

ACCC INFORMATION REQUEST

Your Ref: AA1000433

Contact Officer: Tessa Cramond

Our Ref: ACCC Report

Contact Person: Shirli Kirschner, Resolution Facilitator by email

14 May 2019

I refer to the ACCC's request for information from Resolution Pathways dated 28 March 2019 ('**ACCC Information Request**'). This letter is a response to the ACCC Information Request.

Section 1 provides observations that apply to the ACCC Information Request and responds to some of the key issues and recommendations from the independent review conducted by Alysoun Boyle ('**Independent Review**').

Section 2 responds to the Information Request directly.

SECTION 1

1. General Observations

The key performance indicators (KPIs) used by the Resolution Facilitator ('**RF**') for Resolution Pathways include governance (see 1.1), resolution rates and quality (see 1.2). (This includes feedback from the Independent Review). Below is a summary of the performance:

1.1 Governance:

The initial feedback mechanism for the project was from a stakeholder group representing songwriters, licensees, managers and other stakeholder representatives (*the **stakeholder group***). Their role was to provide input, connect with stakeholders and to establish a smaller governance group for oversight and to comply with the requirements of C3.6 of the ACCC Authorisation.

- (a) This stakeholder group has been representative and provided invaluable assistance to Resolution Pathways since the date of the inception.



- (b) The stakeholder group have established a governance function to supplement the feedback by having more nimble governance as the system matures. This has resulted in a more formalised governance structure led by a governance committee.

A copy of the charter of the governance committee is **attachment 1** to this letter. The governance committee intends to revisit its charter in the 3rd quarter of 2019 following confirmation of re-authorisation by the ACCC. A list of the members of the governance committee is **attachment 2** to this letter.

- (c) The stakeholder group has also ensured succession to provide an updated skill set and a vibrant group. A list of the original members and the current members are attached as **attachments 3 and 4** to this letter.

Refinements to the stakeholder group and governance committee to assist with issues of independence have been considered and are outlined in the comments on Independence below.

1.2 Dispute Resolution:

The authorisation provisions from the ACCC included facilitated, advisory and determinative pathways. The KPIs set by the stakeholder group focussed on the uptake of the process, satisfaction with process and also its success rate. The ACCC made provision for annual reporting by the RF and an Independent Review at the at the end of the period.

- (a) The number of referrals to Resolution Pathways has increased every year since its inception. (Generally systems which are not satisfactory in their uptake do not increase.)
- (b) Feedback that has been received has been positive [see pages 5, 9 and 10 of the Independent Review].
- (c) There has been low turnover of resolvers who have been involved in the system, who continue to be involved and report positively.

As well as the KPIs established by Resolution Pathways both the ACCC Information Request and the Independent Review raise topics on which we have provided some reflection before considering the specific questions posed by ACCC in its Information Request. These include to major issues being:

- (a) **Independence.** (This incorporates sub-issues raised by the Reviewer around funding of the RF and how to manage complaints or concerns about the RF.)
- (b) **Scope of coverage of the scheme.** (This impacts on the number of services to be offered, payment for those services and transparency for payment.)



2. Independence

The perception of independence and autonomy is particularly important for Resolution Pathways, in circumstances where APRA is a party to a dispute.

The Resolution Pathways scheme is administered by an independent provider, Resolve Advisors, and **funded by** APRA. The funding arrangement presents a challenge to true independence and the Independent Review suggests a number of possible mechanisms for ensuring independence from APRA. These involve *“a broader source of funding, and a wider market focus”*, *“industry funding options”*, consultation with and involvement of *“industry organisations and stakeholders”*. See pages 10, 11, 27, 28 and 31 of the Independent Review.

Each of these options has challenges which are difficult to transcend. The two major barriers are the increased expense and difficulty of integrating with other wider stakeholder groups, in the absence of any legislative or administrative power to compel such participation or seed funding to organise such an alliance.

In practice the scheme has addressed the challenge of independence by recognising the limitation on independence and working towards practical safeguards to protect the system.

The RF has been working on a number of initiatives to assist with protections centered around robust reporting and governance (if not independence). The initiatives include, the structure of the governance committee (2.1), oversight of the RF (2.2), diversification of the RF role (2.3), encrypted reporting of matters (2.4), automatic tracking of matters (2.5), and funding (3). Each is outlined in sub-sections below with funding having its own section.

