



# **HOUSE OF REPRESENTATIVES**

## **STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**

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

**MELBOURNE**

**Tuesday, 24 February 1998**

**OFFICIAL HANSARD REPORT**

**CANBERRA**

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Members

Mr Andrews (Chair)

Mr Barresi	Mr Price
Mrs Elizabeth Grace	Mr Randall
Mr Hatton	Mr Sinclair
Mr Kerr	Dr Southcott
Mr McClelland	Mr Tony Smith
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

*Copyright, music and small business*

MELBOURNE

Tuesday, 24 February 1998

Present

Mr Andrews (Chair)

Mr Barresi

Mr Price

Mrs Elizabeth Grace

Committee met at 10.009.47 a.m.

Mr Andrews took the chair.

**STONEHAM, Ms Jan May, Chief Executive, Entertainment Industry Employers Association, 8th Floor, West Tower, 608 St Kilda Road, Melbourne, Victoria 3004**

**CHAIR**—I open this public hearing of the committee's inquiry into the licensing of copyright for the playing of music in public by small businesses. I welcome the witnesses and any members of the public and others who are attending this meeting of the committee today. The subject of the inquiry is the law under which copyright royalties can be collected for the playing of music on commercial premises. This is the committee's second visit to Melbourne for this inquiry. We have taken evidence and had hearings in all capital cities and also regional centres in Queensland and received over 200 written submissions.

I now welcome the committee's first witness, Ms Stoneham. 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. We are in receipt of your submission of 19 September last year. Would you care to make some brief opening comments?

**Ms Stoneham**—Thank you for the opportunity to appear. Whilst I do not believe that this particular inquiry has a great deal of relevance to the bulk of my membership, nonetheless I felt it was incumbent upon me to do a submission, simply because there is a lot of focus on copyright issues at the moment. Given that I prefer not to allow an opportunity like this to pass without making the point that we have some general concerns about copyright and given that potentially there was a degree of vagueness concerning the interpretation of your brief—that is, what small business was—I felt that it was worth putting in a submission for that reason.

Nonetheless, I think you will find that the comments I have made in that very brief submission are more general than they are specific, again for the reason that I was a little unsure of exactly what your brief was with regard to small business.

**CHAIR**—I take it from the general description that those members of your organisation who have some relevance to this area of copyright are basically those people who promote and stage entertainment events; is that a fair summary?

**Ms Stoneham**—Yes, that is absolutely the case. In the main they are involved in live theatre and music presentation, as promoters, entrepreneurs or producers. On the other hand, a major group of my constituency are also managers of venues and auditoria and whatever else may be involved, so that they are then often playing recorded music separate from live music.

**CHAIR**—So they would deal by way of obtaining copyright approval from APRA

and PCCA?

**Ms Stoneham**—Yes, that is exactly right and they have blanket licences.

**CHAIR**—Is there a record of complaints or difficulties or, for that matter, applause for APRA or PCCA about the way in which the copyright licensing occurs?

**Ms Stoneham**—All of that.

**CHAIR**—Can you elucidate on that?

**Ms Stoneham**—Briefly, because otherwise it would take some time and require a deal of paperwork and other people here with me, and you do not have that time, and it is not appropriate.

It is easily summarised by saying that there have been moments of disagreement, tension, contention, and considerable difficulty from time to time with various sectors and with various members within those sectors. The sectors vary enormously, whether it be live theatre or rock and roll, entrepreneurs, cinema exhibitors or venues. Within those various areas there have been problems from time to time with individuals or with people.

I guess it is often the case that when you enter into a business you know there are certain rules and regulations that you must observe as a part of your business practice and you accept that because you have to, but in the course of dealing with a particular body—in this particular case APRA—who may have the right to control a particular area that you are required by law to observe, there may be disagreements about how that is conducted. So there has been a problem in the way that business has sometimes been done.

There have been compliance problems; that is, difficulties with new people coming into the industry and understanding how it should be done. With people who have been in the industry a long time, quite often it is considered to be onerous. Of course the major problem is always one involving the dollar amount—the way the fees are fixed and the way the fees are determined. Disputation often arises in that regard.

On the other hand—I hope it does not sound too much like I am just fence sitting, but I need to consider that there are many hundreds of members and I have people who have concerns across a great spectrum—people have had very good dealings with APRA and I personally find in my dealings with them, when I mention that there is an issue, we can manage to have a reasonable resolution of the conflict.

However, sometimes that has not been without a degree of battle. Cinema exhibition was an example of that. I guess one of the major areas of concern has been on a few occasions when people are in the process of getting a licence, they are disputing (a) that they should have the licence; (b) what the licence should be; or (c) that there should

be any retrospectivity involved. We have had disputation with regard to that. You would know that there are other matters currently before other bodies, such as the ACCC looking at application and authorisation for APRA, and I have been dealing with those issues through that inquiry as well. In a way, I guess it balances out.

On the whole, to sum up my members' view of it, I would say it would be that—I suppose it is an awful term—they are a necessary evil. I think most people would absolutely acknowledge and agree with the right of a composer to have a royalty from his or her work being performed publicly. My people do not dispute that; they dispute either the mechanism and/or the amount.

**Mr BARRESI**—Can I just clarify that. You say in your submission that if an artist performs his or her own work they still have to pay a fee to APRA?

**Ms Stoneham**—That is right.

**Mr BARRESI**—How does that work? I do not understand the logic there.

**Ms Stoneham**—APRA have a blanket licence. If the Rolling Stones are doing a tour of Australia, they play almost 100 per cent their own works. In fact, I do not think the Stones do anything else; I do not think they do any covers—covers being other people's works. The rock and roll promoter still pays APRA the licence fee for that concert and APRA then distributes the amount to the Rolling Stones.

**Mr BARRESI**—Even though the promoter has paid for the band to come out here to begin with?

**Ms Stoneham**—Yes. That is where we have a problem.

**Mr BARRESI**—It sounds ludicrous.

**CHAIR**—I understand in that pure case it is a problem but if Mariah Carey—that may not be a good example. My children would be able to help me out but they are not here at the moment. If you have a well-known artist who performs 75 per cent of his or her own material but does some covers during a concert, as quite a lot would, I suppose that is the only way you can get around that point, because there has to be a distribution back to the owners of the copyright material for the covers.

**Ms Stoneham**—Yes. It is a real problem. In the potential scenario under the ACCC investigation you could have a third component of that as well. Proposed composers have the ability to deal outside of APRA, to opt out—I am not saying it is a good or a bad thing; it is good but it can also be bad—so you could have a scenario where you pay to the performance group that is doing its own works the copyright for its own works. For the remaining body of music that are covers, you may then have to



approach other composers who are not a part of APRA, who have opted out of APRA, so you may have to approach them.

Let us use the example of Mariah Carey, whom you just referred to. You would have to go to Mariah Carey and negotiate a fee for her composition and you would have to negotiate a fee with, potentially, five other people who have decided to opt out of APRA. You would have to go to each one of those individually, or their publisher. Also, you may have APRA representing some other people who have not opted out. So you may have three scenarios: the person doing their own works, the people whose work is performed but who are not under APRA, plus APRA, who have a licence to cover other people whose work is being performed. So within one concert you could have a potential nightmare.

**Mr BARRESI**—Does APRA actually do the negotiations and the money flows back? It seems to me in theory that might be what should happen, but does APRA do it in practice?

**Ms Stoneham**—Send the money back?

**Mr BARRESI**—Yes.

**Ms Stoneham**—As far as I know, absolutely. Probity and every other word that one could imagine would demand that they do, and I believe and understand that they do.

**Mr BARRESI**—What is the distribution based on? Is it based on the box office receipts?

**Ms Stoneham**—No, unfortunately it is not quite that simple. There is a set amount, a blanket licence fee. You pay 1.5 per cent for a live concert.

**Mr BARRESI**—In your submission you say APRA's practice is basing licence fee on gross box office sales.

**Ms Stoneham**—Yes. That is a real problem because it is 1.5 per cent of the gross sales regardless of what the promoter may get back from those sales. I am sure you have all been aware recently of the public interest in the cost of tickets.

To use a couple of examples that were recently in the press, U2 tickets were a lot higher than the Oasis concert tickets. That is because the U2 costs were higher: the production costs, the number of people travelling with them. All of those elements make the ticket price a lot higher, yet APRA's fee is still based on the gross ticket sales. So the promoter is still paying the same amount. Even though the amount of money they get may be huge, they are only getting a small amount of it, whereas on another occasion the amount may be smaller and they are still getting that amount, but they still have to pay

APRA on the gross take. So there is a problem in that regard as well.

Just to answer your previous question about how the money is collected and how it is determined, in a live concert the promoter has to submit to APRA details of every song that is sung or played at the concert. Sometimes that is not quite a given. It is not as easy as it sounds and you have to do it after every concert as well. So APRA then gets that list and divides the money.

**Mr BARRESI**—You would not want to do too many encores of the same song, would you?

**Ms Stoneham**—No, and when it is varied or when it is impromptu it becomes a nightmare as well. On the other hand, the collection of the fee for cinema exhibition for the soundtrack in a film is on the net box office takings. Of course, you cannot distribute on the same basis, so what happens is at the end of the year—I am not exactly sure of this—the figures are all aggregated and the APRA fee distribution is then based on box office takings across Australia for all films and the money is aggregated and sent to the composers around the world accordingly.

So if you collect a licence fee from a movie that may have all works out of copyright, such as Beethoven, Tchaikovsky or other classical music, there is nothing going to a living author but the money is collected and it is put into a box and it is distributed equitably at the end of the year by APRA.

**Mr BARRESI**—Does an APRA official attend all live performances?

**Ms Stoneham**—No.

**Mr BARRESI**—So it is just based on the agreement between APRA and the film producer?

**Ms Stoneham**—Absolutely. It is a legal requirement. I am sure that APRA does a spot check from time to time, and if the spot check shows that the works that have been submitted are not the works that are played, they would have reason for concern.

