



**Australasian Performing Right Association Ltd –
Application for revocation of A91367-A91375 and the substitution of
authorisation AA1000433
Interim authorisation decision
27 June 2019**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has decided to suspend the operation of authorisations A91367-A91375 (which expire on 28 June 2019) and grant interim authorisation in respect of the application for authorisation AA1000433 in substitution for the authorisations suspended.
2. Interim authorisation is granted on the same terms as the existing authorisations A91367-A91375, including the conditions of authorisation C1 to C3 imposed in 2014 (set out at **Attachment A**). This will enable the Australasian Performing Right Association Ltd (**APRA**) to continue its arrangements for its input, output and distribution arrangements for the acquisition and licensing of performing rights in musical works while the re-authorisation process continues.
3. The conduct the subject of APRA's application for re-authorisation, and interim authorisation, may involve a cartel provision within the meaning of Division 1 of Part IV of the *Competition and Consumer Act 2010* (Cth) (the **Act**) or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.
4. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

The application for authorisation

5. On 24 December 2018, APRA lodged an application for revocation of authorisations A91367-A91375 and substitution of authorisation AA1000433.
6. APRA is a copyright collecting society that provides a centralised means for granting copyright licences to those wishing to broadcast or perform musical works in public (for example, cinemas, restaurants, radio stations, nightclubs and live music venues) and for distributing royalties back to its members. Composers, songwriters and music publishers who become members of APRA participate in these arrangements by assigning all of the performing rights in their current and future works to APRA.
7. In broad terms, APRA's application for re-authorisation covers its:
 - 'input arrangements'
 - the assignment of performing and communication rights by members to APRA and the terms on which membership of APRA is granted, and
 - APRA's reciprocal arrangements with overseas collecting societies by which, for the most part, the collecting societies grant each other the exclusive right to license works they respectively control
 - 'output arrangements' – the licensing arrangements between APRA and the users of musical works – APRA generally offers users a 'blanket licence' that covers its entire repertoire, and

- 'distribution arrangements'— by which APRA distributes to relevant members the fees it has collected from licensees/users.
8. These arrangements, in earlier forms, have been authorised by the Australian Competition Tribunal (the **Tribunal**) and the ACCC since 1999, most recently in 2014. APRA is seeking re-authorisation for a further five years.
 9. APRA has advised that it proposes to launch OneMusic Australia on 1 July 2019. OneMusic Australia is a joint licensing initiative between APRA, the Australasian Mechanical Copyright Owners Society (**AMCOS**) and the Phonographic Performance Company of Australia Limited (**PPCA**), the aim of which is to provide a single source of music licences for businesses.
 10. APRA considers that OneMusic Australia does not materially change the legal basis on which it will acquire rights from its members or grant rights to licensees, and the ACCC understands that APRA considers OneMusic Australia therefore falls within the scope of its existing arrangements for which re-authorisation is sought.

Draft determination

11. On 5 June 2019, the ACCC released a draft determination proposing to re-authorise APRA's arrangements, subject to the conditions imposed in 2014, and additional conditions, for a further five years.

The authorisation process

12. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the Act. Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

Interim authorisation

13. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This suspends the existing authorisation and allows the parties to engage in conduct covered by the interim authorisation while the ACCC is considering the substantive application for re-authorisation.
14. On 15 May 2019, APRA requested interim authorisation because the existing authorisations expire on 28 June 2019 and the ACCC will not have made a final determination about the application for re-authorisation before the current authorisations expire.
15. In support of its request for interim authorisation APRA submits that:
 - Interim authorisation on the same terms as the existing authorisations will ensure that the public continues to enjoy the benefits conferred under the existing authorisations.
 - The need for an interim authorisation is brought about by the complexity of the APRA business and the number of third party submissions, rather than by the delay of any party.
 - If interim authorisation is not granted, APRA's entire operations will be at risk. In the absence of an interim authorisation, APRA would be required to avoid the possibility of breach of the Act. APRA states that it regards such a possibility as arguable at best and makes no admissions, however APRA submits that it would be required to at least consider the termination of its more than 100,000 membership arrangements, as well as its arrangements with affiliated societies, and its licence agreements with more than 145,000 licensees. This would increase

the likelihood of large scale infringement of copyright, and cause great confusion in a market that is very familiar with the operations of APRA.