2.1 Independence -Structure of Governance committee

In 2016 the stakeholder group formulated a charter to define the scope of a governance committee. A governance committee was then selected by the RF and endorsed by the stakeholder group. The governance committee comprises of representatives of licensees and members (two licensees, one whose annual licence fees payable to APRA AMCOS are \$3,000 or under, and one whose annual licence fees payable to APRA AMCOS are over \$3,000, and two members, one whose annual royalty receipts from APRA AMCOS are \$3,000 or less, and one whose annual royalty receipts from APRA AMCOS are over \$3,000). The advantage of a governance committee, with its own independent charter is that it provides a mechanism for oversight of the RF which is independent and separate from APRA AMCOS.

An independent chair was appointed to the governance committee who has experience in chairing and the industry but does not represent a stakeholder group. The benefit of an independent chair is



that the governance committee has the capacity to meet in the absence of the RF and APRA AMCOS and discuss/make decisions on issues where the presence of either may challenge its effectiveness. This includes the important issues of succession of the RF and dealing with any complaints about the RF or the scheme.

APRA AMCOS has been asked, and consented to, providing the governance committee with resources to meet face to face once a year and additional resources (in the form of both video and physical rooms) to meet digitally at least once a quarter.

2.2 Independence Oversight and Complaints

The governance committee has oversight of the performance of the Resolution Facilitator, ensuring there are clear and measurable performance indicators.

A participant can lodge a complaint or concern about the RF or APRA AMCOS to the governance committee through the independent chair (current) or directly to the governance committee (foreshadowed in the new website update).

This recently implemented process provides a practical oversight and has also provided an answer to some of the issues raised in the Independent Review. It is currently on the web site and we are reviewing other methods for this to occur.

2.3 Diversification

The Independent Review suggested having the RF role split into administrative and client facing role to assist with this and other constraints:

“Internal management of the Scheme: It is suggested that two roles be established to manage the Scheme. One role would administer the Scheme, including the administrative side of referrals to the panel of third-party neutrals (a Scheme Co-ordinator role); and one role would be a first point of contact for the Scheme, including responsibility for attempting early and quick resolution of matters, as well as assessment of referral to other processes within the Scheme (a Case Manager).” See pages 12 and 31 of the Independent Review.

This recommendation has been partially adopted and modified to ensure continued efficiency of responses. The RF has allocated many of the project management tasks to a second legally trained person while flexibility in tasks has been maintained to assist speed.

2.4 Encrypted Reporting

Another difficulty in any closed private system, is the fear of retribution for reporting on issues concerning APRA AMCOS. It is a fear of impact on their services or their ability to deal with



the organisation. (The impact of this in the current consultation with the ACCC is for a number of participants to provide confidential submissions.)

The Resolution Pathways has designed a system which would allow confidential reporting to the RF or the governance committee where there is an issue and a reporter does not want to be identified for fear of consequences. We are reviewing the use of a facility where the stakeholder's identity could not be traced which will allow people to raise issues confidentially so trends can be reviewed.

This will allow participants to obtain a unique ID through a portal which would encrypt their identity making it invisible both to APRA AMCOS and Resolution Pathways. It is currently in the research and pilot stage. If able to be implemented, this would go some of the way with the other matters described above, to ensuring a robust system.

2.5 Automatic Tracking

Another important protection for the system is ensuring that that all matters lodged with the system are reported, and that the time that it takes for matters to be resolved are properly tracked in a way that is independent of RF and APRA AMCOS.

We are exploring the use of technology to aid with data security and transparency. A trial will take place in which matters are referred to the Resolution Pathways through a portal which automatically date stamps, tracks, and provides reporting on matters referred.

Once again, this is in pilot stages and it is hopeful that a pilot will be monitored by the governance committee and finalised within a year.

3. Funding

The Resolution Pathways overhead is block funded by a retainer to maintain the structure and attend to matters in a timely way. The RF is free to allocate budget in consultation with the stakeholder group and with oversight of the governance committee. This mechanism (rather than individual funding of individual disputes) provides some degree of autonomy from APRA AMCOS.

Individual disputes rely on a co-payment from APRA AMCOS and the other disputing participants. The co-payment model ensures a degree of independence. A refusal by APRA AMCOS to participate in a dispute resolution process (which has never occurred to date) would be transparent to the governance committee and reflected in reporting providing a check on the organisation.



