



**NOVA**  
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## NOVA ENTERTAINMENT GROUP

Submission to the Inquiry into the *Copyright Legislation Amendment (Fair Pay for Radio Play) Bill 2023*

10 November 2023

The NOVA Entertainment Group (**NOVA**) is pleased to provide this submission on the proposed *Copyright Legislation Amendment (Fair Pay for Radio Play) Bill 2023 (Bill)*.

NOVA is a leading commercial radio broadcaster in Australia and operates the following commercial FM and AM radio stations nationally:

- In Sydney - Nova 96.9 and Smooth FM 95.3
- In Gosford - Star 104.5
- In Melbourne - Nova 100 and Smooth 91.5
- In Brisbane - Nova 106.9
- In Adelaide - Nova 91.9 and FIVAaa

Through joint venture arrangements with Australian Radio Network, NOVA also has a 50% interest in each of the following commercial FM radio stations:

- In Perth - Nova 93.7
- In Brisbane - KISS 97.3FM

Commercial radio stations have been licensed since the 1960s in accordance with the statutory licence regime under s109 and s152 of the *Copyright Act 1968* (Cth) (**Act**). The Bill seeks to repeal sections of the Act which limit the amount that multinational record labels represented by the Phonographic Performance Company of Australia (**PPCA**) can charge Australian radio stations for the right to broadcast sound recordings to 1% of a broadcaster's gross earnings. This limit is colloquially referred to as the 1% cap.

Having withstood extensive scrutiny, including by the Australian Government Attorney-General's Department in 2005<sup>1</sup>, the 1% cap has remained a crucial safeguard for the commercial radio industry for 55 years. This is because the 1% cap is fundamentally good policy and creates regulatory fairness.

**NOVA does not support** the Bill for the following primary reasons:

- The Australian Music Industry needs radio. If the 1% cap is removed the music quotas must be removed or it will harm the sustainability of radio and destroy the Australian music industry.
- Australian Commercial Radio is more than music. This Bill will negatively impact a vital community service and the Australians who are employed to provide it.
- The intention of the Bill and the real outcome of its introduction is misaligned. The Bill will not benefit Australian Artists, rather it will further enrich multinational record labels.
- The Copyright Tribunal is currently considering the rate commercial broadcasters pay to the PPCA. The Senate's involvement in this matter is neither appropriate nor required.

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<sup>1</sup> Australian Government Attorney-General's Department, Review of the One per cent Cap on Licence Fees Paid to Copyright Owners for Playing Sound Recordings on the Radio, Discussion Paper (2005)



