whichever medium it is. They pass on those royalties to APRA in the same way that APRA will pass on royalties of British artists who are played over here.

**CHAIR**—One of the problems we have is that people are suddenly getting all these letters. They have never heard of the PCCA. A lot of them have never heard of APRA even though these rights have been around for a long time. In the UK has there been a longer history, for instance, of the hairdressing salon accepting there is a fee that is payable?

**Mr Turner**—The one thing that helps people in the UK to understand why they should pay for the public broadcast of product over the airwaves is that in the private home when they watch the television or they listen to the radio they are expected by the government to pay a licence fee. Therefore, when they listen to stuff in their own home they understand they are paying for a leisure time product. That money goes to the BBC; it does not go to any of the independent operators. Then, when those people get to the workplace they understand that—

**Mr TONY SMITH**—It is a licence fee.

**Mr Turner**—Yes, it is a licence fee. I do not think you have that over here.

**Mr TONY SMITH**—It was canned.

**Mr Turner**—It was canned, and I can understand the reasons for it. Another thing that causes problems over here is the fact that you have the ABC paid for by taxes. People say, ‘I pay my taxes so why

should I pay these people who are being broadcast over the air? I have already paid. Then we buy their CDs. We are paying them again. And now we have APRA and the PCCA on our backs.'

People should understand that to receive a piece of somebody else's work in their home or in their workplace is not a right that comes at them through the air freely. They should understand it is something they ought to pay for. After all, they are having a leisure time activity in the same way as they are going to cinema. They have to pay to get into the cinema. Television comes into their homes. Music comes into their homes via the radio or CD players or whatever. In this country, if they were more used to the idea that they had to pay a licence fee then when it came to the business premises situation they would have less resistance to that idea.

**Ms Mundy**—There needs to be education.

**Mr Turner**—I think education is required.

**Ms Mundy**—It is a shock to have to pay for something that for years you have taken for granted. At the same time we need to acknowledge that music is a valid product just as every other product, just like this glass, is a valid product created by skilled people. We need to be educated that there are rights involved of the people who originated that product. It all starts with the composers. Lots of things happen to it after that, but it does all start with the composer.

**CHAIR**—Are you feeling a backlash from small business proprietors yourselves? Have you discussed this with those sorts of people?

**Ms Mundy**—Yes, I have discussed it with them.

**Mr Mannock**—I live in a small town out of Cairns. I know a lot of the business people in the town. Knowing I was coming here, I went around, and the first thing they said was: 'That bloody APRA thing. I am not going to pay them,' or, 'Stuff them, they're a bunch of thugs. I pay enough taxes.' I said, 'It's not a tax,' and they said, 'It's just another bloody tax.' So I said, 'No it is not. Actually, from what you pay, this much of it comes back to me because of all those songs I write.' And they went: 'Oh! So you get that money? It doesn't go to the government?' I told them that, yes, it goes to the people that wrote the songs. Within five minutes, probably eight out of 10 said, 'Oh, that's all right then. I don't mind paying that. It's not that much.'

It is the perception that it is just another tax. Businesses do not like paying taxes and they just think it is one. That is a big problem, particularly with what you were saying earlier.

**Mr TONY SMITH**—Isn't there another aspect to that, that the cost of collecting means that you are deprived of even more? If there was a way of getting that royalty somewhere else, at some other point in the chain—

**Mr Mannock**—APRA seems pretty efficient. Regarding what Jay was saying before about that process of recording—and having had a major deal with EMI in the past myself I know how slowly these



things happen—the first, and often the only, royalty you get from anything is what you get through APRA. I cannot remember getting a cheque from EMI for quite a few of the songs that I did. But the APRA cheques came in first. They are collected and they are quick—you know you are going to get them within six or 12 months at the most. It is the most efficient system.

**Mr TONY SMITH**—If you had one of your songs played tomorrow on the ABC in Cairns and that was it—not one other song played for the rest of the year; just that one song—what would be your cheque for that?

**Mr Mannock**—Fairly small. It would be a matter of cents, if it was done at the time that APRA do their survey. One song here and there does not maketh the man, so to speak.

