

ACCC/APRA submission February 2019

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Regarding the Report of the Independent Review of Resolution Pathways, Dec 2018:

This submission mostly addresses some concerns relating to that report, and APRA, which show that APRA has perhaps not entirely been proactive and clear as to what was required of it, by the ACCC conditions, in the years from 2014-2019.

This submission will also raise questions concerning APRA regarding a couple of other points not related to that specific report.

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Subsequent to an earlier ACCC inquiry into APRA, APRA was required to make some changes.

One of the several requirements for the Alternative Dispute Resolution (ADR) scheme under Condition C3 (Boyle 2018, p14) is that it must provide a public website, separate from APRA's website.

Another, is "the option for an applicant to request that a matter be managed by an independent expert rather than the facilitator " (p14).

Although the Resolutions Pathways website is that separate website, and Peer Support/Assist appears to be that option that should (potentially) provide availability of independent experts, the website remains outdated and inactive in parts, and seems to be not of widely known use for artists to gain support. The Independent Report states that parts of this website are significantly out of date and that some of the links provide out-of-date information. (p17)

When one clicks on the Resolutions Pathways website link to the page "Peer Assist, Music Creators", the page shows this notice:

" COMING SOON!

This service is due to be finalised and available in December 2015.

For more information please contact the Resolution Facilitator"

I notably viewed this web page in late 2018. I had seen of it much earlier in the few years since its inception, but had assumed it was still being built because of the notice. So I did not return. It did not help me in any way, to look for information via a non-usable peer support page or to follow dead links. I had thought it could be a *potentially* viable and useful resource.

It was brought to my attention in December 2018 that this page, which was a requirement of APRA to create and provide for support for musicians by the ACCC conditions, was *still* not active, not complete, even four years after its supposed creating.

What kind of support site offers a never-completed webpage to show musicians just what contempt or disregard they are seen in, when they require support to manage disputes from an independent team of experts?

It is noted in the review that the scheme "did not enjoy a high uptake of use" (p6) in its first two years. However since the appointment of the reviewer, there was substantial increase, likely because the facilitator actually introduced some innovative changes throughout 2018. Yet, why had these not been introduced in the first few years? It appears that APRA was not doing anything about making the alternative resolutions support a reality, but was giving a token effort to show the ACCC that it had created a public, separate, website. Leaving it til the last year of the test period (of 4-5 years) is not exactly a well organised, or well implemented, system for support.

People need to be able to use and access the webpage, actively. Otherwise it is merely an archived webpage, with no real, practical, value. The website needs to be completely finalised (with room for adjustment and growth etc) and actually be useful for musicians/performers to use, actively and practically, including more links in each section to go for resources and support. This webpage (or one like it) is a potential gem for musicians, educators, mentors, students,

researchers, as well as artists working in the field. APRA could really make something of this, and work in collaboration with independent experts, if they set their intentions to do so.

A peer assist scheme is a potentially positive support for artists to resolve disputes. Having experts or those experienced in various areas is also a constructive way to help those not experienced in those areas, or who need support in lodging or resolving a dispute in those areas, and it *is* a really viable possibility. However, it has to actually be workable and be in existence for it to take off. It also needs to be independent of APRA's employees.

Assuming the Peer Support would be made up of independent experts, and not those employed by APRA, this scheme could provide an innovative and useful service, and possibly could expect to see wide use, once it gets up and running, providing it *remains* independent.

It is important that the proposed Peer Assist scheme be based in an *independent* cohort of experts, who each have available expertise in their individual and various areas of music and the music industry, and the performance industry overall, who are not employees of APRA itself, but who APRA has on contact lists for mentorship and peer support, so that artists can access truly alternative pathways for dispute resolution.

Regarding dissatisfied customers of marketing etc generally, and relating to APRA:

*" ... organisations that cultivate productive relations with their customers, and actively rely on customer input, build a strong cohort of customer loyalty. It has been reported that, the better any relationship between an organisation and its customers, and the more frequent their interactions, the fewer complaints and bad-mouthing will occur. This is because customers know that their views are taken into account by, and can influence the organisation." ( p29).*

So, APRA should take feedback and concerns seriously instead of dismissing them as though they are not important. If people are taken seriously, if they know that their concerns are taken seriously, then they are more likely to approach the organisation in a way that voices their concerns rather than it promoting/provoking word-of-mouth, ill will, overall against an organisation that does not take its customer/client/member wellbeing and satisfaction with

seriousness and respect. Even just the fact even that the website was not updated, for eg, and was really out of date, virtually inactive, shows a lack of taking this seriously.

*"APRA AMCOS could adopt a more pro-active role in developing and cultivating jointly productive working relationships with its many stakeholders. Such an approach is likely to increase the loyalty of stakeholders such as licensees, as well as leading to a reduction in the levels of dissatisfaction with APRA AMCOS services." (p29)*

It might appear that APRA has not taken seriously their client and customer (musicians/members) concerns, to the point of not even bothering, in an estimated four years, to update sections of the website with relevant and timely information, so as to provide some of the promised connectivity for services, such as peer support, that they were aiming/claiming to provide as part of the mandatory four pathways set by the ACCC.

