

COMMONWEALTH OF AUSTRALIA

Copyright Act 1968

IN THE COPYRIGHT TRIBUNAL

FILE NO. CT 1 of 2023

REFERENCE BY: Phonographic Performance Company of Australia Ltd (ACN 000 680 704)

under Section 154 of the *Copyright Act 1968 (Cth)*

ORDER

TRIBUNAL: ROFE J (Deputy President)

DATE: 11 AUGUST 2023

WHERE MADE: MELBOURNE

THE TRIBUNAL ORDERS BY CONSENT THAT:

Interim Orders

1. Pursuant to s 160 of the Act, and subject to further order, the interim arrangement set out in paragraphs 2 and 3 below (**Interim Arrangement**) is to have effect from 1 July 2023 until the earlier of:
 - (a) the final determination of the Tribunal on the application (**Final Determination**);
 - or
 - (b) any agreement between PPCA and CRA as to the subject matter of PPCA's Reference filed 18 May 2023,(the **Interim Period**).
2. The commercial radio broadcasters identified in **Annexure C** to PPCA's **Reference** filed 18 May 2023 and any additional broadcasters who become a member of CRA during the Interim Period (**Interim Licensees**) be granted interim licences by PPCA in accordance with the terms and conditions in the 1999 Industry Agreement and the



related Member Agreements (as those agreements are defined in the Reference), including the obligation to pay the licence fees set out in those agreements, except that:

- (a) the “Term” of the 1999 Industry Agreement will be the Interim Period; and
- (b) any licence fee payable (**Interim Fee**), will be varied to reflect the Final Determination, effective from 1 July 2023 and for the duration of the Interim Period, such that if the final licence fee payable on Final Determination (**Final Fee**) is:

less than the Interim Fee already paid by the Interim Licensees to PPCA under the Interim Arrangement, then, unless otherwise agreed between the parties pursuant to paragraph 1(b) above, the difference between the Interim Fee and the Final fee must be paid by PPCA to the Interim Licensees within 90 days of the Final Determination; or

greater than the Interim Fee already paid by Interim Licensees to PPCA under the Interim Arrangement, then, unless otherwise agreed between the parties pursuant to paragraph 1(b) above, the difference between the Interim Fee and the Final Fee must be paid by the Interim Licensees to PPCA within 90 days of the Final Determination.

- 3. The reporting by Interim Licensees during the Interim Period is to continue in accordance with the terms and conditions in the 1999 Industry Agreement and the related Member Agreements (**Interim Reporting**).
- 4. For the purpose of calculating the Final Fee, the parties will use the Interim Reporting to the extent the Interim Reporting provides a reasonable basis for calculating the Final Fee.
- 5. If the Interim Reporting does not provide a reasonable basis for calculating the Final Fee, the parties are to endeavour to agree on what further revenue information of Interim Licensees is available and should be reasonably required to calculate the Final Fee, and in the absence of agreement, either party may apply to the Tribunal for a determination on that issue.



6. During the Interim Period, the Interim Licensees will retain all revenue information normally retained in the course of their business.

Date stamped: 11 August 2023