**CHAIR**—Those questions about pricing are, in a sense, outside the terms of our inquiry. I suppose they are a matter for commercial negotiation between the various parties involved, but one aspect of your submission that does touch on our terms of reference is that you argue in your submission for the need for a complaints body which could mediate or conciliate in the first instance. Can you say anything more about that?

**Ms Stoneham**—Yes, we feel that the copyright tribunal, by its very nature and certainly by its title, is perceived as intimidatory—not intimidatory but a potentially intimidating body. Most people do not like to front a tribunal, no matter what it is, and no

matter how anyone argues about its not being such a body, it is.

We feel that before it gets to that stage—I have also said this to the ACCC and I know that they are looking at an alternative dispute resolution, although I do not agree with their proposal—there should be a body before that which comprises an APRA representative, the person who is involved, my member and/or their representative, plus an independent chairperson.

We have that particular system in operation with union disputes where, as you would imagine, particularly on immigration matters, we have exactly that thing: each party is represented by themselves, not by legal counsel, or by someone of their choice, and also an independent mediator that is agreed by both parties. There is a core of, say, three or four people as independent chairs who are available to be called on at any time. That body is then able to be called with a day or two's notice and it is a much more informal way of resolving disputes, and we find it works perfectly well.

**CHAIR**—Who funds that?

**Ms Stoneham**—Both parties pay for the independent mediator. It is a very small nominal fee. It is normally someone of high standing, a retired judge or someone like that, someone who is respected in the industry. It is a nominal fee and both parties pay their own costs.

The ACCC is recommending a system whereby there is a person nominated by APRA, a composer, plus an independent person. That, to me, seems to be extremely skewed, and I think it is still far too heavily weighted against the promoter.

**CHAIR**—Thank you very much for your submission and for coming along this morning and discussing it with us.

**Ms Stoneham**—Pleasure. Thank you.

[10.30 a.m.]

**ROTHNIE, Mr Warwick, Partner, Mallesons Stephen Jaques, 525 Collins Street, Melbourne, Victoria 3000**

**CHAIR**—Welcome, once again, to the hearing, Mr Rothnie. For the Hansard record, I ask you to state the capacity in which you appear before the committee.

**Mr Rothnie**—I guess I am a solicitor.

**CHAIR**—I hope you know, Mr Rothnie.

**Mr Rothnie**—I think the official title in this state is a natural person who holds a practising certificate under the Legal Practice Profession Act, so I think I will stay being a solicitor.

**CHAIR**—That must have changed after I departed the legal profession.

**Mr Rothnie**—Yes, it is something to do with plain English.

**CHAIR**—We have a further submission from yourself and Professor Lahore.

Resolved (on motion by Mrs Grace, seconded by Mr Barresi):

That this committee authorises receipt of the submission as evidence to the inquiry and authorises its publication.

**CHAIR**—Mr Rothnie, would you like to make some comments in opening?

**Mr Rothnie**—Certainly. Firstly, I thank you for the opportunity to appear before the committee for the second time. Certainly the time to think a bit further about the issue has been quite valuable. Secondly, I apologise on behalf of Professor Lahore, who has teaching commitments in London and could not be here today.

As a starting point, the supplementary submission is really intended just to address the narrow question of APRA's proposal based on what we understand to be the position in Canada. Our opinion is that if the committee decided that it is an appropriate way to proceed, it would be consistent with Australia's international treaty obligations and therefore would be an option open to the committee to pursue.

The reason for that conclusion arises from the peculiar wording of the peculiarly named article 11 bis of the Berne Convention, which in subarticle (2) provides that countries such as Australia who are members of the Berne Convention can place conditions on the exercise of the rights in question, provided that it is not prejudicial to

the author's right to obtain equitable remuneration.

The article does not specify who has to pay that remuneration; it just specifies that the author has to receive it. So it would seem that the proposal by APRA is consistent with our international treaty obligations.

**CHAIR**—Do you know of any information as to whether the royalties in Canada are collected from broadcasters?

**Mr Rothnie**—I am not sure that the information I have is terribly current. The legislation was initially introduced back in about 1938, and certainly it would seem that for a number of years there were payments made. I think it is a copyright board rather than a copyright tribunal in Canada. I am not sure that there is a decision made in Canada which specifies what royalty, if any, would be payable at the moment.

**CHAIR**—It is just that if we were to pursue that course, it would be useful for us to understand something about the mechanism of how it works. There are two levels. One is the theoretical position that that is what the law is and then there is the question of whether or not it is implemented in the way one would expect and, if it is implemented, what is the mechanism for collecting from the broadcasters.

**Mr Rothnie**—As I understand the legislation, it is a little bit different from the scheme of the Australian legislation but it contemplates the equivalent of APRA filing a tariff with the copyright board and then the copyright board approving that or amending it or varying it. That would fix the fee to be paid by the broadcasters, I suppose, in this context. That is a very general level of understanding of how the mechanics would work.

As I understand it, APRA's proposal is essentially much the same sort of thing, although our legislation provides for APRA to propose a tariff and, if the broadcasters or the other prospective licensees do not agree to that, it goes to the copyright tribunal and there is a hearing for resolution, at which point the tribunal would presumably make a decision of what royalty, if any, was to be paid and would fix a fee or increase the amount currently paid by broadcasters to APRA, presumably by a percentage or something.

I should also say that, although I have not been involved in any of the tribunal's determinations, from my reading of the decisions that have been handed down, quite often it seems that reference is made to how things are dealt with in other countries. Usually the tribunal indicates that, while it has found it interesting, it is not often very conclusive, because there is quite a wide array of ways that things are dealt with overseas. They often take the position that the conditions or the circumstances might not be applicable.

**CHAIR**—In comparison to what we understand the Canadian situation to be, as I understand it there are bills before both the House of Representatives and the Senate of

the United States Congress which, if my understanding is correct, would have the effect of exempting small business owners from paying royalties. That, on the face of it, would seem to be contrary to international obligations.

**Mr Rothnie**—It is some time since I have looked at the detail of the US proposals. At a very broad level, my understanding was that the main thrust of the US proposal, or at least the House of Representatives one—I could be wrong, it might be the Senate one—was to widen the scope of the exemption in the US. The US provision specifically only applies to playing or using one loudspeaker or a single apparatus, whereas one part of the legislation that is being proposed in the US is to remove that restriction, so presumably there can be any number of speakers or apparatus.

I should make an additional comment on that point. I certainly would not claim to be an expert on the legislative process in the US but the impression I gain of the US process and the feedback I have had from other people involved in similar sorts of exercises in Australia is that the US process seems to be rather different from the Australian process. In Australia my experience has certainly been that when a bill has been introduced into parliament it is very difficult for changes to be made to the bill unless there is an obvious problem with it in some way. The consultation process takes place before the bill is introduced into parliament. However, in the US it seems like the consultation process starts once the bill is introduced into the Senate or the House of Representatives, so they seem to have quite a different process. The fact that the legislation has been introduced may not mean that it will ever be passed.

**CHAIR**—You make some comments about the potential constitutional difficulties and I note your recommendation that we seek specialist advice from constitutional experts about that matter, which is a suggestion that we will obviously take on board if we are to pursue this path. Nonetheless, from your discussion it seems to me that you believe the difficulties of the High Court's decisions in the tapes case can be overcome.

**Mr Rothnie**—Yes. I think that is right. Certainly the two situations seem to be rather different. It seemed to be a key part of the tapes decision that the manufacturer of an audio cassette has no control over what a purchaser does with it. The cases have consistently held that the manufacturer in that situation is not infringing copyright. The tapes decision was effectively that there was no real connection between the amount being paid by the manufacturer and any exercise of copyright or right to use copyright, whereas in this situation it would be quite different because the effect of the proposal is to say that broadcasters are in effect exercising the copyright and therefore they would be paying for a right to use that in one sense.

**CHAIR**—It also struck me that if that was not constitutional then it would have the effect of striking down the ability of the composers and performers, through APRA, to claim royalties from the broadcasters now.

**Mr Rothnie**—It is difficult to predict what the High Court might come up with in some of these areas, but I think that is right. Currently APRA's ability to claim from the broadcasters is because the broadcasters are exercising the broadcast right, so that is quite clearly a payment for the exercise of that right. A decision striking down the proposal that APRA has currently made would seem to have that sort of flow-on effect, yes.

**CHAIR**—It depends how you analyse it. If you analyse it by saying there is an existing right for which they pay a royalty, the effect of the introduction of a system like the Canadian system would seem to me to legislatively remove the payment of royalty by certain other parties and the consequence of that is a change in the quantum paid to the broadcasters. I suppose it could be argued that it changes their liability to pay the royalty in one sense, but in another sense it does not; they still have a liability. It just takes into account certain other factors in determining the quantum.

**Mr Rothnie**—I would certainly agree with that. The proposal effectively is that the use of this type of material fits into the public performance box. Effectively the proposal shifts it from that box into the broadcasting box. As we have argued in our submission, that appears to be a course open to Australia under the international treaty, so it would seem to fit within the copyright and the payment for and exercise of copyright.

**CHAIR**—I suppose the question might arise—it may not arise in a practical context because APRA is putting forward the suggestion, but if they were not and it was simply imposed upon them—it would be open for APRA or those for which it acts effectively as an agent to bring an action against the constitutionality of any legislation which precluded the collection of royalties from certain categories of business.

**Mr Rothnie**—That would be one possibility. I would anticipate one possibility would be that if APRA's proposal were legislated there are plenty of interest groups who would have an interest in challenging the constitutionality in any event, depending on whether or not the broadcasters supported it. For example, they would have an obvious incentive to try to question it. It would seem that, whether or not APRA supports the proposal, I am sure you will find somebody who wants to question it.

**CHAIR**—I think that covers it fairly well, Mr Rothnie. Can I thank you, and in his absence Professor Lahore, for the supplementary submission, which has been very useful, because this is a central issue that we have to address. It is no good our coming up with a solution that is contrary to any international obligations we have, because it would be unworkable for obvious reasons. Thank you for your additional submission and for coming along this morning.

**Mr Rothnie**—Thank you very much.

[11.00 a.m.]

