

**DATE:** 24 March 2021

# ONE MUSIC AUSTRALIA FINAL POSITION PAPER

## RECORDED MUSIC FOR DANCE USE AND FEATURED RECORDED MUSIC

### What's in this paper?

- New rate for licensing Recorded Music for Dance (RMFD) commencing 1 April 2021
- New rate for licensing Featured Recorded Music (FRM) commencing 1 April 2022
- Definitions relevant to the new rates
- How we arrived at the new rates
- Summary of the consultation process

### RECORDED MUSIC FOR DANCE (RMFD)

#### Rate

The rate for RMFD is \$1.824 per person admitted to the RMFD Area, capped per day of operation at the area's capacity.

#### How the rate is calculated

We'll ask you to provide us with the number of people admitted to the RMFD Area over the year, and we apply the RMFD rate to that number. The annual number will be capped at the capacity of the area multiplied by your days of operation for the relevant area.

We will take into account any variations to capacity imposed as a result of the Covid-19 pandemic.

Please note that the RMFD rate is applied to physically separate areas where Recorded Music for Dance is played. In multi-purpose venues, for example those that have a separate restaurant or a separate bar with a different sound source that does not play RMFD, different tariffs may apply to those areas. In such circumstances, OneMusic will work with venues to determine which licence scheme is most appropriate for their music use and venue configuration, including for example the 'Hotel scheme'. The application of the RMFD tariff to a location's OneMusic licence will be assessed independently of the location's liquor licence or agreements the location has with other organisations.

#### When it starts

As the new lower rate represents a fee reduction for most businesses offering RMFD compared with the current OneMusic Australia licence, we will start offering it to businesses starting, re-opening, or renewing their OneMusic Australia licences from 1 April 2021.

If you've been licensed with us for the use of RMFD in the past and intend to continue using our music in the same way, this rate will apply to your business.

#### What we're not doing

We are not changing the definition of RMFD Area (i.e. the area that we consider when calculating attendance). That essentially remains the same as it has been for the last 10 years.

## FEATURED RECORDED MUSIC (FRM)

### Rate

The rate for Featured Recorded Music is \$0.264 per person admitted to the FRM Area, capped per day of operation at the area's capacity.

### How the rate is calculated

We'll ask you to provide us with the number of people admitted to the FRM Area over the year, and we apply the FRM rate to that number. The annual number will be capped at the capacity of the area multiplied by your days of operation for that area.

We will take into account any variations to capacity imposed as a result of the Covid-19 pandemic.

### When it starts

We will start offering the new FRM rate to businesses starting or renewing their OneMusic Australia licences a year after the introduction of the RMFD rate, starting from 1 April 2022. In the interim, the existing OneMusic rates will continue to apply.

If you've been licensed by us for the use of Featured Recorded Music in the past and intend to continue using our music in the same way, this rate will apply to your business.

### What we're not doing

We are not changing the definition of FRM Area (i.e. the area that we consider when calculating attendance). That essentially remains the same as it has been for the last 10 years.

## DEFINITIONS

The following definitions are relevant to the new rates, and will be included in the licence agreements that contain the rates. They're essentially the same definitions we've used in previous OneMusic agreements.

**Featured Recorded Music** means recorded music used at the Location or in an FRM Area that is given prominence as a feature of that venue or any part of that venue (not including a Recorded Music Performance). It includes performances by DJs, including those advertised as part of a specific event or series of events, Karaoke, nights of operation where the music has been compiled with a particular or recognisable theme such as 'Retro Night', 'Friday Night Beats' or 'Sunday Jazz'.

**FRM Area** means a specific area, either within a multi-function establishment or a standalone venue, where Featured Recorded Music performances are audible.

**Recorded Music for Dance** means the use of recorded music for the purpose of dancing.

**RMFD Area** means a Physically Separate area, either within a multifunction establishment or a standalone dance venue, that:

- a) provides Recorded Music for Dance Use by patrons; and
- b) has a dance floor or other area for dancing or charges an Entry Fee (even if the fee is not charged to all patrons); and
- c) is not being used for:
  - i. a non-ticketed private function;
  - ii. a dance or dance party;
  - iii. an event that features ballroom or similar traditional dancing;
  - iv. an event promoted by a National Event Promoter; or
  - v. an event for under-aged persons (such as a 'blue light' disco).