3.1 Funding Transparency

In a regulated dispute resolution process there needs to be a careful allocation of resources to core functions covered by the authorisation before embarking on optional ones. The quantum and allocation of the funding is only transparent to the governance committee.

There are issues in a multi stakeholder scheme in having the budget public and transparent beyond that group. The stakeholder group is by its nature representative and partial.

A totally transparent funding model is likely to causes tension in allocation.

It is not useful or practicable for the stakeholders to argue about allocation of resources to additional projects that are outside the scope of the authorisation EG: the quantum of services provided to member to member disputes.

It is also proper for APRA AMCOS to be involved in the allocation of resources where a project is desirous but outside the scope of the authorisation parameters.

The safety mechanism that has been provided to keep in check the RF view of whether funding is core and should be allocated to a matter or project is the ability to appeal to the governance committee in the event that a project, or dispute, has not been provided funding.

While the quantum of funding is not transparent in this way, allocation decisions are accountable. This allows relative funding requirements to be considered by the governance committee if there is a divergence of news, rather than by sectorial interests.

4. Coverage of the Scheme

4.1 The issue of coverage

The dispute resolution system mandated by the authorisation is for resolution of matters between members and APRA. The Resolution Pathways services and therefore matters reported, pertain to issues (currently the majority) that are disputes between writer members of APRA AMCOS (member to member disputes).

Member to member disputes ‘touch’ APRA AMCOS only because the amounts collected by APRA AMCOS with respect to works that are in dispute are held in suspense accounts. However, as a member service, RP is available for use for member to member disputes.

It has been APRA AMCOS’s view that as a collecting agency it is not APRA AMCOS’s role to make a determination on the merits of the dispute between members. It cannot be partial to one of its members over another, or indeed to a member over and above a writer member who may not be in its fold.



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Notwithstanding this, APRA AMCOS has made pathways available to members. That is the subject of a peer to peer service to ensure cost efficient options. This system is outside the scope of the authorisation and its services.

7

Some of the feedback to the ACCC has been concerned that the peer review system hasn't been rolled out more comprehensively. It is appropriate to make it available on a limited basis so that if it is shown to be workable other stakeholders that represent members are free to take the learnings from the pilot and its infrastructure and start a comprehensive member service.

It also provides useful data for APRA AMCOS to consider policy changes to ensure that there are incentives for members to resolve disputes. This is another useful by-product of a pilot.

5. Changes as a Result of Data

APRA AMCOS currently suspends accounts where there is a dispute about royalty splits. Inexpensive resolution processes can be accessed only by consent. One of the trends noticed by Resolution Pathways was that APRA AMCOS's policy of suspending accounts and leaving the registration leaves no incentive for the registered party to engage in ADR. While APRA AMCOS has made Resolution Pathways available at a subsidised cost (because the overhead is covered by APRA AMCOS) there is no incentive on a party who is already registered to consent to any form of dispute resolution unless compelled by a Court.

Clearly, being compelled by a Court is a costly exercise and one that is not accessible or available financially to the majority of members in a writer to writer dispute where the royalties for a song are often nil and this is further exacerbated because a dispute in relation to such royalties is likely to curtail the ability for that work to be used in a commercial way.

The matter is less intense, where the works are of a high value (because there are resources to resolve the issue as well as commercial imperatives) or where publishers are involved.

For this reason, Resolution Pathways recommended that APRA AMCOS consider changing its policy so as to provide incentives for its writer members to actively use Resolution Pathways to resolve their disputes. Such a policy would mean that APRA AMCOS could give effect to any determination made with respect to a member to member dispute, even if that determination was made unilaterally, provided the other party or parties had been notified of the availability of a Resolution Pathways and **not** consented to participate.

Obviously, there would need to be a mechanism where such a party who has not consented can later avail itself of the Resolution Pathways to correct the Register should there be a determination against



them. Payments for any subsequent proceedings would apply. This recommendation has now been accepted by APRA AMCOS and a one year pilot will commence. It is important to do this as a limited pilot and then review it as it may have consequences which have not been anticipated.

SECTION 2

Section 2 provides a response to the ACCC Information Request. The highlighted text and numbering are extracted from that request.