**THOMPSON, Mr Paul Charles, Representative, Federation of Australian Radio Broadcasters and Chief Executive, DMG Radio Australia, Pulteney Court, Adelaide, South Australia 5000**

**CHAIR**—Welcome, Mr Thompson. 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 the parliament. You are aware of the general background to the inquiry, Mr Thompson. Would you care to make some opening remarks?

**Mr Thompson**—Yes, I would. DMG Radio Australia is a subsidiary of the Daily Mail and General Trust Group which has wide media interests in the UK and other places, but particularly in the UK. My experience in the radio industry includes appointment as the founding chief executive of the Austereo Group, which position I held for about 15 years. I have extensive experience in programming and management of commercial radio stations and networks.

DMG currently operates 51 commercial radio stations in five states of Australia. Fifty of the stations are in regional areas and a number are in quite sparsely populated areas, and I describe those regional stations in particular as themselves coming within the term ‘small business’. DMG is very much opposed to the principle that these businesses should have to pay additional licence fees to APRA to compensate APRA’s members where business proprietors listen to the radio. That objection, in the case of DMG, is based on two primary grounds. In the first place it is a question of principle.

Radio broadcasters have been caught, as I see it, in the middle of a dispute between small business and APRA essentially over a matter that has nothing to do with us, other than that in some situations we happen to be the means by which music is played. It is about as sensible, as we see it, as placing a levy on the manufacturers of CD players or tape machines where the business plays recorded music. Given that broadcasters already pay licence fees to reach the free to air audience wherever they may be listening, it is very difficult to see how this proposal could ever be justified on the grounds that broadcasters receive some particular benefit.

Secondly, we object to it on the basis of the economic impact. As I have indicated and as the committee is aware, I believe, the commercial radio industry already pays large annual fees to APRA—in the vicinity, I understand, of \$11 million a year. DMG pays a significant proportion of the fees paid by regional broadcasters, given its substantial holdings.

Many regional broadcasters in Australia are operating at a loss. I do not wish to go into the specifics of DMG’s operations because they are commercially confidential, but in



general terms the Australian Broadcasting Authority recently released financial results for the industry for the year ended 30 June 1997 which showed that profits for the 142 services in regional markets decreased by 13.6 per cent, with some 44 of those services in loss. Revenue decreased in these markets overall by 3.5 per cent.

I believe that stations in many regional areas are facing the prospect of far greater revenue and profit declines. Additional radio broadcasting licences have been issued recently in some regional markets and are soon to be issued in a number of others. It is my view that, unlike the more prosperous capital city radio sector, the somewhat more fragile economic base of regional radio would not be able to sustain these regional licences and many more radio stations, and entire markets for that matter, will have their viability threatened.

Even before the new licences take effect, however, many operations in regional markets are marginal and any increase in costs just would not be sustainable and, in my opinion, could tip the balance from profit to loss in a number of our stations in particular. Furthermore, those costs cannot be passed on to advertisers, as I understand has been suggested. Radio stations in regional markets compete with local newspapers, aggregated television services and community and narrowcasting radio stations, the latter of which are increasing in number every month in many areas. It is an extremely competitive and price-sensitive advertising market.

Leaving aside the inequity of all advertisers having to pay the APRA fees of some businesses, most radio advertising revenue in regional markets is local. There is not a lot of national advertising carried by the smaller country services—in fact the smaller the country service the smaller the amount of national advertisers—so any additional cost burden primarily would be borne not by multinationals or large companies but by regional industry. This would really be a case of shifting the financial responsibility of some businesses, who at the end of the day make the choice to listen to the radio, on to the general community.

I can understand, however, the position of many regional businesses who are confused about why they have to pay a licence fee to APRA in all the circumstances. Radio in the country is, I think, actually quite significantly different from radio in capital cities, and offers a vital service to its community. Many people listen to it not simply as an entertainment medium but as a source of community information, often vital community information.

I know from first-hand experience, for example, that in January when the floods occurred in Townsville, where we have two commercial stations, our stations played an extremely important role not just in keeping the public informed but also in coordinating a lot of the emergency services work that took place in maintaining public safety.

Radio 2CS in Coffs Harbour, which is also a station that we have, played a

significant part in assisting the community when in November 1996 there was a very bad storm in the area and flash flooding. The station received a community service award for its involvement, again both for keeping the public informed and for coordinating emergency services activity.

In summary, DMG is strongly opposed to the proposal put forth by APRA because it places a cost upon the industry for an activity which has legitimately nothing to do with the broadcaster and relates to actions over which we have no control. It also seeks to shift a financial burden on to services which may already be borderline undertakings and would be quite inequitable as regards general advertisers who do not exercise the public performance right granted to APRA's members.

**CHAIR**—Thank you, Mr Thompson. Is it possible to provide a ballpark figure—I understand figures probably vary from radio station to radio station—of what proportion of expenditure is actually constituted by the fees paid to APRA?

**Mr Thompson**—That is a figure I am not in a position to provide. I would be happy to provide it but I cannot provide it at this moment.

**CHAIR**—Perhaps you could take that on notice, if you are happy to do so. I understand that you may have to be general about it and provide an estimate, but still it would be useful.

**Mr Thompson**—I would be happy to do that. I think that often the financial status of regional radio is overestimated and I would be actually quite happy to provide more information to you, but I do not have that figure here now, so I will provide that.

**CHAIR**—A view has been put to the committee by some small business operators and business representatives that the charging of a licence fee to those businesses that replay the radio in their workshop or their retail premises or whatever constitutes double dipping; that is, that the fee has already been paid to the broadcaster, so why should it be paid again. Do you have any views about that?

**Mr Thompson**—I must admit, I tend to agree with that. We clearly pay a substantial amount of money already for broadcast rights and we pay for those rights, as I understand it, in order that radio broadcasting and listening can take place in all environments. It has never been suggested that it was being paid for some limited use; it has always been an all-encompassing thing; and the suggestion that maybe it is not is a very recent one. I have been in radio a long time—too long—and it has never been suggested before that the right that we pay for now was not an all-encompassing right, so I actually think it is being paid for now.

If the environment was a paid environment that was being listened to—I was thinking about it this morning—for example, a one-day cricket match where people had

paid to enter the arena and they played the radio at half time, for example, I would have thought that would be a different environment and maybe somebody should be paying some additional rights for that because people had actually gained some financial reward through the people paying their money at the gate. But in an environment where there is no money changing hands, where people are simply listening as they normally would listen to the radio, I genuinely cannot understand why the original broadcast right would not encompass that.

**CHAIR**—You say you find yourself in the middle, but one categorisation that we were at least considering by way of discussion was to say that there is a difference between listening to a broadcast which is purely private, such as you might do in your lounge room or kitchen at home, versus one by which the broadcast creates some background ambience, and a third category of where it is quite clearly used for a commercial purpose. Playing the radio at half time in the cricket would seem to me to be a commercial purpose; it is there to entertain people whilst they are waiting for the batsmen to have their lunch or tea or whatever. If radio is used in a gymnasium for exercise classes—although it is more likely to be CDs than the radio—but if it was radio, there is clearly a commercial purpose associated with the use of that.

If you accept that categorisation, where do you draw the line about that for which a royalty fee is paid? Given the commercial use you could say, yes, it ought to be and for private use it ought not be. What do you do about this category in the middle, just ambience, such as when you walk into a florist shop and Classic FM is playing. I suppose that does not apply because it is out of copyright, so I will leave that aside. If you walk into a florist shop and some easy listening station is being played in the background, does that constitute simply the private enjoyment of the proprietor or the workers in the shop or does it in fact have a commercial advantage?

If you walk into a jeans store and they are playing Triple J or whatever they play—I am not up to date with all the stations, Mr Thompson—then you might argue that the music was chosen to attract the clientele of young people who listen to that sort of music on the radio themselves, and the last thing they would be playing in a jeans shop is Classic FM or something like that.

**Mr Thompson**—My experience, which is anecdotal or just experience in entering those premises myself in recent years, is that there actually has been quite a significant change. Back in the 1960s, 1970s and 1980s I think the radio was used much more than in that environmental influence. My experience now is that in most of the shops where they are seeking to create a mood, they are actually playing tapes. I think there has been quite a marked change over the last decade in that regard. Maybe they have moved to a different level of sophistication in terms of seeking to create some sort of ambience, but I think the use of the radio in that environment is in decline.

Most of our stations are in regional areas so I possibly have a slightly greater sensitivity to regional areas. I was talking to our management in Griffith, New South Wales on this subject the other day and they were saying they actually do not find our radio stations being played in that environment any more, as they once were, because the shop owners can create precisely the mood they want to create with tapes, which they cannot do precisely with radio.

During the course of the day we are highly likely to play advertising for opposition shop owners and they find themselves in a situation where they have customers coming in listening to advertisements for an opposition's establishment, so they have simply changed the way they use it now. Business is too competitive for that, so they simply do not do it. I think it is a practice that is in decline. I think it peaked a decade or two ago.

The point you make is still, of course, what do you do? In answer to that, I think it is a more minor issue than it used to be and it is very much in decline. In the morning, for instance, we play John Laws on something like 15 to 20 of the markets that we are in at that time of the day. Firstly, that is not music, or he plays a very small amount of music. It is not ambience, I would have thought.

**CHAIR**—I will not comment, Mr Thompson.

**Mr BARRESI**—It is an ambience of sorts.

**Mr Thompson**—I would have thought in those situations you simply are providing it for people who choose to listen to it and who listen to it because they wish to listen.

The other comment I might make in regard to that is that listening patterns have changed quite a lot during the last 10 to 20 years. Twenty years ago people listened a great deal in the day time at home, and this applied even more to women than to men. Twenty years ago they even called daytime radio, particularly in the morning, 'women's programs'. Obviously, the whole pattern has changed completely. It seems to me that listenership has not necessarily grown or declined at that time of the day but it has completely changed its focus. The people who were listening at home are now listening in the workplace, so the same kinds of things are taking place at that time, but it is a different listening environment.