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1. **The Australian music industry needs radio. If the 1% cap is removed the music quotas must be removed or it will harm the sustainability of radio and destroy the Australian music industry.**
  - (a) The Bill suggests that the 1% cap disadvantages Australian artists and rights holders. We disagree. The 1% cap is critical to ensuring economic viability in commercial radio continuing to support Australian musicians not just directly through the payment of royalties, totalling around \$40 million of which it pays around \$30M directly to songwriters and composers<sup>2</sup>, but also indirectly by providing an invaluable brand promotion and profiling platform and medium. The power of radio to broadcast artists to a broader audience is unparalleled.
  - (b) The ability of radio to deliver content to Australian households, is dependent upon controls such as the 1% cap which create fairness by balancing the cost to play Australian music against the legal requirement to do so.
  - (c) The commercial radio code of practice, developed by the industry with ACMA, sets Australian music quotas for commercial radio broadcasters. The music quotas mean that commercial radio broadcasters are under a legislative obligation to buy and play up to 25% of Australian music in their daily play lists. Additionally, all regional radio stations must play 3 hours of content local to their licence area per day. No other platform offers such a range of live, local and Australian voices within such a diverse range of communities.
  - (d) The 1% cap goes hand in hand with Australian music quotas. The legislative obligation to buy up to 1-in-4 Australian songs is matched with a corresponding legislative obligation for the record industry regarding the amount it can charge for that music. Removing the 1% cap will create a significant power imbalance between commercial radio and the record labels because it will enable them to charge exorbitant fees which will have the effect of financially penalising commercial radio stations for playing Australian music they are legally required to play.
  - (e) The 1% cap and the music quotas ensure that Australian listeners hear Australian music on Australian radio. The link between the music quotas and the 1% cap cannot be severed – they must exist together. Removing the 1% cap means the obligation on commercial radio to play Australian music must also be removed because it will otherwise become economically unviable for radio to play. Such a removal will fundamentally damage the Australian music industry, with commercial radio forced to play predominately US music which attracts no payment to the record labels.
  - (f) NOVA is a strong supporter of, and celebrates, Australian artists in ways which include the following:
    - a. Three of its broadcasters are Australian artists which provides them a platform to showcase their skills:
      - Ricki-Lee Coulter is a multi-platinum selling ARIA nominated singer/songwriter and co-hosts NOVA's *'Ricki-Lee, Tim & Joel'* the #1 Drive Radio show in Australia;
      - Gina Jeffreys is a multi-award-winning country singer and is the first female in the history of Australian country music to achieve platinum record sales and sell out shows across the country. Gina is the co-host of STAR104.5's breakfast show *'Rabbit & Gina'*. Gina has provided a statement in support of these submissions at **Appendix A**;

<sup>2</sup> These fees are collected by APRA for the copyright in lyrics and music and are unaffected by a statutory cap.





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- Maddy Rowe is an emerging Australian artist who has achieved over 50 million global songwriting streams and major Spotify editorial playlisting success for her own music. Maddy is the host of NOVA's *The Maddy Rowe Aus Music Show*.
- b. NOVA has an Australian music show dedicated to promoting and supporting Australian artists. *The Maddy Rowe Aus Music Show*, which broadcasts every Sunday from 6pm-7pm, plays music from established, developing and independent artists. The show features and fosters over 200 new Australian artists and their songs every year.
- c. Over the past 2 years NOVA has had over 7 Australian artists perform live in Nova's Red Room. These Australian artists are provided with a substantial media package valued at up to \$300,000 in airtime, digital and social promotion. This type of promotion and reach is life changing for these artists.
- d. With over 4 million listeners per week to NOVA's network nationally, we are constantly using our platform to give a voice to Australian artists via way of live interviews, often at no cost to the artist.
- (g) NOVA's support of Australian artists is not unique – it is a tenant of the entire radio industry and the value that radio has to Australian music, which is more than just the payment of licence fees for sounds recordings. In particular, given the rise of streaming which tends to preference overseas artists and older music, radio is more valuable than ever for new Australian music.
- (h) The value of radio to Australian artists is not about the fees paid to PPCA. Removing the 1% cap won't have the benefit of supporting Australian artists, it will have the impact of financially affecting commercial radio and in turn eliminate a fundamental platform for the support and development of Australian artists.
- 2. **Australian Commercial Radio is more than music. The Bill will negatively impact a vital community service and the Australians who are employed to provide it.**
  - (a) Commercial radio plays an essential role in ensuring Australian communities have access to local news, weather, Australian music, emergency information, community information and entertainment. Hyper local content enables people to feel heard and remain connected. For local Australian business, advertising on radio provides an opportunity to capitalise on current social trends, with research indicating that consumers will go above and beyond to support their local businesses and would personally try a brand or product endorsed on radio<sup>3</sup>.
  - (b) Radio is a free, readily available, convenient and accessible medium to everyone to help mitigate the current financial stress of rising costs in Australian households.
  - (c) If the Bill were to become law, and the amount of royalties payable to record labels became "a matter of negotiation", the increase in fees payable could reach an unprecedented level. PPCA has recently pointed to fee increases of 900% as appropriate<sup>4</sup>. This would be more than the royalties paid to Australian artists for the copyright in their music and lyrics.
  - (d) NOVA would be required to deploy cost cutting measures to fund this increase in fees. To offset this significant fee increase, we would have no choice than to reduce our number of on air and off-air support. This means less jobs in the Australian radio industry, and a highly specialised group of