Consultation

16. The ACCC invited submissions from a range of potentially interested parties including industry associations, member organisations, government organisations, music users, members and licensees.¹
17. The ACCC received one submission in response to APRA's request for interim authorisation, from the Background Providers of Music Association Ltd (**BPM**). The BPM submits that it supports in-principle interim authorisation, but reiterates its position expressed in an earlier submission that the ACCC should take into account the finalised version of the OneMusic Australia licencing scheme in its assessment of APRA's application for re-authorisation, as recommended by the House of Representatives Parliamentary Inquiry into the Australian Music Industry.
18. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisations.

Reasons for decision

19. The ACCC considers that it is appropriate to grant interim authorisation on the same terms as the existing authorisations. APRA's arrangements for the acquisition and licensing of performing rights in musical works have been authorised by the Tribunal and the ACCC since 1999. On each of these occasions, the Tribunal and the ACCC have concluded that, subject to conditions, the likely benefit to the public would outweigh any likely public detriment, including from any lessening of competition that would be likely to result.
20. Interim authorisation has the effect of suspending the existing authorisations before they expire. As such, interim authorisation will enable the ACCC to continue with its assessment of the application for re-authorisation and will enable APRA to continue its input, output and distribution arrangements while the re-authorisation process continues.
21. Consistent with the view in its draft determination dated 5 June 2019, the ACCC considers that (with the conditions proposed by the ACCC) the conduct for which APRA has sought re-authorisation and interim authorisation is likely to continue to result in public benefits that would outweigh the likely public detriments, including any public detriments in respect of any lessening of competition.

Reconsideration of interim authorisation

22. The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.

¹ A list of the parties consulted and the public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.

Attachment A

Conditions of authorisations A91367-A91375

Condition C1 – Transparency of licence fees

- C1.1 Within 3 months of the ACCC's final determination being made, APRA must publish comprehensive plain English guides that outline each of the licence categories individually. The guides, which must also be published as a single document, must also include:
- (i) a table summarising each type of licence and licence category, the basis on which fees are determined, and the range of fees payable for each licence and licence category listed
 - (ii) an introduction that includes an overview of the licence categories and their use
 - (iii) definitions of each of the licence categories - for example, Recorded music for dancing use, Dance party, Featured music event and TV/large screen
 - (iv) examples of common types of licensees and the fees payable by them (e.g. nightclubs, hotels, gyms, cafes), the licence categories commonly utilised by each of those types of licensees, and the range of fees payable by each of those types of licensees
 - (v) guidance on whether fees are negotiable and if so in what circumstances
 - (vi) information that encourages licensees to contact APRA if they have any concerns, including the types of assistance available and the numbers to call
 - (vii) the options available to licensees for resolving a dispute about licence fees, or about other licence terms and conditions
 - (viii) links to the application forms for the licences and licence categories.
- C1.2 Once published, the guide must be provided to all new or renewing licensees and must be prominently displayed on APRA's website (www.apra.com.au). The homepage must have a prominently displayed link to the guide as well as available links on the relevant section of APRA's website. APRA must also provide the comprehensive plain English guide, and information about how to obtain additional copies of the guide, to relevant industry associations (that is, industry associations that have musical work copyright holders, or licensees or potential licensees, as members) on publication.
- C1.3 APRA must provide a copy of the plain English guide to the ACCC, prior to publishing.
- C1.4 APRA must publish a revised, and up to date, version of the guide by 30 June each year (if any aspect of the content of the guide will no longer be current as at that date).

Condition C2 – Comprehensive plain English guide and education campaign for the opt out and licence back provisions

C2.1 Within 3 months of the ACCC's final determination being made, APRA must take the following steps to increase awareness of the licence back and opt out provisions provided by APRA:

- (i) APRA must publish on the APRA website, and via an email distribution to members and licensees, a comprehensive plain English guide explaining:
 - (a) the purpose, scope and content of the opt out and licence back provisions
 - (b) the situations where using those provisions might be of benefit to members and licensees
 - (c) the steps involved in applying to make use of the licence back and opt out provisions (including guidance about the minimum information that an applicant must provide to APRA)
 - (d) examples of how the opt out and licence back provisions have been used to date

and attaching the APRA application forms for the licence back and opt out provisions