**CHAIR**—Is there available any documentation or any written material about the change in listening patterns and what listening patterns are? I presume it is available to you by way of market research to radio stations, but is there some more general reference that we could refer to?

**Mr Thompson**—Yes, I believe there is. If we were to access the McNair surveys of 15 or 20 years ago, or even 10 years ago, and compare them with the place of listening now, I believe that would show that quite clearly. The only thing I am not sure about is

how far back the place of listening information goes, because there was a time when it was considered that it was almost all at home so they did not bother to break it down. I am not exactly sure when that changed, but I would be happy to follow that up with them and see when the first of those place of listening surveys were recorded and maybe take a look at the information of when that was first recorded compared with now and see how that trend has evolved.

Now the surveys look at at-home listening, at-work listening, in-car listening and other listening, which is anything else that is not picked up by those categories. There is no doubt that over the past 10 or 15 years certainly there has been a significant change in that regard.

**CHAIR**—That may be useful, if you are able to do that. What is your understanding of how the Canadian situation, on which the proposal put forward by APRA is based, actually works in Canada?

**Mr Thompson**—I have not actually been to Canada for a very long time so I am not an expert on that at all. My understanding is that it actually does not work at all; it does not occur. As I understand it, there was some provision for it in legislation but it was never considered to be a practical thing to be implemented. My understanding is it was not implemented and is not being implemented.

**CHAIR**—By that, do you mean that there is no additional royalty paid by the broadcaster to compensate the owner of the copyright for the absence of royalties paid by business?

**Mr Thompson**—Yes, that is my understanding.

**Mr BARRESI**—Mr Thompson, you mentioned the likely impact upon your radio station's profitability if the fee is increased. Assuming that path is taken and there is a corresponding fee increase to broadcasters to compensate for the fees at the receiving end, is there some way of structuring that fee so that it takes into account the regional differences between the city and the country, whether it be based on audience reached or based on the market share that you have? I do not want to put words in your mouth, but I am looking at the possibility of some sort of restructuring of fees to take into consideration your circumstances.

**Mr Thompson**—I understand the point that you are making. It is very difficult because I cannot see—I am not an expert in this field at all—how it can be implemented in practical terms, either in a capital city environment or in a regional environment. If I could understand that, I might be better placed to be able to talk about the difference in implementation.

The way that it works now, as you know, is that the music lists which we pay a

broadcast right on are music lists that we generate, so we know what we are playing, we provide the material and the calculations are based on things that are within our control.

In the case of businesses, obviously we do not switch on the radio, we do not know what is being done, when it is being done or who is listening, so I find it very hard to understand how it could in fact ever work in any environment. I guess there would have to be some kind of survey of the business environment to come up with some sort of listening patterns. But how that would differ between capital city and regional environments, I am not sure.

Just to emphasise the great difference that is involved there, we have some stations—I did say I was not going to go into revenue or financial figures—that have total revenue in the region of \$350,000 a year all up, if they make budget, and they do not look like they are going to do that at the moment. They are quite small businesses.

The only way you can actually control the costs that relate to that is by controlling the amount of locally originated material that you broadcast. The more locally originated material you broadcast, the higher your costs and the more syndicated or networked material you take, the lower your costs. What we have been trying to do is maintain the local content to the highest level possible. It is only that which enables you to do things like we were able to do with the Townsville floods, where we were able to provide a team of people to work through the weekend and through the night, coordinating that activity.

My concern, because of the cost pressures that regional radio is facing and the revenue sharing problems that are coming up with the additional licences that are being granted, is that there is actually nowhere for regional radio to go other than to reduce the local programming content of its business and to become more of a relay outlet than something that reflects what is happening locally. Personally, that is not why I got into radio, that is not what I would like to see happen, but it is a pattern that I can see developing. We need to try to limit the cost elements as much as we can in regional radio.

**Mr BARRESI**—I gather from that answer that you do not have a fixed view on the restructuring of fees to take into consideration the regional differences.

**Mr Thompson**—No, I do not.

**Mr BARRESI**—You would have audience surveys from time to time to give you an idea of the market share?

**Mr Thompson**—Yes.

**Mr BARRESI**—Do you have official regional coverages? I know that a radio wave does not stop at a river or at a highway, but is there a defined region that you have

allocated to your radio stations, even though the reception may be received 200 or 300 miles outside that region?

**Mr Thompson**—The smaller the market, the less survey information that is gathered. Some markets—for example, in Western Australia, which is probably where we have our smallest stations—are not surveyed. Firstly, they are the only commercial stations in the market and, secondly, they are so small that the stations just cannot afford to run surveys.

Just talking about the Western Australian example, state surveys that place and the nearest you could probably get is Western Australian regional, which is Western Australia other than Perth. So it is a pretty broad brush. It is very hard to get down to the level of these stations.

**Mr BARRESI**—Thank you.

**Mr PRICE**—When did DMG first come to Australia?

**Mr Thompson**—In early 1996 I was given a brief to seek opportunities for investment in Australia and in the last week of September 1996 we purchased a number of stations and started the group at that stage.

**Mr PRICE**—I apologise, I did not catch the figures you gave from the ABA stats, but 41 out of how many regional stations are in the red?

**Mr Thompson**—I think it was 44. Of 142 services, 44 were not profitable for the year ended 30 June 1997.

**Mr PRICE**—Is there a contractual arrangement for the fees you pay to APRA?

**Mr Thompson**—Yes, there is a contract, to my understanding.

**Mr PRICE**—What do the fees cover in that contract?

**Mr Thompson**—As I understand it, the contract covers the broadcast right, which I understand to mean the right to broadcast and the right to broadcast to anyone at any place where they can pick up the broadcast.

**Mr PRICE**—When you referred to tapes, that is different from muzak, the landline music going into businesses?

**Mr Thompson**—Yes. In referring to tapes, I was thinking in terms of somebody who might have a CD or might have transferred the product of a number of CDs on to a tape that they might then play on a tape recorder.

**Mr PRICE**—Is there any study that shows there is a changing mix or share between radio being used as a medium in businesses and the muzak type arrangement of people who are making and playing their own tapes?

**Mr Thompson**—I do not think there is. If there is, I am not aware of it. It would be a study that I would like to see, actually. As I say, anecdotally, I feel as though radio's share of that is in decline. But there are no figures to support that, or not that I have anyway.

**Mr PRICE**—So you are not aware of that aspect of the industry ever being studied in any detail?

**Mr Thompson**—No. It is probably something that deserves study but it has not been.

**Mr BARRESI**—The fees that you are paying, is there a difference in the fees for live broadcasts versus recordings?

**Mr Thompson**—We do not have any live broadcasts.

**Mr BARRESI**—You do not take the mike down to the local country fair and broadcast the battle of the bands?

**Mr Thompson**—No. We might go to such a place and talk to the people who are organising it or the artists who are involved, in an interview environment, but no, the only music we play is recorded music.

**Mr PRICE**—The only stations that do that are the 44.

**Mr Thompson**—You are right, too.

**CHAIR**—Mr Thompson, can I thank you very much for coming along and discussing the matter with us today. Thank you.



[11.30 a.m.]

**PIRRIE, Mr Paul, General Manager, Austereo Melbourne, 180 St Kilda Road, Melbourne, Victoria 3004**

**CHAIR**—I welcome Mr Pirrie. 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 the parliament.

Mr Pirrie, you are aware of the general background and the terms of the reference of the inquiry. Are there some opening remarks you would like to make?

**Mr Pirrie**—I have no opening remarks. I am just here for the record, to say that I am against it.

**CHAIR**—You were here for most of Mr Thompson's evidence. Is there anything you would like to elucidate in response to what he said, or anything you would like to add to what he said?

**Mr Pirrie**—I was only here for a couple of Mr Thompson's questions.

**Mr PRICE**—Does Mr Pirrie want to submit the opening statement?

**CHAIR**—We can take it and it can be incorporated. You were going to read it?

**Mr Pirrie**—Yes.

**CHAIR**—Is it the wish of the committee that the document be incorporated in the transcript of evidence? There being no objection, it is so ordered.

*The document read as follows—*

**CHAIR**—I do not think there is anything in the statement that we have not heard from other broadcasters and, given your condition, Mr Pirrie, we will leave it at that, unless anybody has a pressing question they wish to ask.

**Mr BARRESI**—Can I ask you to consider, not now but perhaps later, the same question I put to Mr Thompson about whether or not there is a way of restructuring the broadcast fees to take into consideration the difference between regional and metropolitan radio stations?

**Mr Pirrie**—Restructuring the proportion of fees paid by metropolitan and regional stations?

**Mr BARRESI**—Yes.

**Mr Pirrie**—I would not see the purpose of that. We are opposed in total to the principle of the APRA fee because we believe we are already paying for the right to broadcast to anyone who can receive the signal, and in principle we think it is unfair.

**CHAIR**—I understand your point of view, but if the worst case scenario is that we decide to follow this path, contrary to the view that you are strongly putting to us, there would have to be a mechanism to take account of the sorts of differences that Mr Barresi is putting.

**Mr Pirrie**—Are you talking about radio or television or everything?

**CHAIR**—Basically radio.

**Mr BARRESI**—You do not have to answer it now, you can go away and think about it.

**CHAIR**—If you are happy to correspond with the secretariat, we will send you a copy of the transcript of this morning's hearing in which the question was put to Mr Thompson and his response to it, and if there are any further comments that you have to make about it, you may.

**Mr Pirrie**—I have no problem commenting on it now, if you would like me to. I did not hear Mr Thompson's response, but if you would like to inform me of the response, I am quite prepared to comment on it.

**Mr BARRESI**—Mr Thompson did not really give a proposal on how it can be structured, except to say that there was very limited capacity to raise money from regional stations and, furthermore, that a number of regional stations—if you are basing the licence fee on audience reach—do not survey, so it would be hard to actually come up with a criteria.