**Ms Mundy**—But that is not really the point. If you have a popular can of beans on your shelves, they are going to make more money than the unpopular can of beans. The more you get played, of course the more royalties you get, but you should still pay for the use of the music.

**Mr KELVIN THOMSON**—Mr Smith's point, I think, is administrative complexity and what seems to be the overhead of going through a process which might end up returning a minuscule amount of money.

**Mr Mannock**—It might in that situation. But for me, at the moment, this album that my band released earlier this year has got a great deal of commercial airplay in the north. We have not released it down south yet. I have made APRA aware of that and as long as their surveys coincided with when that airplay was I am looking forward, for the first time in quite some time, to a sizeable APRA cheque for that airplay. That makes it worth while.

**Ms Mundy**—But they also have the live performance included in that administration. We perform our songs every week, and every time we perform them live that is public performance royalty that gets accounted for. We fill out live performance returns at the end of every year and send them to APRA. APRA are pretty efficient. I have been told their administrative fees are 12 or 13 per cent. The rest of it goes to the songwriters, the composers.

**Mr Turner**—You can always argue that just one airplay on the radio is only going to get you 30c. Then again, if your song becomes popular, 150 airplays is going to get you 150 times that amount. The other side of the argument is that it is basically to do with the right. It is not to do with the amount; it is to do with the right. It seems to me that, totally regardless of whether it is 30c, \$150 or \$5,000, if you are supplying something to somebody for their entertainment, or for the betterment of their business, then that should be paid for and we should get the results of it as much as possible.

People would have to apply to each and every composer and recorder of each and every track that was played over the airwaves or on CD for the right to play that music in their workplace or in their home. APRA represents all of those people that you would have to apply to. No business could possibly apply to get the right to play the music from every composer that they want to listen to through even just a single day. They would need full-time staff to apply for that and it would cost them heaps of money.

**Mr KELVIN THOMSON**—The argument is really that, yes, there is a right there or there are intellectual property issues there and so on, but if the cost of compliance for small business is a source of annoyance and distress to them and the benefits coming through on the other side are minuscule, then are the costs outweighing the benefits, or can this be done in another way which would be superior to the existing method of collection?

**Ms Mundy**—You would have to measure the benefit not just to one composer but to all of the composers, and to composers in general. You cannot just say, ‘How much are you really getting for your one song being played once?’ You need to look at it overall.

**Mr Turner**—Ask Paul McCartney’s bank account and see what—

**Mr KELVIN THOMSON**—What is your Paul McCartney point?

**Ms Mundy**—*Yesterday* is played something like every 30 seconds.

**Mr Turner**—The song *Yesterday* is played at least once in the world every two minutes, and considering it is three minutes long that means that he is making quite a lot of money. It is being continually played somewhere on the planet. That return to him in revenue from the various collection agencies—PRS in the UK, APRA over here, there is another one in the United States and there are several in Europe—is utterly substantial. I would think that he would not have got knighted, or whatever he has been, by the British government for import and export sales if—

**Ms Mundy**—I think the administration costs are worthwhile for him.

**CHAIR**—What does he pay?

**Mr Turner**—He is paid exactly the same pro rata as everybody else.

**CHAIR**—No, what does he pay?

**Mr Turner**—How do you mean? In terms of the amount?

**CHAIR**—All these bodies are collecting the money for him. He doesn’t have to pay them to collect it? Or does he give a percentage to them?

**Mr Turner**—No—

**Ms Mundy**—They are agents’ fees—

**CHAIR**—What other business? Do you have all these societies collecting the moneys on your behalf?

**Mr Mannock**—He does pay. He pays 12 per cent.

**CHAIR**—Where does he pay?

**Mr Mannock**—He pays whatever percentage is lost in administration—it is like an agent's fee for collecting these things. But I must say that not everybody is a Paul McCartney in monetary terms. An average working songwriter, for instance, might only get two grand or 10 grand a year from APRA. You might get other money from commission work you do. You might get some money from jingles. You might get some arranging money, and some from performance and, say, a bit of work from teaching or something. It is all mixed in. But together that gives you enough time to keep the creative process going. If you did not have that APRA cheque, you would have to be out doing other things which would mean you would not have time to do the writing. You will start to lose original music in this country.

