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Submitted via online portal

Committee Secretary
Legal and Constitutional Affairs Legislation Committee
Department of the Senate
PO Box 6100
Parliament House CANBERRA ACT 2600

Copyright Legislation Amendment (Fair Pay for Radio Play) Bill 2023

Southern Cross Austereo (SCA) is one of Australia's leading media companies and the home of the Hit and Triple M national radio networks, the LiSTNR digital audio network, and regional television stations, reaching more than 95% of the Australian population. With a weekly national audience of nine million Australians, SCA's 88 Triple M and Hit network FM and AM radio stations, along with 11 DAB+ brands, make up the nation's largest commercial radio footprint. SCA also provides national sales representation for another 56 regional radio stations, and broadcasts 96 free to air TV signals across regional Australia.

SCA is *Proudly National, Fiercely Local*. As the world becomes more global and more digital, our connections to local communities become ever more important. Our 1,600 people - located across the length and breadth of Australia - live, work, play, and actively contribute to their local communities. Our radio and digital audio content is relevant to those local communities, our advertising services support thousands of local businesses, and we provide significant support to local community groups, events, and causes via on-air community service announcements and assistance with fundraising.

SCA welcomes this opportunity to provide its comments on the *Copyright Legislation Amendment (Fair Pay For Radio Play) Bill 2023 (Bill)*, which would amend the *Copyright Act 1968 (Cth) (Act)* to remove provisions that prevent licensed commercial radio broadcasters from paying more than 1% of gross earnings in licence fees for the broadcast of sound recordings.

SCA is concerned that in the absence of other regulatory changes – namely reconsideration of the current Australian music quotas – the removal of the 1% cap would have a significant, adverse, and unfair financial impact on commercial radio broadcasters such as SCA.

This in turn could diminish commercial radio broadcasters' ability to support Australian music artists – the opposite of what the Bill aims to achieve.

Removal of the cap would unjustifiably increase costs

Commercial radio broadcasters already pay three fees for their use of Australian music – one to Australasian Performing Right Association Limited and Australasian Mechanical Copyright Owners Society (APRA AMCOS) and two to the Phonographic Performance Company of Australia Limited (PPCA).

Commercial radio broadcasters typically simulcast their live radio broadcasts for consumption by listeners on Internet connected devices such as smart phones and desktop computers. APRA AMCOS

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provides a single licence covering both broadcast and simulcast streaming of music, while commercial radio broadcasters pay separate fees to the PPCA for broadcast and for simulcast streaming of sound recordings in commercial radio broadcasts. The licence from APRA AMCOS covers all commercial music played on commercial radio stations, while the PPCA's licences do not. The PPCA's licences cover sound recordings from a range of countries, including Australia but not the US.

Commercial Radio & Audio (**CRA**) estimates the fees paid by commercial radio broadcasters to APRA AMCOS in 2022 totaled \$37 million a year, or approximately 4% of gross industry revenue.

The Bill addresses only the broadcast licence fees paid to PPCA and not the simulcast streaming fees paid to the PPCA. In 2022, these broadcast fees were approximately \$4.5 million. Under the Act, these broadcast licence fees are capped at 1% of gross revenue¹ from radio broadcasting. As noted below, the cap balances the obligations of commercial broadcasters to play a certain percentage of Australian music.

SCA's concern is that if the cap is removed, the record labels – via PPCA - would seek substantial, unjustified increases in the rate. In fact, PPCA Chief Executive Annabelle Herd has signaled the record industry's belief that the rate should be "somewhere between 2.5% and 5%"².

At that level, the total royalties and fees paid by commercial broadcasters to APRA AMCOS and PPCA would total up to 9% of gross industry revenue. This would be unprecedented globally and would cause significant financial challenges for even the most financially robust entity. As the fee is determined on revenue – not profit – it does not consider the profitability of broadcasters or individual stations, which can vary materially from year to year.

The current cap provides financial certainty for commercial radio broadcasters and should remain.

Removal of the cap would be unfair to broadcasters obliged to play Australian music

The cap in the Act balances commercial radio broadcasters' obligation to play required amounts of Australian music. The Commercial Radio Code of Practice (**Code of Practice**), registered by the Australian Communications and Media Authority under the *Broadcasting Services Act 1992* (Cth), a radio station can be obliged to play up to 25% Australian music between 6:00am and midnight depending on the radio station's format. The following extract from the Code of Practice sets out the three formats with the highest Australian music content requirements:

Category	Format	Aus music
A	Mainstream rock, Album Oriented Rock, Contemporary Hits, Top 40, Alternative	25%
B	Hot/Mainstream Adult Contemporary, Country, Classic Rock	20%
C	Soft Adult Contemporary, Hits & Memories, Gold/Classic Hits, Hip Hop	15%
D	Oldies, Easy Listening, Easy Gold, Country Gold	10%

SCA, especially through its Triple M Network, is a strong supporter of Australian music – with numerous presenters and programs committed to promoting Australian music and artists. However, at present, none of SCA's radio stations are in category A under the Code of Practice. All SCA's radio

¹ The legislation refers to "earnings" but this in practice refers to commercial radio broadcasters' revenue, rather than profits.