**Mr Pirrie**—I would agree with him.

**CHAIR**—You would be of the view—and this is a leading question, so if you disagree with me, tell me—that, given the vagaries of regional broadcasting—

**Mr Pirrie**—Which I am not an expert on.

**CHAIR**—And the differences that occur from region to region and the difficulty of actually measuring market share and the impossibility of ascertaining a market share where you have only got one broadcaster in a region, you could not fairly come up with a mechanism that would work?

**Mr Pirrie**—Absolutely. That would be impossible. I believe one of the points of reference of this hearing is that radio makes money out of at-work listening, or listening at work. Now, technically it is very hard to gauge that because if you look at a survey diary it is monitored in 15-minute blocks. A typical everyday example would be a person getting out of a car, going into a shop, perusing and buying something. That person may not be in the shop or that location for 15 minutes and, accordingly, technically they are not in a position to fill in a survey diary. I think a lot of the examples of at-work-listening pertain to private at-work listening, whether it be in a car, where that is not monitored, or at work in a closed environment, not in a public environment.

**Mr BARRESI**—However, when you are setting fees for your advertisers, is that not based largely on the market share that you have and also the time of day that the advertisement will be played on radio; therefore you have an idea already about the differences in audience reach because you have a differing fee structure for your advertising?

**Mr Pirrie**—The fee is actually based on demand. It used to be based on times of the day. For instance, typically the breakfast shift, which did not include at-work listening, and the drives shift, which is 4.00 to 7.00, were the most expensive shifts. Now basically we schedule our fees and fix our pricing according to demand—as simple as that—demand placed on our inventory. We have at most eight or nine minutes an hour of inventory, and accordingly our pricing structure is based around the demand at any particular time.

**CHAIR**—Has that moved away from breakfast and drive?

**Mr Pirrie**—No, it has enabled us to use our inventory better, so our yield has increased. For breakfast and drive, I suppose you are not just looking at pure numbers, you are looking at what the programs contain. We are very highly geared around providing expensive breakfast and drive shifts traditionally, and that is why listening tends to be greater and we have to get a return on that.

**CHAIR**—What proportion of your listening audience, so far as you can measure it, is in the work hours? By that I mean traditional work hours of 9.00 to 5.00.

**Mr Pirrie**—Is this over a five-day week or a seven-day week?

**CHAIR**—We will make it a five-day week.

**Mr Pirrie**—It would be 60 to 70 per cent.

**CHAIR**—You were talking about surveys. Forgive my ignorance of the industry, but when you do a survey, how do you do it? Do you select an individual and the survey is on the listening pattern of an individual for a period of time? How does that work?

**Mr Pirrie**—AGB McNair conduct the surveys. There are approximately 2,200 diaries done per survey, except for the first survey of the year, where there is a double sample, and they are distributed evenly, geographically and demographically, across the Melbourne broadcast area or the area as mapped out by the ABA.

**CHAIR**—How long are the survey periods?

**Mr Pirrie**—The first survey of the year, of which the results just came out today, was a five-week double sample period. Every week after that is a four-week period. However, the surveys are called rolling surveys, where the results of half of the previous survey are put into the results of the current survey in order to gain a sample size which radio has agreed upon, which gives you your result. So the results, I suppose, give you a more accurate indication of what the market is doing as well, so the results flow throughout the year. At the end of the year the whole process starts again.

**CHAIR**—It is sort of an averaging process.

**Mr Pirrie**—Yes, correct.

**Mr PRICE**—There can be a lag, too, if there is a significant change because if you are putting half the previous survey in, you may not be picking up the changes.

**Mr Pirrie**—Yes, that is a very fair statement. There can be a lag.

**CHAIR**—The survey requires the diary. Is it a 24-hour four-week or five-week diary?

**Mr Pirrie**—No, it is 5.30 am to 12 midnight. Midnight to dawn is not included in the survey.

**CHAIR**—The individual who gets the diary has to fill in each quarter-hour that

they listen to the radio and which radio station they listen to.

**Mr Pirrie**—Yes, it is as simple as that. There is also a lot of information we use for advertising purposes, a questionnaire, asking them where they eat, who they bank with, etc, but the crux of it is their age, their sex and their listening habits.

**CHAIR**—And that is done by?

**Mr Pirrie**—AGB McNair.

**CHAIR**—For?

**Mr Pirrie**—FARB, the Federation of Australian Radio Broadcasters.

**CHAIR**—Does it cover the entire industry?

**Mr Pirrie**—It is not compulsory for every radio station to go into. You may decide not to be a part of it. However, if they do not, they have then got nothing to sell to advertisers.

**Mr BARRESI**—What does that what mean, they have got nothing to sell to advertisers?

**Mr Pirrie**—You have got no figures with which to go and sell a product.

**Mr BARRESI**—So you are basing your advertising on your audience reach, on your market share and your positioning in the hierarchy?

**Mr Pirrie**—Well, partially, but at the end of the day the pricing structure is fixed according to demand. For instance, in the last quarter of the year, Christmas, you will probably find rates increase. There was a huge demand in the first six months of this financial year in Melbourne radio; the advertising market has increased by 22 per cent. We had budgeted for a 4 per cent increase. That was our assumption when we set the budgets, based on a negative growth the year before. Triple M, for instance, actually had its audience share go down, yet the advertising price rose significantly because of demand. So yes, your audience share and your figures are a base for it.

But we have a limited inventory, and that is not so for every radio station. For instance, 3AW could run 18 minutes an hour worth of commercial content but because we are predominantly a music based radio station we have to maintain the integrity of our product by keeping commercial air time to a minimum; therefore our air time has to be at a premium and that is based on demand. If there is a huge demand, which we have experienced in the last six months, the rate goes up and it goes up every week and it continues to go up until the demand is not there.

January and February have been a different story: the local Melbourne market for January decreased by 1.5 per cent. Accordingly, our pricing structure changed dramatically. It is a matter of handling your inventory, so you manage to keep your yield but spread your inventory.

**CHAIR**—So the ratings we read in the newspapers every month or so are—how can I put this?—I was going to say misleading, but they do not tell you the whole story.

**Mr Pirrie**—They tell you how a station is performing.

**CHAIR**—Only vis-a-vis the other stations.

**Mr Pirrie**—Correct, only vis-a-vis the other stations. That is important to a prospective advertiser. Demographically, if 3AW is the number one station, with 10-plus ratings, which they have at present and they have been for a considerable period of time, a client may not wish to advertise with them because they are not strong in that particular client's demographic.

So yes, it is good for the ego and for the radio station to have a number one rating, a 10-plus result, but other stations can definitely write more money than that particular station because they are strong in demographics with people with expendable income. That is very appealing to your mainstream advertisers.

The same goes for football: it is seasonal as well. Football brings in a whole new type of advertising. Triple M's ratings have actually increased as its music content has dropped. Twelve months ago, Triple M was a radio station that was predominantly a rock radio station. We made a concerted effort to change the direction of that radio station and introduce more talk and accordingly our ratings went up. Our APRA fees, the percentage has actually dropped from 2.66 per cent to 2.33 per cent because we are playing less music.

**CHAIR**—That is over how long?

**Mr Pirrie**—In the last 12 months—from the beginning of 1997.

**CHAIR**—Is it calendar or financial year?

**Mr Pirrie**—Calendar.

**CHAIR**—From 1 January 1997 through to today?

**Mr Pirrie**—I have got the figures. I beg your pardon, I stand corrected. Our 1998 forecast is 2.33 per cent for APRA fees. Up until then it had been 2.66 per cent. Once again, that is because our music content has dropped from probably 12 songs an hour

during breakfast, morning and drive to four songs an hour during breakfast, if we are lucky; mornings we will play five or six; drive we will play five or six. That is the Grill Team, which is a current affairs/sports-orientated talkback program with music. On weekends, which has predominantly been music, from Friday night to Sunday night we play 10 to 12 songs an hour; and during football we do not play any songs on Saturdays from 12 noon to 6 pm. That has been a dramatic decrease in the number of songs we play and it has been successful for us. I am not saying that is a formula every radio station would adopt, but it has certainly been successful for us.

**Mr PRICE**—What is the requirement of Australian music being played?

**Mr Pirrie**—Twenty-five per cent. Fox is running 25 per cent Australian content and Triple M is running 33 per cent Australian content.

**CHAIR**—Those statistics were for Triple M?

**Mr Pirrie**—Correct.

**CHAIR**—Do you know the figures for Fox?

**Mr Pirrie**—Yes, I do. Is this for the APRA fees?

**CHAIR**—Yes, APRA.

**Mr Pirrie**—Yes, it is 2.66 per cent and once again we will be forecasting 2.33 per cent for 1998.

**CHAIR**—That is a percentage of?

**Mr Pirrie**—Gross revenue.

**CHAIR**—Mr Pirrie, I thank you very much for coming along today and discussing the matter with us. We hope your health improves.

**Mr Pirrie**—So do I.

**Sitting suspended from 11.45 a.m. to 1.30 p.m.**

[1.30 p.m.]

**MACAINSH, Mr Gregory John, Director, Australian Performing Rights Association, 6-12 Atchison Street, St Leonards, New South Wales 2065**

**CHAIR**—Welcome, Mr Macainsh.

**Mr Macainsh**—I am here as a songwriter and composer, and also as a writer-director of the Australian Performing Arts Association.

**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 that may be regarded as a contempt of parliament. We are in receipt of your submission of 12 September, Mr Macainsh. Would you like to make some opening remarks?

**Mr Macainsh**—Yes, I would. I have been a songwriter and musician for over 25 years, most notably with the group Skyhooks. I have had possibly 60 or 70 songs recorded, a number of which have become quite popular in Australia, songs such as ‘Living in the Seventies’, ‘Horror Movie’, ‘All My Friends Are Getting Married’, and a number of others. I have also been a musician with a number of other groups, most notably with John Farnham. I have been an APRA member since 1974 and currently, as I said before, I am a writer-director of APRA.

It seems to me that the central issue in this inquiry is to do with the value of music in our society and specifically its value in the commercial environment. I assert that music in our culture is perhaps like the air to birds or the water to fish. In the words of Friedrich Nietzsche, ‘Without music, life would be an error. The German imagines even God singing songs.’