<sup>3</sup> <https://www.commercialradio.com.au/RA/media/General/Documents/CRA-Deloitte-Connecting-Communities-2023-Report.pdf?ext=.pdf>

<sup>4</sup> "If you look at comparable markets in North America and in the UK, sound recordings earn royalty payments somewhere between 2.5 and 5 per cent. That's where we should be." Annabelle Herd, CEO of PPCA (The Australian, 4 June 2023).



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people whose skills are not easily transferable to other industries, left without employment in the midst of extreme economic uncertainty.

- (e) It is not just music that would suffer as a result of the Bill. The Bill would mean negative consequences for the community in general and the people employed at NOVA who are already struggling under today's building economic pressures.
- 3. **The intention of the Bill and the real outcome of its introduction is misaligned. The Bill will not benefit Australian artists - it will further enrich multinational record labels.**
  - (a) Contrary to its suggestion, the Bill is not about protecting Australian Artists, it is about further enriching multinational record labels. The commercial radio industry pays approximately \$30 million dollars per year to songwriters and composers for the broadcast of their lyrics and music on radio. These royalties are not subject to the 1% cap or any statutory cap and go directly to songwriters and composers.
  - (b) The Bill is noticeably silent on the distinction between the different types of copyright royalties payable and who they are intended to compensate. APRA AMCOS licences the rights associated with the use of music and lyrics, while PPCA licences the rights associated with sound recordings. In other words, the fees paid to APRA AMCOS are intended to remunerate artists, songwriters and composers, while the royalties the subject of the Bill primarily remunerate multinational record labels for the recordings they make of an artists' work.
  - (c) Sony, Universal and Warner own 100% of the shares in PPCA. Its shareholders (and controlling mind and primary beneficiaries) are record companies, not Australian artists.<sup>5</sup> PPCA appears to pass less than 10% of the fees to artists. Additionally, unlike in the UK, US and most of Europe, PPCA only pays featured artists and not Australian session musicians<sup>6</sup> who have no economic claim to their recorded performances beyond a basic session fee.
  - (d) PPCA has publicly claimed that it is unable to pay royalties to session musicians. This is untrue. There is nothing in the Act that expressly excludes them nor prevents distributions to them. There is nothing to stop PPCA providing royalties to session musicians. They have elected not to do so. In refusing to pay session musicians contrary to international norms, PPCA shows its focus on increasing revenue for multinational record labels, rather than helping the artists who need it most.
  - (e) The Bill is not supported by recommendations for regulatory scrutiny around how PPCA spends the fees it collects and how it distributes the fees every year to artists. Nor does it propose that more fees will be allocated to artists. It just proposes that more fees should be paid by commercial radio. The Bill is not about valuing Australian artists or musicians. It is about providing more value to record labels.
  - (f) Despite its claims to support performing artists, PPCA has never clearly indicated what proportion of its fees flow through to performers (rather than going to the record labels). Its public reports state only an amount distributed to licensors (i.e., record labels) and featured artists, and do not reveal the actual amount paid to artists alone. Further the distribution to featured artists only occurs if the artist is registered with PPCA, otherwise the full amounts are distributed directly to the record label licensors.