- (ii) at least once each calendar year, including a standard plain English paragraph in correspondence sent to licensees and members, outlining the availability and scope of the opt out and licence back provisions, and providing the web address for the guide referred to in condition C2.1(i) above, as well as information about how to apply
- (iii) launching an education campaign to its members and licensees, following on from its email distribution of the plain English guide, which may include offering a seminar to members and licensees, outlining the situations in which opt out and licence back could be utilised and the benefits to members and licensees and the process involved
- (iv) as part of APRA's educational campaign in this regard, APRA must offer to send representatives out to talk to groups of 5 or more members or licensees (as relevant) that could benefit from these facilities, and to otherwise make representatives available to talk to such members or licensees (as relevant).

Condition C3 – Alternative Dispute Resolution

Scheme Requirements

- C3.1 APRA must establish an alternative dispute resolution ('**ADR**') scheme (the '**Scheme**') that is managed by an independent dispute resolution facilitator (the '**Facilitator**') for the resolution of any disputes between APRA and a licensee, or potential licensee of copyright held by APRA ('**Licensee**') or a member or potential member of APRA ('**Member**'), including complaints made to APRA by or on behalf of a Member or Licensee. The objective of the Scheme is to resolve disputes in a timely, efficient and effective manner.
- C3.2 The Scheme must include four options for resolving a dispute or complaint, or an aspect of a dispute or complaint ('**Dispute**') notified by a Member or Licensee, or by an authorised representative of one or more Members or Licensees ('**Applicant**'), as follows:
- (i) Option 1 - informal resolution: informal resolution of the Dispute in a manner facilitated by the Facilitator, with an indicative timeframe of 20 business days for resolution of the Dispute or referral of the Dispute to Options 2, 3 or 4
 - (ii) Option 2 - mediation: external mediation by an independent mediator ('**Independent Mediator**'), with an indicative timeframe of 20 business days for the resolution of the Dispute (from the date on which the Dispute is referred to Option 2)
 - (iii) Option 3 - expert opinion: a non-binding written expert opinion (including reasons) delivered by an appropriately qualified or experienced independent expert ('**Independent Expert**'), with an indicative timeframe of 20 business days for the resolution of the Dispute, and 30-60 days for preparation of the written opinion from the date on which the Dispute is referred to Option 3
 - (iv) Option 4 - binding determination: a binding written determination (including reasons) delivered by an Independent Expert, with an indicative timeframe (from the date on which the Dispute is referred to Option 4) of 30-60 days for resolution of the Dispute, or of 90 days for a Dispute involving more than one Applicant).
- C3.3 The Scheme must provide that:
- (i) a Dispute, or an aspect of a Dispute, may be referred to Options 2, 3 or 4 at any time by agreement between APRA and the Applicant, including agreement about the identity of the Independent Mediator or Independent Expert (as relevant). The resolution of each Dispute must commence with Option 1, but APRA may not withhold agreement to progress to another Option merely because the Applicant has not agreed to continue or complete the processes available under Option 1 first. If agreement cannot be reached about the identity of the Independent Mediator or Independent Expert or about progressing a Dispute to another Option, the Facilitator must refer these preliminary matters for determination (at APRA's cost) by an Independent Expert (who must not then be otherwise appointed to hear the Dispute under the Scheme).
 - (ii) the resolution of Disputes under Options 2, 3 and 4 must be carried out on terms, and in accordance with processes and procedures, established by the Independent Mediator or Independent Expert (as relevant) in accordance with practices commonly adopted in other ADR schemes for ADR options of that kind