A world without music would almost be impossible to imagine. Thus there is a tendency to take it for granted in some ways. But, like the air and the water, its absence is only desperately missed when it has gone. Music for many of us, both collectively and individually, is undeniably powerful. Paradoxically, it is this importance in our lives which perhaps some of us take for granted. Those of us that are composers and songwriters are perhaps the very few people who understand what it takes to create music. It is not something that just exists, it has to be forged.

To stare at a blank score or to be in a silent recording studio and know that you must create a work which has the power to move, excite, give joy and touch the emotions of the listener is truly a humbling experience. It requires moments of inspiration and yet hours, days and months of perspiration, hard work, wrestling with concepts, lyrics, melody, rhythm and arrangements, and also battling with your own inner voice: is it good



enough, does it convey what I intend, will the audience respond, and am I going to be able to make a living out of this?

Very few composers rise to the level of Michael Jackson, Lennon and McCartney or Andrew Lloyd Webber. For the most part we are not employed by anybody. We create our own businesses, our own musical groups, our own contacts, production houses and studios, but we have to live in houses, eat and pay taxes like everyone else. Our product is our copyright. That is what we create and that is what is ours to bargain with in the marketplace, just like any other shopkeeper. The value of our product is ascertained in the marketplace, just like any other product or service. I believe the licences that APRA issues for the public performance of music in this marketplace are extremely reasonable.

What value does music have in a place of business? It is a bit like saying, what value does a colour scheme have in a shop or a workplace? What value does the advertising signage have? Do the customers like the look of the place? Will they be attracted to McDonald's golden arches? Do these things have value? Yes, they do and so does the music that is played in these establishments. What value does air-conditioning have in a shopping mall or an office? The ambience of the environment attracts the customers, perhaps to retreat from the cold in Melbourne or from the heat in a place like Brisbane. The feeling and comfort of these environments is important to the business that takes place in these establishments.

Is the smell of a workplace, shop or restaurant important? Absolutely. What value does the layout of a supermarket have, or the ergonomics of an office, the ease of getting around from one location to another? Surely we want our business places to be customer friendly. Why do we employ architects? What value does the sound that exists in our business environment have? Is it too noisy? Can we work peacefully and productively in it? How many business deals are made in restaurants because the ambience there is more suitable than perhaps that of a dull office?

I will give you an example of a restaurant I went to in Brisbane. I noticed while I was dining there that it had perhaps the feeling of a boarding school cafeteria or an army mess hall; it was dead. I looked around; there were no speakers. This was an outdoor patio area, so I said to the waiting person, 'Why don't you have any music here?' She said, 'Oh well, if only, but our lease precludes us from having music played in this restaurant because there are residential tenants nearby and we cannot do it. We would dearly love to have it, but that is not the case.' I am sure that the establishment, if they could pay whatever it took, would probably realise the value of that ambience. To my mind, I possibly would not go back there because there was something sterile about the place.

I would like to refer to an article in the Melbourne Herald Sun which says perhaps there is too much music in the marketplace. Helen Elliott says:

Did you find yourself bopping merrily along the supermarket shelves at 2 pm yesterday? Throwing

in this, throwing in that, two steps forward, one step back?

You might even have been humming along to the music.

Music is perhaps the truest, most lasting pleasure in life, the pleasure closest to divinity. But music had better start watching itself. What's happening in the supermarket isn't to do with divinity. Call it commerce.

Music is so powerful it alters your mood. As you bop, jive or rock along the supermarket shelves, you're on a little high of pleasure. You're not discriminating. So you buy. And when you unpack the shopping you often get a surprise at what you've bought.

This, I feel, is undeniably stating the power of music in the commercial environment and its benefit to the transactions that go on there. I am sure there is a whole school of psychological rationale which goes into the choice of music which is played in shopping areas and workplaces. The local milkbar is not going to have Metallica playing away—they are going to choose something more conducive to the mood of their customers. What soundtrack does your place of business have? What do the clients and customers hear when they enter your premises? I assert that the sound of an environment contributes greatly to the ambience, just as much as the visual component.

Commercial radio stations program music not particularly for its artistic content but more with regard to the tastes of their listeners, who will then listen to the advertisements on those stations which are the real product of commercial radio. Commercial radio means exactly that: stations which play commercials with some music in between to keep the listeners interested. Commercial radio stations recognise the value of music in their businesses and pay the appropriate licence fees.

In my longstanding association with APRA I have found it to be an honourable and fair organisation, both with regard to the writers and publishers they represent, as well as to the licence holders they service. Friends of mine in the restaurant trade speak surprisingly favourably of APRA's willingness to educate them in the intricacies of the public performance copyright. The licence fees that APRA apply to commercial premises seem to me to be extremely reasonable and hardly would represent any burden on a real business.

I would like to thank the committee for their time and I am willing to answer any questions you may have.

**CHAIR**—Mr Macainsh, if every small business owner heard the justification for the licence fees as eloquently as you have just put it, there may not be a difficulty. But there does seem to be a difficulty, and that is that for some reason over the last couple of years or so some small business operators do not seem to have been educated about the property which exists in music and therefore the livelihoods which are dependent upon licence fees. As someone associated with APRA, do you have any thoughts about that,

why we are here? I will put it another way. If it was all as straightforward as you say, we would not be sitting here today.

**Mr Macainsh**—Well, perhaps empty vessels make the most noise, I do not know. I would say that in my opinion APRA does an excellent job of educating people. Undoubtedly it requires a bit of skill and thought to understand exactly what copyright is but, once again, if you are running your own business, I would assume there are many seemingly complex concepts that you have to deal with and, really, this is just another one. Business owners may complain that the health and safety regulations might be a little hard to understand, nevertheless they have to comply with them.

**CHAIR**—As a composer, what proportion, in round figures, of your livelihood is dependent upon the licence fees on radio broadcasts, as distinct from live performances and others?

**Mr Macainsh**—This would vary from composer to composer but not all composers perform live. In actual fact, the advent of the singer/songwriter—someone who writes their own songs and performs them—began, I guess, in the late 1960s. Prior to that we had Tin Pan Alley, where people basically wrote songs for a living. I do not know that you could ever make a satisfactory division of that. There are some people who do both and some people who just write songs.

**CHAIR**—I suppose what I am getting at is if the suggestion has been made that licence fees not be payable directly by small businesses for the playing of radio, what impact would that have if there were other adjustments made, for example by increasing the amount paid by the radio stations in terms of air licence fees? What sort of impact is that likely to have on the composers and the performers?

**Mr Macainsh**—I think that would have a great impact. The component that a songwriter might earn from performance royalties would be, in some cases, a substantial part of their income.

**Mr PRICE**—Averages are really deceptive, but what proportion of royalties would you derive from CD sales, from APRA fees associated with existing radio licensing arrangements and what you would get from the radio being played in small businesses, as a percentage, rather than dollar amounts?

**Mr Macainsh**—It varies from year to year. I would say all generalisations are false but—

**Mr PRICE**—So are simple solutions to complex problems.

**Mr Macainsh**—APRA income versus sale of Cds, I would say it would be perhaps less than 20 per cent, and that is perhaps in a year when it is sold. If you had a hit song,

the return from the APRA component I would say would possibly be 20 per cent, perhaps a bit less.

**Mr PRICE**—You have no idea of the break-up within the APRA component?

**Mr Macainsh**—If we break that up, certainly the predominant income would be television and radio, perhaps 50 per cent of that again, possibly less. So of the total pie you might be looking at a figure of 10 per cent.

**Mr BARRESI**—Can I pursue that line a bit further? You made the qualifier there of a hit song in a hit year. Down the track, take the songs from the 1970s, 20 years on, what proportion of your income or an artist's income could conceivably be made from APRA each year?

**Mr Macainsh**—Every artist has varying degrees of success. If someone had said to me in 1975, 'They will still be playing your songs in 20 years time and you might earn some APRA royalties,' I would have said, 'I am not going to base my existence on that possibility.' I can only speak from my own experience.

**Mr BARRESI**—But that is the important thing: you would not base your existence on it because it is not enough to live on.

**Mr Macainsh**—Not on that one song, no. There might be a song that earns in radio air play \$300 a year and then there might be some that earn a lot less.

**Mr BARRESI**—If that is the case, is the money that you receive for those songs written 20 years ago an issue of being paid your dues for your creative work versus being paid as part of an income stream?

**Mr Macainsh**—It is the value that the song has to the radio station. There are stations which only play stuff from 20 years ago, so it obviously has some value in the marketplace, which I think APRA fairly assesses.

**Mr BARRESI**—I am just trying to put myself in the position of the artist concerned. In 20 years time do I really want APRA to be collecting those fees on my behalf because I need the money or because I have proprietary rights in that song? What is my major motivation for wanting those fees collected, considering it is only a small part of your income anyway?

**Mr Macainsh**—For some people who earn a very small income it might be a great part of their income. Every case is different. I think those rights have to be protected.

**Mr BARRESI**—So it is a rights issue more than anything else?

**Mr Macainsh**—Yes. As I said, that is what we create. That is the only thing we have to trade with. You cannot say to people, ‘Well, forget any future income you might have.’ It is like goodwill in a business, really; you create something and you work at promoting it and hopefully it has some inherent value which you can trade.

**Mr BARRESI**—Why are some artists in APRA and others are not? From your perspective, what is the value to you of being in APRA versus going out there and doing your own deals?

**Mr Macainsh**—Artists or songwriters?

**Mr BARRESI**—Songwriters, composers.

**Mr Macainsh**—As far as I know, the majority of songwriters and composers in this country would be members of APRA because it represents one’s performance copyright. For me to actually knock on the doors of radio stations or small businesses and say, ‘Hey, you played my song and here’s my invoice,’ I think would be logistically impossible. That is why APRA works as a central clearing house for those rights. Conceivably I could not be a member of APRA and do it myself but I think what APRA does is just a much more sensible way of doing it. I would not like to try and collect my performance rights, as I said, from radio station to radio station, it would be just ludicrous.

**Mrs ELIZABETH GRACE**—I might say that my daughter was one of your greatest fans in the 1970s so I know some of your songs extremely well.