## HOW WE ARRIVED AT THE NEW RATES

Previous proposals have included rates for RMFD and Featured Recorded Music based on capacity. Feedback on those proposals by businesses and associations that responded to the proposals suggested strongly that capacity was unpopular as a basis for licensing RMFD. Additionally, the challenges to hospitality businesses like hotels, bars and nightclubs presented by COVID-19-related social distancing rules mean that most will not be operating at anywhere near their normal capacity for some time.

Additionally, a single attendance-based metric will assist with making reporting declarations less complicated for businesses.

### RMFD

The proposed OneMusic rate for RMFD is calculated at two times the existing March 2021 rate for APRA rights, as that existing rate is based on attendance. The existing APRA AMCOS cap on attendance at capacity will also continue.

### Featured Recorded Music

To account for the change to the existing attendance-based rate for APRA rights, which is significantly higher than the capacity-based PPCA rate for Featured Recorded Music, automatically doubling the APRA rate as we did for RMFD would have resulted in an increase to \$0.326 per attendee. Our proposal instead is to only increase the combined current rate by 20% - the same percentage by which the RMFD rate has been reduced – and for the rate to also cover Karaoke nights.

We will not be introducing this rate until 1 April 2022 to enable businesses ample time to prepare for its introduction. For the Featured Recorded Music rate only, we are also prepared to 'freeze' any CPI increases for three years from its introduction. This would mean that for those three years, CPI would be applied at CPI less 2%, or 0% - whichever is the higher.

## THE CONSULTATION PROCESS

OneMusic Australia started the consultation process with businesses and associations in the hotel and nightclub industries in October 2017, seeking feedback on proposals for new licensing rates for Recorded Music for Dance (RMFD) and Featured Recorded Music (FRM), amongst others.

Although our aim was to finalise a harmonised rate for RMFD and FRM by July 2019, industry feedback made it clear that more work was needed to create a licence scheme that is not only fair to music creators and licensees, but also has broad acceptance by industry.

It was our intention to consult again with industry stakeholders in the first half of 2020, however due to the disruption caused by COVID-19 this was delayed.

While OneMusic notes however that some associations and licensees remain unhappy with the proposed changes including as to the rate and definitional issues, feedback received about the reduced RMFD rate and changing to an attendance-based metric has been largely positive, particularly in the context of limited COVID-related trading. Individual licensees, pub groups and the Australian Hotels Association have expressed support for both the move from capacity to attendance to calculate the rate, and the reduction in the combined rate.

Changes to the original proposal for new RMFD rates over the three-and-a-half year consultation period are a direct result of the feedback we have received from numerous associations and licensees, and we would like to thank all those who participated in the process.

We considered all feedback, including suggestions that did not eventually result in changes to the rate or calculation method. We assessed suggestions based on how likely they were to result in a rate and metric that was fair, consistent, and easy to administer and define for the largest number of licensees, while ensuring that the work of music creators is not undervalued.

As the new OneMusic Australia RMFD rates represent a licence fee reduction for most businesses, it will be introduced on 1 April 2021.

To assist businesses with the transition to the new Featured Recorded Music rate, it will not be introduced until 1 April 2022.

## NEXT STEPS

The new, cheaper RMFD rates will come into effect from 1 April 2021.

They'll apply straight away from that date for all of our RMFD customers, whether you're a new or existing licensee.

Of course, if you haven't been trading or using RMFD or FRM, the new rates will only apply you once you're back up and running again.

If you're an existing OneMusic customer for RMFD or FRM you'll keep the same licence renewal date you have now. We'll contact you to make the necessary adjustments, and if you've yet to relicence with us – we'll be in touch to discuss the commencement date of your OneMusic licence.

Businesses may object to some of the proposals set out above. Licensees and associations have recourse to expert processes under APRA's existing alternative dispute resolution service, Resolution Pathways.

If there is a reference to Resolution Pathways and the parties are unable to agree on an outcome, then either party may make a reference to the Copyright Tribunal.

## FURTHER QUESTIONS

If you have any questions or would like to discuss the proposal further, please email [questions@onemusic.com.au](mailto:questions@onemusic.com.au) and we will be in touch.