- (iii) the Applicant (or APRA, if a non-binding written opinion has been delivered under Option 3) may also seek resolution of the Dispute by the Copyright Tribunal or by a court, rather than under the Scheme
 - (iv) the Facilitator must, if requested by an Applicant, refer a function of the Facilitator set out in Schedule C (in respect of the Applicant's Dispute) to an Independent Expert (at APRA's cost)
 - (v) subject to condition C3.3(vii) and conditions C3.14-C3.16, the resolution of Disputes under the Scheme is to be carried out confidentially unless all parties to a particular Dispute agree otherwise in respect of that Dispute.
 - (vi) each Independent Expert may obtain such advice (including, but not limited to, economic or financial advice) as the Independent Expert considers reasonably appropriate for the purposes of resolving a Dispute, provided that the estimated costs of obtaining that advice have been approved by APRA and the Applicant, or by the Facilitator, or by another Independent Expert (at APRA's cost) if APRA or the Applicant is dissatisfied with the Facilitator's decision to approve (or not approve) those estimated costs. The actual costs of any such advice are to be included in the costs of the Independent Expert in relation to the Dispute.
 - (vii) each Independent Expert who issues a binding written determination under Option 4 is to prepare and issue, to the Facilitator, a public version of that determination (excluding any confidential information of APRA, the Applicant, a Licensee or a Member) within 7 days of the date of the determination.
- C3.4 APRA must procure that the Facilitator ensures that each Independent Mediator or Independent Expert:
- (i) is suitably qualified, by reason of their training and / or experience, for resolving the kinds of disputes, and for carrying out the kinds of dispute resolution processes, for which they are engaged under the Scheme
 - (ii) has an understanding of copyright or the ability to properly acquire such understanding
 - (iii) takes into account the matters referred to in Schedule E, if requested to do so by the Applicant.

Fees and Charges

- C3.5 The Scheme must also provide that:
- (i) the fees and charges payable by Applicants under the Scheme, including provision for the reduction or waiver of those fees and charges, will be set in accordance with Schedule A ('**Fees and Charges**')
 - (ii) the relevant Fees and Charges for Option 1 are payable for all Disputes that are then referred to Options 2, 3 or 4, even if the Applicant does not complete the processes that are available under Option 1
 - (iii) the Fees and Charges are payable to the Facilitator (who will then distribute them as appropriate)
 - (iv) other than the Fees and Charges, each party must bear their own costs of resolving the Dispute
 - (v) an Applicant may withdraw a dispute from the Scheme, except after a hearing when awaiting a written expert opinion or a binding determination

under Option 3 or 4 above (in which case the Applicant may only withdraw if the withdrawal is the result of APRA and the Applicant having reached an agreed settlement of the Dispute). Unless otherwise agreed as part of the settlement of the Dispute, the Applicant must pay all Fees and Charges incurred up until the date of withdrawal.

Establishment and role of consultative committee

C3.6 Within 3 months of the ACCC's final determination being made, APRA must ensure that the Facilitator establishes, and thereafter maintains, a consultative committee (the '**Committee**'). APRA must also permit the Facilitator to establish and maintain sub-committees of the Committee where the Facilitator considers it appropriate to do so. APRA must ensure that the members of the Committee (as appointed or reappointed from time to time by the Facilitator) consist of an equal number of representatives of:

- (i) Licensees whose annual licence fees payable to APRA are \$3,000 or less
- (ii) Licensees whose annual licence fees payable to APRA are over \$3,000
- (iii) Members whose annual royalty receipts from APRA are \$3,000 or less, other than members who have not received any royalties from APRA in the previous 24 months
- (iv) Members whose annual royalty receipts from APRA are over \$3,000

and a representative of APRA. Where a representative of a Licensee or a Member is appointed to the Committee, that appointment must be as a representative of one Licensee or Member (as relevant), but a representative of a Licensee may also represent the interests of one or more other Licensees, and a representative of a Member may also represent the interests of one or more other Members.

If an insufficient number of Members or Licensees in a particular category are willing to be members of the Committee, APRA must ensure that the Facilitator appoints another Member or Licensee (as relevant) to fill that position on the Committee.

C3.7 APRA must also ensure that:

- (i) the Committee operates with the objective set out in Schedule B and performs the functions set out in Schedule B
- (ii) the Facilitator periodically invites all Members and Licensees to nominate for the Committee, and takes all nominations and other input from Members and Licensees into account in determining the members of the Committee
- (iii) the annual funding provided by APRA for the operation of the Scheme (including the costs of the Facilitator but otherwise excluding costs incurred by APRA in connection with individual Disputes) are adequate for the operation of the Scheme (taking into account the level of funding recommended by the Committee)
- (iv) it provides to the Committee all information requested by the Committee that the Committee considers necessary or appropriate for performing its functions under Schedule B (including information about the actual costs of operating the Scheme).