**Mr Macainsh**—Give her my regards.

**Mrs ELIZABETH GRACE**—I bought one of your long play records for her 16th birthday because that is all she wanted.

**Mr BARRESI**—Whenever someone starts off saying, ‘My daughter or my son’, they really mean themselves.

**Mrs ELIZABETH GRACE**—No way. I just had to live with it.

**Mr PRICE**—It is outrageous that you are so conservatively dressed. Make sure you get that quote on the tape.

**Mrs ELIZABETH GRACE**—They were not conservative in the 1970s. You say in your submission:

Computer software enables business to operate more efficiently and music software performs the same function.

With computer software, you go out and buy the program, you install it and you run your business accordingly. Why would not music work the same way? You go out and buy the music and music and you play the music in the shops, therefore you have paid for your right to play that music.

**Mr Macainsh**—You have not paid for your right to play that music in public, because if you read the fine print on the majority of Cds, there are certain rights which are reserved, and one is the public performance right. When you buy that music, it is for your personal use, it is not to be rebroadcast. The public performance rights, which are part of the package of rights which copyright is, I have assigned to the Australian Performing Rights Association to administer.

This is probably the crux of the matter. People think, ‘I have this CD here, it is mine to do what I like with,’ but that is not the case. It is for your personal listening pleasure. It is not for you to make pirate copies from, it is not for you to even put on a listening party and invite people to pay and have a listen to it.

Because a thing can be copied so many times people seem to think it somehow diminishes its value. Imagine if you could only make one recording of Beethoven’s Fifth and there was only one CD in existence of that, people would want to listen to that and it would have a value. The performing right is the right which APRA administers and that is not what you purchase when you purchase that record to listen to.

**Mrs ELIZABETH GRACE**—Therefore your comparison is not a good comparison because once you have bought your computer software and used it to enhance your business, whichever way you use it, that is it. You are told not to pirate it and recopy it and things like that, but that is it, you have bought the right to use that to enhance your business in whatever way you choose to do it, whatever program it is. If you say, ‘I buy a CD to play in my business to enhance my business,’ that is different.

**Mr Macainsh**—I think what I was trying to get at is this notion of software. The playing of the music has some value in the business, in the same way that the paint on the walls has some value in the business and the computer software. Everything in your business is there for a reason—to assist your business—and that is why the ambient music has some value. I think that is what I was trying to get at, perhaps not quite as eloquently as I would have liked.

**Ms GRACE**—I agree with what you are saying, but you have paid for your paint, you have paid for your software, your computer hardware, you do not have to keep paying for it. At the moment that is what APRA is asking businesses to do; to keep paying for the use of that record.

**Mr Macainsh**—Yes, because music is performed, it exists over time, and that is, as I understand it, why it is an ongoing thing. I would imagine if businesses wanted to pay

for the performance right for the life of copyright, it would possibly be a much higher fee than they currently pay.

**Mrs ELIZABETH GRACE**—Thank you.

**CHAIR**—It seems to me that there has been a failure of education on the part of APRA; that is, you have got small businesses who do not understand copyright, or maybe it is broader than that, maybe the general populous does not understand copyright. People think when they go out and buy a CD, or if they switch on the radio and want to rebroadcast it or people want to listen to it, they are perfectly entitled to do that. Do you agree that there seems to have been a failure to educate?

Let me ask a second question: given that APRA basically comprises some of the most talented, creative people in the nation—

**Mr PRICE**—Communicators?

**CHAIR**—Should they not be doing something about it?

**Mr Macainsh**—I can only speak from my own perception and that of people I come into contact with. In my opinion they do quite a good job. I have only been a member of the board for the last three months and I was surprised at the actual length they do go to to explain how the performance copyright works. Like any education process, I guess you can never do enough.

**CHAIR**—APRA has put forward a proposition that the licence fees not be collected from business for the playing of the radio. Presumably as a member of the APRA board you are in agreement with that? The broadcasters obviously do not agree with that because they perceive that if a system was to be introduced their royalty fees would go up. Do you have any comments about that?

**Mr Macainsh**—It is really the business of the committee to make the decision on that. I would just say that it has to be paid by the user and perhaps APRA's proposal that the radio stations pay an extra component, perhaps APRA would possibly agree with that if the committee decided that this was the way it was to be dealt with. But I think the present system is workable, too.

**Mr PRICE**—I suppose if you think of this copyright fee, it is an aspect of intellectual property. Your opening remarks made a real plea about the importance of music in society, culture, et cetera, with which I agree.

Perhaps I might ask you a question from left field: of the issues facing composers or performers, what is the highest priority you have in terms of encouraging Australian music?

**Mr Macainsh**—If we are supposed to be the clever country—

**Mr PRICE**—There has been a change of government, by the way.

**CHAIR**—We are even more clever now.

**Mr PRICE**—We are cheaper but more clever.

**Mr Macainsh**—Our intellectual property is one of the things we can export. We are an English speaking country, we can sell music to the US market and to Europe. English speaking songs are not something we can really export to Asia. Music is by far the most popular contemporary art form. You just have to look at what a country like Ireland has done with encouraging musicians, authors and composers; it has really made something of a country which was perhaps going backwards.

**Mr PRICE**—I am not aware of what happens in Ireland.

**Mr Macainsh**—In Ireland there are tax incentives for musicians and composers.

**Mr PRICE**—We do not have any of those?

**Mr Macainsh**—No. The most pressing issue for composers is the strength of their copyright, not to see that eroded, because that is the only thing we have got to trade with and nobody is hiring us to do what I think is an extremely important cultural and commercial job.

**Mr PRICE**—Apart from the copyright, you would point us in the Irish direction?

**Mr Macainsh**—That would be nice, too, but that is a whole different discussion on tax reform.

**Mr PRICE**—Yes, I understand.

**CHAIR**—Mr Macainsh, I thank you for your submission and also for coming along and discussing it with us today.

**Mr Macainsh**—Thank you.



[2.05 pm]

**LETCH, Ms Kathleen, President, Community Broadcasting Association of Australia and Station Manager, 3RRR, 25 Victoria Street, Fitzroy, Victoria 3065**

**CHAIR**—I welcome Ms Letch from 3RRR. 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. You are aware of the background of the inquiry. Would you care to make some opening remarks?

**Ms Letch**—I suppose fundamentally the things I say are the things I imagine you will hear from everyone else in the community broadcasting sector. Fundamentally we are a non-profit voluntary based sector and we do not believe that it is appropriate for us to experience any further financial pressure or indeed that we experience any commercial gain from the broadcasting of our stations in any other outlet. I think you will find that repeated as a fundamental issue from anyone in the community broadcasting sector.

**CHAIR**—Forgive my ignorance of the radio industry in general and the community broadcasting sector in particular, but how does a station like 3RRR raise the money necessary to operate?

**Ms Letch**—It is a self-funded station, as most of them are. Primarily it is through listener subscription and through sponsorship—they are the two primary sources of revenue across the whole sector, not only for 3RRR. There are very small other things, such as fundraising concerts. There are about six stations that still have some funding from tertiary institutions, little bits and pieces in addition, but they are the two primary revenue sources.

**CHAIR**—When you say sponsorship, that tends to be sponsorship of particular programs?

**Ms Letch**—Either of particular programs or sponsorship announcements run across the program format in the form of 30-second spots. Under the Broadcasting Services Act sponsorship is differentiated from advertising in the sense that it must be acknowledged on the air as sponsorship support. So you might say, ‘Fred Bloggs makes and sells surf boards at such and such an address, proud sponsor of 3RRR’.

**CHAIR**—Is that a rose by another name?

**Ms Letch**—Some people would say that there are thin distinctions between advertising and sponsorship but we are governed under the Broadcasting Services Act in that regard; we have a limited four minutes of sponsorship per hour in on-air time under

the Act. So it is much more restricted than advertising in a commercial radio sense.

**CHAIR**—In terms of the licence fees that are paid by community broadcasters, is the quantum of those fees the same as paid by commercial broadcasters or is there a differential? If you play a particular piece of music on 3RRR, is the licence fee the same for playing that piece of music as it would be on Triple M or Fox FM?

**Ms Letch**—Up until July 1997 for community broadcasting, which is roughly 20 years old, it was two per cent of our gross revenue and it had been that since the beginning of community broadcasting in Australia. Early last year APRA commenced negotiations with our sector to increase that fee schedule. It was a flat fee schedule, 2 per cent of gross revenue, regardless of what type of station you were or how much music you played. The commercial stations were on a percentage of music played category schedule and they suggested it would be appropriate for that to be applied to our sector as well. We agreed to that.

There is now a four-level structure in place according to the amount of music played by stations. The basis of those arrangements was that it was revenue neutral in terms of the return to APRA. Some stations have very little music air play; for example, our sector has a number of identifiable areas, such as ethnic broadcasting, Aboriginal broadcasting, broadcasting for the print handicapped, et cetera. Radio for the print handicapped has a very low level of music air play so their APRA fee has decreased. For a station like 3RRR and for many of the major metropolitan stations that has resulted in an increase.

Using RRR as an example, up to July 1997 we paid two per cent of revenue. We now pay three per cent of our gross revenue, with some categories exempted. It is close to gross revenue but there is a small level of exemptions. For us in this current financial year that will result in an increase in our APRA fee of approximately \$9,000, which is a substantial amount for a non-profit organisation.

**CHAIR**—Interestingly, that puts you above Fox and Triple M.

**Ms Letch**—Yes. I was about to say, in relation to your question at the beginning, ironically as a non-profit and voluntary based sector we are currently paying more than commercial broadcasters in APRA fees but we believe this is likely to change when APRA enters into negotiations with commercial broadcasters. We will assume on that basis that after the new agreement with commercial broadcasters we will not be in that situation.

We have successfully negotiated that with APRA. Partially that informs our view of the current discussion paper. In the early days of community broadcasting our sector received a lot of concessional arrangements and support arrangements, both in the private sector and through government agencies. With the increase in the economic rationalist

position, our sector, which consists of non-profit and voluntary organisations, has had to pay the same fees as commercial broadcasters; and, to be perfectly frank, it is crippling the sector.