Potentially offering such things as an important aspect of the available dispute resolution pathways, is one thing, but this needs to be followed through with action. Four years is likely long enough to have come to some action on that. This lack of action is not treating its customer/client/member wellbeing and satisfaction seriously. This is just one area through which cynicism has grown amongst some members (and non-members) as to APRA's real agenda.

*"It is not clear how a complainant would access an independent point of contact if they wish to complain about the Scheme itself." (p32).*

APRA don't seem to be really making it a clear option for people to make complaints. The website, again, here is almost leading people round in circles and it's a futile enterprise perhaps to even start to try to make a complaint. People cannot see who to address in order to lodge a complaint or who to contact for some complaint. So people give up, or don't even try.

*"It would be better for the evaluations to be distributed, collated, and analysed by a third party" (p33).*

Currently this is not the case. The review suggests that this internal user feedback model dissuades complainants to make negative evaluations of a case. Dissuading complainants from making any negative evaluations negates the purpose of a disputes resolutions body.

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My own experience of visiting the website was disappointing, with discovering that the Peer Assist section, for music creators, was still due to be updated, some 3-4 years later after its inception. A note on the page stated that it was due to be updated in 2015 (while I was reading it in Dec 2018).

I thought the idea of the Peer Assist option was a potentially very positive area that I would look at more later, perhaps for further resources, although I was disappointed that clicking on the Peer Assist option simply led to a "this area is being developed" type of notice on that page. I valued the idea of having contacts and links to look further into for information and to gain a stronger understanding of the means at work behind the Peer Assist system.

Unfortunately, it was then quickly brought to my attention that this area of the website had been left languishing for a few years, already, with nothing updated about it. So much for peer assist. It had not even been given the basic attention of providing a few links for further, serious, information.

How can APRA expect to promote anything but cynicism and disappointment if they make a superficial show of creating an apparently novel website for support, yet do nothing or little about making those support services readily workable? Cynicism has already been gaining traction amongst many musicians, who have to navigate the maze of copyright issues, royalties, streaming rip off rates, and other payment issues, sometimes for years at a time, whilst attempting to hone their craft continuously and still continue to create and make an income.

The music industry in Australia overall, in Sydney, and in NSW, have each had to undergo some serious scrutiny in the past year alone, based on Parliamentary Inquiries into the NSW music economy/industry, the Australian music industry, and the City of Sydney review of the night time music economy in that city. And much more is still needed.

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## VOTING SYSTEM

One point that I will address that is not related to the Independent Report is in relation to APRA's voting system for the Board of Directors. Currently APRA operates with unfair voting that allows for some members to have more than one vote. If a member earns over and above a certain level of income they are given more votes. In what democratic system of govt, company, or co-operative endeavour do people receive the option to have more than one vote? That is not a fair system. In APRA this is what is happening, and it is clearly imbalanced, verging on corrupt. The simple and fair way of arranging voting systems is to grant one vote per person, and one vote only. Currently there is a petition on Change.org to attempt to bring attention to this system and to bring some reform. This is one reform that needs to be effected if APRA is to be granted the reauthorisation in 2019 from ACCC. The Association of Australian Musicians notes that "APRA's current complex voting rules stop nearly 40,000 out of APRA's 90,000 Australian Writer Members from voting for APRA Directors" (Association of Australian Musicians 2019).

## STREAMING SERVICES PAYMENTS

APRA could also have some sway in the way the streaming services pay musicians. Currently streaming operates at an appallingly low level of payment for musicians' work. Listeners can listen to music readily online, by paying a premium for a service such as Spotify, or using the free service that incorporates adverts between listening, as well as other free online music listening.

Currently, Spotify has become the biggest, worldwide-known, streaming service, seemingly most popular and most known, and growing in its fan/user base. There are others, and Spotify is not

the first. Some streaming services are attempting to compete more with Spotify in terms of paying artists better streaming rates, such as I-Tunes, and Tidal (Sanchez, 2018). Nevertheless, these services, although paying somewhat more than Spotify, still pay an extremely low rate to musicians for the music that is streamed, meaning that musicians receive very little for their work.

Although a global concern, APRA could indeed have a part to play in creating more equitable terms for Australian musicians who want to have their work available, heard, and to be paid at a reasonable rate for their work.

A musician puts in many hours, weeks, months, years, to hone their craft, skills and talents. Navigating the online space of music streaming is a minefield, with scammers rorting it from every angle possible, and it is the musicians who suffer.

If APRA were to start a service/platform specifically dedicated to rectifying some of the inequities in the streaming services, from the musicians perspectives, this could be a positive, and forward thinking, contribution to the music industry in Australia. It could be perhaps a solution that extends further than Australia, if a worthwhile model is created and utilised, one that benefits musicians and creators, rather than just the streaming companies, listeners, or large companies. APRA could lead the way in this, globally, if they were to give it priority.

APRA does have the opportunity to help create a more equitable online space for musicians, as well as more equitable rights overall for musicians and performing artists. Yet they have to really address some concerns that performers, artists and musicians are attempting to bring to their notice, and to take action on these very real issues. The performance space, music recording space, music listening space, music industry overall, are not in the same space that it once was, and things are rapidly changing. APRA needs to keep up and be ahead of the game on this, rather than lagging behind, as it appears to be doing, and support Australian performers.

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