Appointment and role of the Facilitator

C3.8 Within 1 month of the ACCC's final determination, APRA must appoint a Facilitator to operate and manage the Scheme, and must then ensure that there is an appointed Facilitator in place at all times throughout the term of the authorisation. The Facilitator (including any replacement Facilitator) must:

- (i) be approved or reapproved by the ACCC, within 20 business days, in accordance with condition C3.12 and for a specified period of time, prior to the appointment or reappointment taking effect for the purposes of these Conditions
- (ii) have specialist training in ADR and have a detailed understanding and experience of dispute resolution practice and procedures which do not involve litigation
- (iii) have the capacity to determine the most appropriate alternative dispute resolution procedures in particular circumstances
- (iv) have an understanding of copyright or the capacity to quickly acquire such an understanding.

C3.9 APRA must ensure that each Facilitator:

- (i) operates with the objective set out in Schedule C, and performs the functions set out in Schedule C
- (ii) complies with conditions C3.3(i) and (iv)
- (iii) does not perform any work for APRA other than work relating to the Scheme or to any extensions of the Scheme
- (iv) can be, and is, removed by APRA from the position of Facilitator if the ACCC considers, having regard to the performance of the Facilitator in that role, that the Facilitator is likely to fail to adequately perform the functions set out in Schedule C.

Appointment and role of the Independent Reviewer

C3.10 No later than 18 months before the date on which this authorisation expires, APRA must appoint an independent reviewer (**'Independent Reviewer'**), to review and report on the operation and management of the Scheme. The Independent Reviewer must:

- (i) be approved by the ACCC, within 20 business days and in accordance with condition C3.12, prior to the appointment taking effect for the purposes of these conditions
- (ii) have substantial experience in reviewing the operation and performance of alternative dispute resolution schemes.

C3.11 APRA must ensure that the Independent Reviewer operates with the objective set out in Schedule D, and performs the functions set out in Schedule D.

ACCC approval of the Facilitator and Independent Reviewer

C3.12 In considering whether to approve a proposed Facilitator or a proposed Independent Reviewer, the ACCC may take into account any matter it considers relevant, including:

- (i) any previous or existing relationships between APRA (or a Member or Licensee) and the proposed Facilitator or proposed Independent Reviewer (as relevant)
- (ii) the proposed remuneration arrangements for the proposed Facilitator or proposed Independent Reviewer (as relevant).

C3.13 Prior to the ACCC making a decision about whether to approve a proposed Facilitator, APRA must provide to the ACCC:

- (i) the agreement, or proposed agreement, setting out the terms and conditions on which the proposed Facilitator or proposed Independent Reviewer (as relevant) will be engaged in connection with the Scheme
- (ii) any other information requested by the ACCC that the ACCC considers relevant.

Annual Reporting

C3.14 APRA must provide the ACCC with an annual public report, for publication on the public register of authorisations maintained in accordance with Section 89 of the *Competition and Consumer Act*, about Disputes notified to APRA under the Scheme for the previous calendar year (the '**ADR Report**'), in accordance with condition C3.15 and C3.16.

C3.15 Each ADR Report must be submitted to the ACCC prior to 1 March of each year and must concern disputes for the 12 months ending 31 December of each year.

C3.16 Each ADR Report must include (broken down into Licensee Disputes and Member Disputes):

- (i) the number of Disputes considered, and the number of Disputes resolved, under each Option
- (ii) a statistical summary, in weeks, of the time taken to refer Disputes from Option 1 to Options 2, 3 and 4, and of the time taken to resolve Disputes under each of Options 2, 3 and 4, measured from the time at which the Dispute was referred to that Option
- (iii) a summary, for Options 2, 3, and 4, of the subject matter of the Disputes considered under that Option
- (iv) for Disputes considered under Options 2, 3, or 4 but not resolved, a summary of the reasons why those Disputes were not resolved
- (v) a summary, for each Option, of the range of Fees and Charges, and of the average Fees and Charges, incurred by Applicants for Disputes considered under that Option, and of the extent to which the fees and disbursements of Independent Mediators or Independent Experts (as relevant) were borne by APRA
- (vi) a summary of feedback received by APRA, and by the Facilitator, in relation to the operation of the Scheme, including the feedback and recommendations provided by the Committee (see Schedule B).

Other matters

C3.17 APRA must establish and maintain a link to the Scheme website in a prominent location on its own website.