- 1. We understand based on discussions during our meeting that disputes resolved informally by the resolution facilitator free of charge are not recorded as disputes resolved by “informal resolution” in Resolution Pathways’ reports to the ACCC. Please confirm whether this is correct.**

All disputes resolved by informal resolution are included in the quarterly reports and matter updates provided to the ACCC. These include disputes between writer members (which are not disputes with APRA AMCOS). We apologise for any confusion in this regard. In the 2018 reporting period, the following 8 disputes were resolved, or continue to be managed, through informal resolution:

- 041L of 2018 is a dispute involving a blanket licence for a streaming service (active and carried over to 2019).
- 046L of 2018 was a licensee inquiry regarding an overdue account (finalised in 2018)
- 050L of 2018 was a licensee dispute over a proposed licensing agreement under One Music (finalised in 2018).
- 051L 2018 was an inquiry from a club regarding a licence (finalised in 2018).
- 052L of 2018 was an inquiry from a licensee about the interface between APRA and PPCA (finalised in 2018).
- 053L of 2018 was a dispute with APRA AMCOS over the applicability of a multi-screen licence for a sports bar (finalised in 2018).
- 054L of 2018 was a dispute with APRA AMCOS over the applicability and calculation of a licence fee for a yoga studio (finalised in 2018).
- 058L of 2018 is a dispute with APRA AMCOS over a dance club’s eligibility for a full exemption from licensing fees under Section 28 of the Copyright Act (carried over to 2019 - closed in February 2019 but not resolved).

- 2. If this is correct, please provide an estimate for the period of 1 January – 31 December 2018 about how many disputes were resolved informally by the resolution facilitator free of charge, without being escalated to the “informal resolution” stage for the purpose of recording the matter as an informal dispute. Please also provide a summary of the types of disputes that were resolved in this manner.**

All of the disputes resolved through informal resolution in the 2018 reporting period were licensee matters. Please see 1 above for a description of these matters.



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3. Having regard to disputes that were resolved informally by the resolution facilitator without being escalated to the “informal resolution” stage for the purpose of recording the matter as an informal dispute, please provide a view about:

(a) whether the reports provided by Resolution Pathways to the ACCC, as required by Condition 3 of the ACCC’s 2014 authorisation, provide an accurate representation of the number of disputes, and the types of disputes, and other matters or enquiries handled or resolved under the scheme,

(a) The Quarterly Reports and Matter Updates provided to the ACCC do provide an accurate representation of the number of disputes, and the types of disputes, and other matters or enquiries handled or resolved under the scheme.

(b) any changes Resolution Pathways considers could be made to the reporting requirements and processes to better reflect the full scope of matters considered under the scheme.

The RF is exploring the use of software for electronic monitoring of disputes [see Part 2.5 of Section 1 above]. Many issues require a combination of pathways, making reporting by type of pathway difficult, artificial and dependent on a binary classification for a process that has multiple limbs.

It would be useful if the ACCC allowed for flexibility for the reports to be generated in a format that followed the software and by date and type (licensee or member) rather than in classes of process (mediation etc).

4. We refer to the 2018 quarterly reports and matter summaries for Resolution Pathways provided to the ACCC on 5 March 2019, as an alternative to providing an annual report for 2018. We have consolidated the information in the quarterly reports as reflected in the table below.

Please confirm whether the following table is an accurate reproduction of these reports:

Quarter (2018)	Total new matters	# Licensee	# Member
Jan - March	2	1	1
April – June	11	2	9
July – Sep	3	3	0
Oct - Dec	8	3	5
2018 total	24	9	15

The table presented is accurate.



5. Perceptions of independence

Some submissions received by the ACCC about APRA's application for re-authorisation have raised concerns that because APRA funds Resolution Pathways' operations (including the cost of the resolution facilitator), Resolution Pathways is not sufficiently independent of APRA.

Please provide a view about these concerns, including any steps that have been taken, and/or that you consider could be taken, to increase the independence (actual or perceived) of Resolution Pathways' operations.

Please see [Part 2 in Section 1 above]

Nature of disputes

We refer to the Report of the Independent Review of Resolution Pathways released in November 2018 (the Independent Review), which found that in 2016 and 2017, the majority of matters that had been raised with the Resolution Pathways scheme concerned disputes between writer members, while the ACCC's 2014 determination had a strong focus on the concerns of licensees.