² 'Fear that push for radio royalties lift could fall on deaf ears', James Madden, The Australian, 4 June 2023.

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stations are in category B or category C with obligations to play at least 20% or 15% Australian music, respectively. In nominating these categories for SCA's formats, we have considered the preferences of our listeners and the financial burden associated with category A, which requires stations to play at least 25% Australian music.

SCA also considers the cost of music in other programming decisions.

In 2017, SCA changed its approach to off-peak programming specifically to reduce the costs of that programming. SCA had traditionally played music from midnight to dawn; however, it is more economical to run talk programming during that period. The most prominent current example is Nights with Luke Bona across the national Triple M Network midnight to 5:30am on weekdays.

When assessing the business case for commissioning or acquiring non-music programming (such as sports rights), SCA considers the savings from reduction in the volume of music that would otherwise be played on the relevant radio stations.

The reality is that, without the mandatory quotas under the Code or Practice, it is likely that SCA and other commercial radio broadcasters would choose to play more US music, which is popular with Australian audiences and does not require a payment to the PPCA.

If music licensing costs were to increase further, as the PPCA intends, SCA and other commercial radio broadcasters would almost certainly review their music formats and the Australian music quotas in the Code of Practice with a view to reducing their operating costs by reducing the amount of Australian music on commercial radio. This would defeat the purpose of the Bill.

The cap was put in place to avoid a scenario under which the record labels via the PPCA are at liberty to charge as much as they liked for a product – Australian music – that the commercial broadcasters are obliged to pay for. For more than 30 years, the cap has balanced the Australian music quotas in the Code of Practice, protecting Australian commercial radio broadcasters from powerful international record labels whose market size and influence dwarfs the entire Australian radio industry.

As commercial radio is bound to play Australian music, it is only fair that the record industry is under a corresponding obligation regarding the amount that it can charge.

If the cap is removed, then it is only fair that the Australian music quotas are removed or substantially reduced.

There is no transparency regarding the use of the PPCA fees

SCA agrees that all artists – songwriters, composers, and performers – deserve to be fairly rewarded for their work and talent.

SCA is committed to supporting local artists. In 2022, SCA's radio stations broadcast over 500,000 hours of local content, including 44,000 hours of Australian music. Programs dedicated to the surfacing and promotion of Australian music include Homegrown with Matty O on Triple M around Australia from 10:00pm to midnight seven days a week, and SCA's radio stations regularly participate in live Australian events through promotion, ticketing, and broadcast.

SCA meets all of obligations under the APRA AMCOS and PPCA royalty and licensing schemes and is a strong supporter of local music and artists. However, SCA is aware of concerns that there is little transparency surrounding the distribution of the fees paid to the PPCA.

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CRA estimates that around 90% of the fees paid to PPCA for broadcast rights go to the three global record labels that own PPCA – Sony, Warner and Universal – leaving little for direct distribution to artists. Attempts to improve the transparency of the distributions have been unsuccessful, although the PPCA discloses that its administration costs are more than 16% of the total raised in fees.

If the PPCA believes that artists should be paid more, then the PPCA should pay Australian artists more of the fees it collects from commercial radio broadcasters each year.

Improving transparency around the distribution of the PPCA fees could have the same positive impact on artists as the removal of the cap. It would also be immediate.

Conclusion and recommendations

The removal of the cap will not achieve the Bill's stated intention of increasing support for Australian artists and Australian music. In fact, by diminishing the financial sustainability of commercial radio as a platform for Australian music – and by providing incentives for commercial radio stations to play less Australian music to reduce costs – these proposed changes risk harming those it seeks to help.

SCA believes this legislation should not be passed, with the cap left to continue playing its important role balancing the commercial radio broadcasters' obligations to play Australian music. Without the cap, the Australian radio industry would be left in a substantially weaker bargaining position against the global record labels.

A better solution to meet the Bill's stated intention is to reform the PPCA fee distribution system to reduce administrative costs and ensure that more money makes its way directly to Australian artists.

Thank you for the opportunity to make this submission. Please contact SCA via the details provided online if you require any further information.