<sup>5</sup> <https://www.pcca.com.au/artists/facts>. The constitution for PPCA (<https://aria.azureedge.net/documents/ppca-amended-constitution---november-2021.pdf>) gives one vote to each of the 5 non-shareholder directors and 3 votes to each shareholder director (i.e. the 3 major labels). This means the labels will have the majority in any decision making process

<sup>6</sup> <https://theconversation.com.au/Australia-is-one-of-few-countries-that-doesn't-pay-session-musicians-ongoing-royalties-our-music-industry-suffers-as-a-result-185022>





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- (g) The commercial radio industry already pays artists for the copyright in their lyrics and music and this royalty is not legally capped. If the record labels are serious about supporting Australian artists, then there is a better way to do it than by making radio pay more – highlight, scrutinise and externally regulate the PPCA distribution process. Why does it appear that only around 10% of royalties are paid directly to Australian artists? Why are more than 16% of PPCA fees allocated to ‘administration costs’?<sup>7</sup> Reform of PPCA’s structures to provide transparency and enable more balanced bargaining with artists should take place before more money is taken from the Australian radio industry.
4. **The Copyright Tribunal is currently considering the rate commercial broadcasters pay to the PPCA. The Senate’s involvement in this matter is neither appropriate or required.**
- (a) Currently, the commercial radio industry’s agreement with the PPCA (**Industry Agreement**) represents a payment of 0.4% of industry gross revenue. The Industry Agreement has been on foot for over 21 years and has been rolled over multiple<sup>8</sup> times with no change to the fee since the current rate was agreed for the 2001/2002 financial year.
- (b) The Industry Agreement remains nowhere near the 1% cap, and therefore removal of the cap is unnecessary. Historically there have been numerous failed attempts to challenge the 1% cap, including by a unanimous dismissal in the High Court of Australia.<sup>9</sup> This is because the 1% cap is good law.
- (c) It is fundamental to note that the PPCA has already sought adjudication in the Copyright Tribunal<sup>10</sup> on how much money commercial radio should pay to copyright collecting societies for the use of sound recordings (**Tribunal Proceedings**). The Tribunal Proceedings and the matters the subject of this inquiry are inextricably interlinked.
- (d) This Bill was proposed 4 months after the Tribunal Proceedings were commenced. To consider amendment of the Act while this litigation is ongoing would change the statutory framework underpinning the litigation in the Copyright Tribunal.

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Thank you for the opportunity to make this submission. If you require any further information or clarity on the content of this submission, please contact us via the details submitted online.

<sup>7</sup> FY21/22 annual report

<sup>8</sup> The initial rate was 0.2% of industry gross revenue. The present rate of 0.4% of industry gross revenue has been in place since the 2001/2002 financial year. Under the Industry Agreement, gross revenue is essentially defined as gross earnings.

<sup>9</sup> *Phonographic Performance Company of Australia Ltd v Commonwealth* (2012) 246 CLR 561; [2012] HCA 8

<sup>10</sup> File No. CT 1 of 2023

## Appendix A

### **Statement in support of submissions by NOVA Entertainment Group to the inquiry into the *Copyright Legislation Amendment (Fair Pay for Radio Play) Bill 2023*.**

“As both a musician and a radio presenter, I have experienced firsthand how radio promotes, empowers, and lifts up Australian music and talent.

I have mentored some incredible Aussie artists over the last 15 years, and I know that being played on commercial radio means more to them than anything else. No artist is truly in the industry for the money – they just want to be heard.

In turn, having their music played leads a fanbase to their socials, Spotify and ultimately gigs and a big successful career.

I am passionate about supporting up and coming Aussie musicians. We have so many incredible unknown artists who deserve this chance. I feel like it’s Aussie radios responsibility to support them.

And now, as a radio presenter, on the other side of the microphone I am realising that in hindsight, as a child growing up in country Queensland, the radio made us all feel like part of something bigger. Almost like part of a family – or a little club where we felt like we belong, feeling so close to the announcers, like they were our friends, laughing together with them and feeling that sense of pride when they spoke about our where we live.

I now understand why radio is so important to communities – It’s a source of information and companionship, as well as a local voice and sense of identity. No other form of media is as immediate, as local, and as collaborative as radio. More than ever, we need to ensure that radio can be sustained and remain part of our local communities.”

Sincerely,

Gina Jeffreys.  
10 November 2023