We consider this finding by the Independent Review to be consistent with the information provided in Resolution Pathways' 2018 quarterly reports and matter summaries, though we note the increase in the number of disputes involving a licensee in 2018 compared to the two preceding years.

6. Please provide a view about why relatively fewer disputes involving APRA licensees have been referred to Resolution Pathways since the scheme's introduction. If you consider that the manner in which the scheme currently operates is an impediment to, or discourages, some licensees that may wish to have access to an ADR scheme from using it, do you consider that there are any changes to the Resolution Pathways scheme that

could be made to encourage or facilitate the referral of more disputes between licensees and APRA?

It is always difficult to analyse the reasons why something does not happen as the analysis has to rely on conjecture rather than data. We have discussed this with our governance committee and stakeholder group:

- (a) many (but not all) licensees have access to peak bodies (such as Fitness Australia, LPA and the AHA) that can operate as a first avenue of assistance or inquiry. These are likely to act as filters.
- (b) It may be that some licensee matters do not progress to Resolution Pathways as they are being resolved internally at APRA AMCOS without the need for escalation.



- (c) Some licences are of small value and it is likely that on a cost benefit analysis it is not worth bringing a claim.

Resolution Pathways' website

We note that in compliance with the Condition 3 of the ACCC's 2014 authorisation, a separate public website for Resolution Pathways has been created which provides information about how the scheme operates, including the resolution pathways available under the scheme and the costs involved.

Some submissions have suggested that the Resolution Pathways website is not as effective in conveying information as it could be because of out of date information. For example, in March 2019, the landing page for the 'Peer Assist' program states that the service is 'coming soon' and due to be available in December 2015. A number of submissions suggest that Resolution Pathways' website should be updated to include further information about how the scheme operates, and better explanations of the processes available within the scheme.

7. Please provide a response to these concerns, including details of any planned updates to the Resolution Pathways website.

Websites date quickly and we agree that the Resolution Pathways website requires an update. Given that the Independent Review was undertaken in 2018 and was to be followed by the ACCC authorisation in 2019, it was agreed with the governance committee that Resolution Pathways would seek feedback from the Independent Review and the ACCC authorisation prior to updating the website, so that any amendments could capture the responses from those inputs and maximise the efficiency of a major update. We have requested quotes for updating the website that include:

- A review and update of the existing pages of the website where appropriate.
- Full details of the Peer Assist scheme, which will continue to be a pilot until further data is available.
- More comprehensive privacy and data management architecture.
- An outline of the functions of the governance committee and an updated list of the stakeholder group.
- The services provided by the various neutrals and experts utilised by Resolution Pathways.
- A triage checklist explaining the considerations used by the RF to assist the parties to agree on a consultant(s) for a particular matter.



In the meantime, Resolution Pathways has updated the website to rectify the error in the Mapping Agreement identified by the Independent Review. The 'Contacts' page of the website has also been updated to include the contact details of the Independent Chair of the Governance Committee for the lodging of any concerns or complaints about the system or the RF.

Peer Review

The Independent Review identifies 'Peer Assist' as a process provided by the Resolution Pathways scheme. The following is the Independent Review's description of the program:

The [Peer Assist] process is available to music creators, and involves the appointment of an industry "Peer" whose role includes considering information provided by the disputants, providing an assessment of the likely provenance of the disputed music item, and facilitating collaborative negotiations between the disputants. The process itself is not determinative, and the Peer's role does not include making any decisions on behalf of the disputant.

Peer assist is designed to extend the resolution pathways beyond disputes with APRA AMCOS and provide a cost-effective forum for member to member disputes. [See also Part 4 of Section 1.]

The Independent Review also noted a 'Peer Review Sub Committee' has been established to oversee the trial of the 'Peer Assist' program.

A committee headed by John Prior has been active in assisting the RF to design and implement this innovative program.

8. **Please provide additional information about Resolution Pathways "Peer Assist" program, including:**
 - (a) **whether the program is still in a pilot or trial stage.** This program is in a pilot stage and will continue as a pilot to allow the program the flexibility to be integrated with other programs as needed. [See Part 4 in Section 1.]
 - (b) **if the program is still in a pilot or trial stage, when the program is due to be introduced more broadly.**
 - (c) **the types of complaints that have been handled by the Peer Assist program and any outcomes that that have been facilitated by the program.** The program has been effective in assisting with member to member disputes involving writer splits. At this time, the use of the Peer Assist program has been unilateral. The next stage of the pilot is to try to use the technique as a dispute resolution process involving all sides of the dispute.