C3.18 APRA must make the Scheme fully available for Disputes involving Licensees by 31 March 2015 and for Disputes involving Members by 31 March 2015.

C3.19 APRA must educate licensees, potential licensees, industry bodies and members about the operation of the new Scheme by publishing a plain English guide to the process within 6 months of the ACCC's final determination, and by making that guide available in a prominent position on its website, and on request.

SCHEDULE A – Fees and Charges (Condition C3.5)

Option 1

Action	Maximum fee to Licensee / Member
Initial phone discussion with the Facilitator (up to 45 minutes)	No charge
Subsequent involvement of the Facilitator (Option 1) where the amount in dispute is less than \$1,500.00 or there is a Dispute on matters that are not monetary.	\$50.00 incl. GST
Subsequent involvement of the Facilitator (Option 1) where the amount in dispute is \$1,500.00 to \$3,000.00	\$75.00 incl. GST
Subsequent involvement of the Facilitator (Option 1) where the amount in dispute is over \$3,000.00	\$150.00 incl. GST

1. Each Member or Licensee who wishes to become a party to a Dispute must pay this fee (if any) separately.
2. Where the Dispute relates to only a part of an amount specified by APRA, the undisputed parts of that amount are not to be taken into account in determining the fee payable by the Applicant.
3. The fee payable by an Applicant may be waived or reduced by the Facilitator, or with the agreement of APRA. The Facilitator must waive the fee where the Facilitator determines that the Dispute consists of a complaint.

Options 2, 3 and 4

1. Subject to paragraphs 2 and 3 below, each Applicant who is a party to a Dispute must pay 50% of the fees charged, and 50% of the disbursements or other costs reasonably incurred, by the Independent Mediator or Independent Expert for the resolution of the Dispute, each divided equally amongst all Applicants who are parties to the Dispute and who have agreed to that particular Option for resolution of the Dispute.
2. Subject to paragraph 3 below, fees and costs are only payable by an Applicant where the Dispute is about:
 - (i) the terms and conditions of a grant, or potential grant, of a licence of copyright by a Member to APRA, or by APRA to a Licensee
 - (ii) the implementation of the terms and conditions of a grant, or potential grant, of a licence of copyright by a Member to APRA, or by APRA to a Licensee

or where the Facilitator determines that fees and costs are to be payable in respect of the Dispute.

3. Fees and costs are not payable in respect of a Dispute where:
 - (i) the amount disputed by a Member or Licensee is less than \$10,000
 - (ii) the Dispute does not involve a disputed amount, but:
 - (a) in the case of a Licensee, the annual amount payable by the Licensee for the licensing (or potential licensing) of copyright by APRA to the Licensee is less than \$10,000
 - (b) in the case of a Member, the amount paid by APRA for the licensing of copyright by the Member to APRA in the previous twelve months is less than \$10,000; or
 - (iii) the Facilitator determines that the Dispute consists of a complaint.
4. Where the Dispute relates to only a part of an amount specified by APRA, the undisputed parts of that amount are not to be taken into account in determining the fees and costs payable by the Applicant.
5. The fees and costs payable by an Applicant may be waived or reduced by the Facilitator, the Independent Mediator or the Independent Expert (as relevant) or with the agreement of APRA.

SCHEDULE B – objective and functions of the Committee (Condition C3.7)

The objective of the Committee is to provide feedback and other advisory input to APRA and to the Facilitator in relation to the operation of the Scheme.

The functions of the Committee must include:

- (i) monitoring the operation of the Scheme, including the actual costs of the Scheme
- (ii) receiving feedback on the Scheme and communicating that feedback to the Facilitator and APRA (where appropriate)
- (iii) in consultation with the Facilitator and for each calendar year, making an annual recommendation to APRA about the budget for the operation of the Scheme
- (iv) making other recommendations to the Facilitator and to APRA about the operation of the Scheme.

but not intervening in individual Disputes.

SCHEDULE C – objective and functions of the Facilitator (Condition C3.9)

The objective of the Facilitator is to manage the operation of the Scheme, and to participate in the resolution of Disputes, in a way that facilitates the resolution of Disputes in a timely, efficient and effective manner.