There are 145 community radio stations, most of which are completely voluntary. Even at RRR, which is one of the largest stations in the sector in the country and certainly the highest profile community radio station, all of our broadcasters except breakfast are volunteers. These are people contributing their own labour and their own talent as broadcasters on a voluntary basis.

Over 50 per cent of the sector operates on under \$100,000 a year gross revenue and many are struggling to survive. Community broadcasting plays an important role in supporting Australian artists. It has been publicly acknowledged in industry forums in Melbourne that one of the ways commercial broadcasters seek new Australian and local material is to keep a very close ear on what RRR is playing. It is the breeding ground for Australian talent in radio.

The sector suffers quite severely financially. Many organisations are already experiencing an increase in APRA fees in year, and to expect them to bear a greater financial burden I think is simply untenable and risks losing a very valuable community service from the broadcasting industry.

**CHAIR**—I take it then that you are opposed to the proposition that has been put forward that the rebroadcast of radio on business not be subject to licence fees and that the broadcasters' fees be adjusted somehow accordingly?

**Ms Letch**—Sorry?

**CHAIR**—Let me go back. At the present time APRA can and does collect fees from business owners and proprietors who play radio on their business premises. The proposition is being advanced along the lines of the Canadian situation that there be no licence fee collected from the business owners where a radio is played on the premises but the forgone revenue from the royalties that would otherwise be collected be collected by increasing the royalty paid by the radio stations.

**Ms Letch**—I certainly would not wish to argue the case for commercial radio but I think in regard to community radio it is untenable for that increase to be passed on to those stations. I add that I imagine the practicalities of limiting this are enormously difficult and I do not see anything in the discussion paper that really addresses that, and I am sure those practicalities are evident to anyone. But, beyond that, I am really not looking at this in any way from a commercial broadcasting perspective, simply from the point of view of community broadcasting. It is interesting that in the APRA discussion paper they state:

If the performance of music has a commercial value to the user it is a use of property that ought to be paid for.

I would argue that in the case of community broadcasting, as a voluntary non-profit structure there is no commercial value. Under the act, the stations cannot be operated for profit so all revenue is directed to support a radio station structure that volunteers from the local community can access and can contribute to the diversity of broadcast content. We are actually prohibited from taking advantage of that structure in the commercial sense and prohibited from operating for profit under the act.

**CHAIR**—The logical conclusion of that argument is to say that you should not pay any licence fees at all.

**Ms Letch**—No, we recognise that as radio stations it is appropriate to pay a licence fee to APRA and to support the Australian industry in that way. We would wish to do that. We have very close associations with the local music community and the artists in it and we see it as entirely appropriate to pay a fee for the material which enables us to operate our services and to attract an audience and to attract subscription and sponsorship. So we see it as entirely appropriate to pay those fees. What we see as inappropriate is to consider that by the relaying of our broadcast services in other public sites that we become responsible for additional costs, which is what this paper argues.

**Mrs ELIZABETH GRACE**—I would like to ask if you do any surveys.

**Ms Letch**—On some level.

**Mrs ELIZABETH GRACE**—Do you do any collecting of statistics to know how many people you are getting to, what sort of market share you have?

**Ms Letch**—We do not have precise figures. We have recently been accessing some information from the Roy Morgan database, which indicates a national audience of approximately 890,000, so it is getting towards the one million mark across the country, and that covers the 140 or so stations. The information from the Bureau of Statistics, which does the regular activity surveys, shows that there are approximately 10,000 volunteers involved in community radio nationally. So it has a substantial audience, which are all niche audiences—classical services, ethnic services, specific kinds of services, and stations like RRR that have a strong youth base. So each of those have their niche within the community.

In the regional areas in particular, where they are almost exclusively completely voluntary operations, not only in broadcasting but in every other aspect of administering them, they are very general stations. Often in small communities you have a great number of people coming and going in and out of that site. So it is not only a community radio station but, if you like, a place which contributes to the sort of social cohesion of regional

communities.

**Mr BARRESI**—One of the attractions of community radio is that you mentioned you were able to source new talents. Is there a fee that you pay to new talent?

**Ms Letch**—No.

**Mr BARRESI**—None at all?

**Ms Letch**—No. It works at a very community level. For example, at RRR we have 150 volunteer broadcasters. Many of them will be people who have connections to the music industry; they might play in a band, work as a DJ at places, or whatever. We are inundated with every local Melbourne release coming into the station.

This is another issue in the paper—a relatively minor issue—but the performance is compared to the photocopying of a writer's work. While I would agree this may well be very important, they function in a very different context. We are implored by local artists to play their material because it means that if their material is played—they do not have any opportunity to play it on commercial radio because of commercial radio formatting—they will get people coming to their live shows and they will get people buying their CDs. So they are very supportive of our capacity to give them air play because it benefits their role as artists and performers.

**Mr BARRESI**—Do they pay you a fee?

**Ms Letch**—No. This is unusual in the modern world; a non-monetary exchanging arrangement.

**Mr BARRESI**—How do you set your prices for advertising or sponsorship revenues?

**Ms Letch**—It is really based on what we think is a reasonable fee for the type of service we provide to the type of audience we have. It is largely small business that uses us to promote their business services. In RRR's case, predominantly the users are in the entertainment industry—music, shows, theatres, et cetera—and a small level of general small business that might relate to the kind of station we are. It is largely guesswork, to be honest—it is based on what someone guessed once and it moves from there. At the moment our 30-second sponsorship spot rate is \$35, which is very much lower than a commercial station.

**Mr BARRESI**—Are the drawing power of the station, the audience reach and the type of people who make up your audience all taken into consideration in determining the fees?

**Ms Letch**—Yes, but there is a whole range of things also taken into consideration: our links with the community, the people who support us through sponsorship, what they are able to afford. We offer cheaper prices and additional promotion, for example to independent bands. Bands that are not signed by any record company are given additional promotional support at no cost in order to allow them to be able to afford to promote what they are doing. If you are a young band and you are doing a gig down at a pub, \$300 to promote that is a lot of money. You are lucky if you walk away with anything from those performances. So our structure is geared to supporting our local community and our local community are part of our organisation. It is very much meshed together.

**Mrs ELIZABETH GRACE**—In some ways you are actually creating a market for APRA because you are promoting the groups which eventually become popular and they then need the services of APRA.

**Ms Letch**—Absolutely. With community radio, there is no beginning point in the Australian broadcasting industry outside the national broadcasters, which perform this role to a certain degree. But you even need a certain level of success, and quite a high level of success, before you might have your music played there.

Commercial radio is saturated with the golden oldie kind of formats, the classics of Australian music, Jimmy Barnes, John Farnham, et cetera. We have no play listing; all our broadcasters select their own play material, and they are all well connected to their local community of people. So you have this new diverse range of young, new, fresh people, as well as people who have been around for ages but do not get air play on commercial radio—they could be folk or jazz—coming through and that is where people hear it.

If it becomes popular, you might eventually have it played on Triple J or on Fox, but without that role, where do people hear it? That is why we have such close links with the local music industry, because they know that we function in that way. RRR has a particularly strong reputation for that in Melbourne and a national reputation for its support to Australian music, but it is true of the whole sector.

**Mr BARRESI**—The many operators who are on less than \$100,000 revenue per annum, what would be the average dollar fee that they pay to APRA?

**Ms Letch**—I would say the majority would now be on three per cent, which is the third category in the new fee schedule; there would be some that would be on two per cent; and a very small amount, possibly not any in that area, in the minimum, which is 1.25 per cent.

**Mr BARRESI**—About \$3,000?

**Ms Letch**—Yes.

**Mr BARRESI**—If there is an increase in broadcasting fees as per APRA's submission, what would happen to those operators? If they are already operating at the margin, it is not really going to make that much difference to them.

**Ms Letch**—It is, because what has been occurring in our sector over the last 10 years is that we are increasingly expected to pay the same costs as commercial operations. The NTA, the National Transmission Agency, is about to be privatised, and we are already, as a directive from the government, expected to pay the same transmission site costs as a commercial broadcaster. So the cost to operate these community broadcasting services has been increasing dramatically over the last 10 years. I could name off the top of my head 20 stations that are struggling to stay on air, and I mean really struggling.

**Mr BARRESI**—Have you heard at all, formally or informally, that if there were to be an increase in fees from APRA, as per the submission, what that increase would be?

**Ms Letch**—No.

**Mr BARRESI**—So at this stage it is hypothetical whether some of these stations would go under.

**Ms Letch**—I would argue at this stage it is irrelevant. I think any increase beyond what we are already paying, in a situation where many stations have recently incurred a substantial increase, is inappropriate to the sector. I realise it might be a small amount but if you are a little station in a regional area, where a lot of our depressed regional areas are economically, and you are already in debt and you already cannot pay your bills, every \$50 makes a difference to whether that operation is sustainable.

**Mr BARRESI**—Therefore, as president of the Community Broadcasters Association, are you able, either today or in the future, to come up with an alternative structure which would take into consideration the plight of community broadcasters if we are to move down that track? At the moment it is based on a percentage of gross revenue. Is there another way the fees can be calculated, taking into consideration your needs?

**Ms Letch**—I do not think so. I think at this stage my response would be that, to take into account the role of community broadcasting as defined under the Community Broadcasting Act, there should be no increase and we should be exempted from this path. If this path is taken with commercial broadcasters, I see that as a quite separate issue.

**Mr BARRESI**—The solution is an exemption?

**Ms Letch**—Yes. I think that community broadcasting, whole role is defined under the Act in accord with the service we provide, should be exempted from this pathway.

**CHAIR**—I thank you very much for coming along this afternoon and discussing

the issue with us.

**Ms Letch**—Thanks very much.

**CHAIR**—I thank all those who attended this hearing today.

Resolved (on motion by Mrs Grace):

That the committee authorises the publication of the evidence given before it at public hearing this day.

**Committee adjourned at 2.30 p.m.**