- (d) **whether the peer assist program is intended to be used to resolve disputes involving APRA (that is, disputes between APRA and licensees or disputes between APRA and members).** At this time, we have not had any matters referred which require the use of Peer Assist or Peer Review, beyond member-to-member disputes.
- (e) **the role of the 'Peer Review' committee.** This committee was designed to be an advisory committee to the RF in designing and implementing the peer assist program which is novel and innovative. The RF was charged with ensuring that the model was safe for users and modified to accord with appropriate rules of dispute resolution and natural justice.

Fees and charges

We note that the fees and charges for each of the four resolution pathways offered by Resolution Pathways (informal resolution, mediation, expert view and binding decision) vary according to the amount in dispute, the dispute resolution process chosen, and the fees charged by the third-party neutral (if applicable).

Some submissions have cited the potential cost of raising a dispute, and uncertainty about fees that may be incurred, as reasons for not pursuing a dispute through Resolution Pathways. We note that some interested parties who have provided submissions appear to be unaware that fees will only apply if the amount in dispute is above a certain threshold (or for non-monetary disputes, where the applicant pays licence fees to APRA or receives payments from APRA above a certain threshold), even if the dispute involves a third-party neutral.

- 9. **Please provide a response to these views, including any suggestions for ways to make information about the various fees associated with the scheme, and the circumstances in which these fees might apply, more widely available.**

It is important to acknowledge that there is a difference in fees for those disputes covered by the ACCC authorisation, and fees for pilots or other extension programs.

Fees for matters covered by the ACCC Authorisation

Fees for those matters covered by the ACCC authorisation are outlined on the Resolution Pathways website. They also form a part of the checklist for the RF triage process provided to all participants in a dispute at no charge. The RF is also available by telephone and email to ensure that any party considering lodging a dispute understands the potential fees. We continue to benchmark these fees against other services available and they are competitive.



Fees for member to member disputes

The matter of fees is less clear for member to member disputes which do not involve APRA AMCOS. Similarly, the fees for participating in peer assist have also not been clear as it is a pilot program. The current process for member-to-member disputes is to communicate with parties that an application will be made to APRA AMCOS for participation in a pilot.

Where matters are accepted for the pilot (only some representative matters to test the boundaries), APRA AMCOS has paid the fees for the peers to undertake the review. These fees do not appear on the Resolution Pathways website and are subject to direct communication with the RF.

There are a number of member to member matters which have been on hold until APRA considered its policy described in Part 5 of Section 1 above. Peer Assist will now be offered for these member to member disputes to test this new policy at a subsidised cost to be finalised. The exact amount will also depend on whether the matter is unilateral or if all parties participate. The Governance Committee will review the proposed considerations for providing subsidies to make sure that they are fair and reasonable. This process is currently being established, together with documents and a system for secure data management of these disputes. As indicated above, this offering is outside the scope of disputes with APRA AMCOS and is additional to the matters prescribed by the ACCC.

Awareness of the scheme

We note APRA's submission to the Review of Code of Conduct for Australian Copyright Collection Societies (the Collection Societies Code Review), which states that APRA has information about Resolution Pathways on the home page of its website, as well as numerous other landing pages directed towards licensees. APRA further submitted that its ADR facility is referred to in every APRA AMCOS licence agreement and in every piece of correspondence emanating from APRA AMCOS' dispute resolution team, and in all its legal correspondence.

However, submissions suggest that there is still a lack of awareness about the availability of Resolution Pathways as an independent mechanism for members and licensees to resolve disputes with APRA.

- 10. Please provide a view on whether the Resolution Pathways scheme is currently being adequately publicised to potential disputants.**

In a world that is information rich this is a difficult question. The scheme is visible to potential users. Most people only consider dispute resolution when it is something that they need.



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The steadily growing number of people making contact with the scheme suggests that it is gaining traction.

Please identify any additional steps that you consider could be taken by either APRA or Resolution Pathways to increase awareness of the scheme.

15

A new website and continued engagement with the stakeholder group should see an organic growth in the awareness of the scheme.

Engagement with APRA

The Independent Review noted that the resolution facilitator has been effective at resolving disputes by acting as an intermediary between APRA and disputants.