**CHAIR**—Is it fair to the poor struggling artists that Paul McCartney only pays the same 12 per cent that they pay?

**Mr Mannock**—I am happy for that. He is a good bloke.

**CHAIR**—You are happy with that?

**Mr Mannock**—Yes.

**Ms Mundy**—His music is played. He has made a success. Every business that makes a success of themselves is rewarded for it. Woolworths is much more successful, obviously, than just one little corner store; they have managed to make a big worldwide chain. It is the same. Paul McCartney has his songs played a lot more often than we do, but good on him for being a success. I would aim for that success in my career.

**Mr KELVIN THOMSON**—Yes, but you are more magnanimous about that than the struggling small business in Cairns or Townsville that says—

**Ms Mundy**—We are a struggling small business.

**Mr KELVIN THOMSON**—But they are saying to us, 'We are having difficulty making ends meet and along comes APRA and says, "We want you to pay over money to Paul McCartney, Bob Dylan, et cetera, who are the multi-multimillionaires." ' That is their view of the equity of it. I understand the position you are saying.

**Mr Turner**—Perhaps they should admit that if they were not playing music in their workplace and their business place, they would be struggling a lot harder because maybe people would not come into their business place and stay and look around to browse and to buy things. As far as I am concerned, whenever you are playing music in a place of business it has to benefit either the workers or the public, or both. Under that circumstance, you are always enhancing your business place; you are always enhancing the mood of the workers.

It has been shown a number of times in various proved instances that music will change the mood of

workers, change the mood of the public, change the mood of politicians even. So it is a very powerful tool. For instance, a restaurant that I know plays loud fast music most of the time. You get in there, you eat your food and you get out. And that is what they want.

If you want productivity to go faster in a production line—I have actually been in a factory where this happened—if you lower the temperature in the factory and you speed up the music, you are going to get higher production. If you warm up the workers and you play slow, dopey music then you are going to slow down production. It is as much a marketing tool as anything else in the shop, as much as the advertising and displaying the wares on the shelves in a feasible fashion.

**Mr KELVIN THOMSON**—I would agree in those kinds of examples that you are using about deliberate use of particular kinds of music to produce particular outcomes. I think your case is very strong. What some of the businesses will say to us, though, is that the music is not about customers. If customers come in and leave the shop in the space of 10 or 15 minutes, they do not come for music purposes. The music is all about entertaining me—the shop owner and so on—during the periods when there is nobody in the shop.

**Mr Turner**—In those circumstances, if it is in the shop area it is very difficult. If it is to do with just their own private use in the back of the shop, then APRA does not ask for any revenue from that.

**Mr Mannock**—Should Catherine’s haircut therefore be cheaper because sometimes she is sleeping and people are not looking at her? She is not really using it at the time so she should not pay as much.

**Mr KELVIN THOMSON**—They are saying that this is really about entertaining them, not a matter of attracting customers. I accept that in the case of certain shops—retail outlets and so on—that will not be the case. There are some very obvious examples where there is mood music of various kinds, or particular people being played and so on, but there is also an argument being made by some businesses that it has really got nothing to do with customers.

**Mr Turner**—There is another thing. Something happened the other day that was fairly relevant to this for me. I went to the market, and I went up to a woman who was selling exactly the same as everybody else was selling in Rusty’s Market. I asked her for a particular vegetable and she was surly and quite miserable; she gave me my change and did not smile. I thought, ‘Well, I’m not buying anything more off you. Even though I fancy the capsicums over there I will go elsewhere.’

If you have somebody in their workplace and they are miserable because they are not listening to music, then when people walk in it is just as likely that those people are not going to buy off them. If they have had their mood enhanced by the music that they are playing for their own leisure time entertainment, the possibility is that it is going to enhance their business. If you are playing music in the business place, it is there for a reason. If you do not need it do not play it; do not pay us. If you use it please pay us, because we need it. We are small businesses and we are struggling too.