The functions of the Facilitator must include:

- (i) ensuring the effective set-up (in the case of the initial Facilitator) and the effective operation of the Scheme
- (ii) appointing, reappointing, replacing and terminating the appointment of members of the Committee from time to time
- (iii) informing Members and Licensees about the Scheme (including informing individual Members or Licensees (as relevant) about the costs that those Members or Licensees are likely to incur under the Scheme in relation to a particular dispute) and being available to answer enquiries and questions about the Scheme
- (iv) resolving Disputes under Option 1, including by discussing issues with Applicants on a confidential basis, assisting with communications between APRA and Applicants, and narrowing down issues between APRA and Applicants
- (v) establishing a pool of suitably qualified or experienced Independent Mediators and Independent Experts (the '**DR Pool**'), including barristers and / or former judges, and persons with relevant industry and / or commercial experience, across a range of areas of expertise and geographic locations, and reviewing the composition of the pool annually
- (vi) making recommendations to APRA and to Applicants about the suitability of Options 2, 3 or 4 for resolving a particular Dispute, including recommendations about appropriate Independent Mediators or Independent Experts for resolving that Dispute (whether drawn from the DR Pool or otherwise), with the objective of resolving the Dispute quickly and efficiently
- (vii) collecting and distributing the Fees and Charges
- (viii) assisting the Independent Mediator or Independent Expert in the making of timetabling and other administrative arrangements for resolving each Dispute under Options 2, 3 and 4, including:
 - (a) arranging meetings or conferences
 - (b) receiving submissions from the parties
 - (c) distributing submissions and other relevant materials to the parties and to the Independent Mediator or Independent Expert (as relevant)with the objective of ensuring that the resolution of each Dispute progresses in a timely and efficient manner (including the objective of ensuring that all preliminary steps in relation to a dispute be completed without the need for travel)
- (ix) preparing the annual ADR Report (see condition C3.14 to C3.16)
- (x) establishing and maintaining a public website for the Scheme that is separate from APRA's own website, and publishing on that website information and documents relating to the Scheme, including:
 - (a) the plain English guide to the operation of the Scheme (see condition C3.19)

- (b) each public ADR Report, which the Facilitator must publish no later than 1 business day after receiving it from the relevant Independent Expert, and the public version of the report of the Independent Reviewer (see Schedule D)
- (c) the curriculum vitae of each Independent Mediator and Independent Expert in the DR Pool
- (d) the public version of each binding written determination under Option 4 (see condition C3.3(vii)).

SCHEDULE D – Independent Reviewer (Condition C3.11)

The objective of the Independent Reviewer is to monitor and report on the operation of the Scheme (including whether the Scheme is resolving Disputes in a timely, efficient and effective manner).

The functions of the Independent Reviewer must include:

- (i) reviewing:
 - (a) the operation and performance of the Scheme (including without limitation the processes and procedures established under the Scheme, and the extent to which any concerns expressed by Members and or Licensees have been addressed by APRA and / or the Facilitator), and
 - (b) the performance of the Facilitator,

in accordance with the requirements of condition C3 and the Scheme's objective of resolving Disputes in a timely, efficient and effective manner.
- (ii) as part of item (i) above, obtaining feedback from APRA, the Committee, Members, Licensees and Independent Mediators/Independent Experts about the operation and performance of the Scheme, and the performance of the Facilitator
- (iii) no later than six months before this authorisation expires, preparing a report, and providing the report to the ACCC and publishing a public version of the report, on the matters reviewed under items (i) and (ii) above in respect of the period between the commencement of the Scheme and that date that is twelve months before this authorisation expires.

SCHEDULE E – Relevant Matters (condition C3.4)

1. Consider whether APRA offered the user (being a Licensee) a licence that takes into account any direct dealing or potential future direct dealing between the user and a copyright owner.
2. If so, whether in the Independent Expert's opinion, APRA offered the user (being a Licensee) a licence that reflects a genuine and workable commercial alternative to the user's blanket licence to take into account past, or potential future direct dealing between the user and a copyright owner. In expressing this opinion, the Independent Expert must have regard to whether any increase in administrative costs, charges and expenses contained in the modified blanket licence are reasonable, having regard to the administrative costs to APRA of offering and providing to the user a modified blanket licence.
3. Whether any amendments could be made to the user's licence (or if the user is not a licensee, to the blanket licence offered) so that the licence provides a genuine and workable alternative to the user relying on a blanket licence.