**Mr Mannock**—I think that is the point. We are small business. It is as if it is an ‘us against them’. This morning the small businesses came in, but this afternoon the small businesses came in again. If you are

looking at taking some of our income because another lot of small businesses do not like paying for something that we have provided, it just does not seem fair to me.

**CHAIR**—Are you members of the local chamber of commerce?

**Mr Turner**—No. I don't think we are big enough for that.

**Ms Mundy**—We are a very, very small business. We are a two-person partnership.

**CHAIR**—Or are you a member of any of those small business associations? We did ask whether they had representatives of this industry in their organisations and so forth.

**Mr Mannock**—Musicians tend not to be involved in those things so much, I guess, because they seem to operate in a collective area like a small town—

**CHAIR**—They do tend to say that they recognise the right; it is just that they have some concerns about collections and those particular instances that we have had raised with us about the radio use and so forth behind the counter.

**Mr Turner**—I think the educational thing is a very strong point. Basically, there are only two real collection agencies that are necessary as far as I can see—APRA for the copyright and the PPCA, I believe it is, for the mechanicals—

**CHAIR**—Wouldn't it be better if they had one collection point anyway? What we find as well is that if we say to someone, 'Do you know what APRA is?' then some will say that they know what APRA is. Then if we say, 'Do you know what the other one is?' they think it is a fraudulent organisation because they have already paid it.

**Mr Turner**—They need that delineation, though, because some of them only use radio and some of them use CDs and radio. So there is a delineation in actual fact. If they only use radio, then presumably they only have to pay to the PPCA, don't they?

**Ms Mundy**—No, APRA.

**Mr Turner**—I beg your pardon, that is right, so it is.

**Ms Mundy**—I do not know of the PPCA either. I really had not heard of them before. They represent recordings and mainly record companies. We record ourselves, so I do not have any dealings with the PPCA. But APRA do offer pretty much a one-stop shop, I believe, with the music, the lyrics and the right to play the CD. I think the only reason the PPCA has an interest in it is because they represent the recording of it.

**Mr KELVIN THOMSON**—It is a process of recording, so if other people want to go and use that record, then there are some property rights involved.

**Ms Mundy**—So the people who record it are different from the people who have written the music that was recorded. So that is why there are the two.

**Mr KELVIN THOMSON**—Yes, the act of composition.

**CHAIR**—You record it too, don't you?

**Mr Turner**—Yes.

**Ms Mundy**—Yes, we record our stuff as well, but I think the record companies are the people who form the interests of the PPCA. We do not have a record company.

**CHAIR**—Perhaps they should be collecting for you as well.

**Ms Mundy**—Yes, perhaps.

**Mr Turner**—They do collect for themselves and for the artists.

**Ms Mundy**—The artists who work for record companies would not be the same people who would do the production on their recordings. They do not produce the recordings; the record company does. Do you understand that?

**Mr Mannock**—There is a certain amount of confusion even amongst musicians about who does what. I understand that APRA is kind of a swear word in a lot of small businesses.

**CHAIR**—This is the point. We ask regularly what are these organisations, and no-one can tell.

**Mr Turner**—It certainly would be less confusing if there was only one.

**Mr Mannock**—I do not think you should underestimate APRA. I know you turn on Lawry or something and he is giving it a good flogging, and everyone is ringing and saying, 'I've got to pay my 36 bucks; I hate it too.' In my experience, I have been involved with three large corporations in my life—APRA, EMI and the education department. Without a shadow of a doubt in my mind, APRA is far and ahead the most efficient and the easiest to work with. It is not just because they give me money—they all gave me money. They really seem to be a lot more streamlined. I am sad when I think, 'God, this is one organisation that is sort of large and actually seems to get it right, and now it is getting a flogging.' It does not seem very fair.

**CHAIR**—On that positive note for APRA, we might close today's proceedings. I want to thank you on behalf of the subcommittee for attending. We appreciate your attendance. We thank you for that.

Resolved (on motion by Mr Thomson):

That the subcommittee authorises publication of the evidence given to it at the public hearing today.

**Subcommittee adjourned at 4.23 p.m.**