11. Please provide details of any instances where APRA has made changes to its operations or arrangements as a direct result of engagement with the resolution facilitator.

Please see Part 5 of Section 1 above.

It is a consistent practice for all matters which are resolved to be reported to the General Counsel of APRA AMCOS and other senior Executives. In this way, trends are noted for training and improvement purposes.

Areas for reform

Please identify any possible changes that you consider could be made to improve the overall effectiveness or efficiency of Resolution Pathways

Resolution Pathways was established as a result of the ACCC authorisation conditions. To establish a system from scratch with governance, reporting, multiple pathways, innovative pilots, a website, succession, and a standing panel of resolvers in 3 years is a major undertaking. There is high satisfaction with outcomes from the program. Resolution Pathways has achieved an ADR industry award and the Mappers involved were runners up for an ADR innovation award. There is a growing number of people seeking to use the service.

We are looking to build state of the art software to augment the reporting. There is an additional part time resource assisting the RF. This is all a testament to the incredible hard work and dedication of each of the volunteers on the stakeholder group, the governance committee, the panel of experts, the peers and those in APRA AMCOS who interface with the program.

The challenge and secret to continuing this momentum and pace of innovation is for all of these stakeholders to remain committed and willing to continue to implement the changes and continue to grow from the learnings generated from Resolution Pathways.

14 May 2019

Shirli Kirschner



GOVERNANCE SUB-COMMITTEE (GSC)

OBJECTIVES

It has been proposed that the Facilitator establish a governance capability, as foreshadowed in the ACCC 6 June 2014 APRA determination, by creating a sub-committee of the Consultative Committee that will address relevant governance aspects of the Consultative Committee's work.

The governance sub-committee will be a sub-group, and meet the criterion outlined by the ACCC, potentially meeting more often than the Consultative Committee.

SUGGESTED WAY FORWARD

The ACCC 6 June 2014 APRA determination ensures that the Facilitator is empowered to establish and maintain sub-committees of the Consultative Committee where the Facilitator considers it appropriate to do so.

Following the Consultative Committee's discussion of this topic on 29 August 2016, it is proposed that the following Consultative Committee members, along with the Facilitator, constitute the GSC:

Artist larger royalty

Artist smaller royalty

Licensee larger

Licensee smaller.

APRA AMCOS observer.



DRAFT TERMS OF REFERENCE FOR THE GOVERNANCE SUB-COMMITTEE (GSC)

1. Purpose

The GSC's primary purpose is to provide support by overseeing and monitoring the dispute resolution system, how decisions are made within the system and how effectively and efficiently the system discharges its function.

13

2. Responsibilities

The GSC's responsibilities are:

2.1 Risk Management

- Ensure there is a common understanding of the key risks within the dispute resolution system.

2.2 Compliance with ACCC Authorisation

- ensure that the ACCC guidelines are met
- Oversee the review of the dispute resolution system's framework and processes.
- Consider the findings of any reviews carried out
- Evaluate the effectiveness of the dispute resolution facilitator
- Monitor budgets and priorities.

3. Membership

- GSC members shall have skills and experience, which may include legal, communications, management, an understanding of the industry as appropriate to the GSC's role and responsibilities.
- The GSC Chair shall be elected from and by the GSC members but cannot be the Facilitator.



4. Meetings

The GSC will meet at least twice per year.

The Chair shall call meetings as required or if requested to do so by any GSC member, the Consultative Committee, the facilitator, APRA-AMCOS or the ACCC.

The GSC may invite other persons to attend meetings and provide information as necessary.

For meeting purposes, a quorum exists if 4 GSC members are present.

For voting purposes, the GSC Chair has a second, casting, vote.

14

5. Consultative Committee Succession

The GSC will, in a structured manner and taking a multi-year view, regularly assess the overall skills, experience, independence and knowledge required to competently discharge Consultative Committee's responsibilities, having regard to the Consultative Committee's roles and objectives, and report the outcome of that assessment to the Consultative Committee.

Having regard to the assessment, the GSC will implement a succession planning process for the identification of suitable candidates for appointment to the Consultative Committee. This process will focus on the short, medium and long term.

The GSC will make recommendations to the Consultative Committee on candidates it considers appropriate for appointment.

6. Ethical Practices, Confidentiality and Independence

GSC members are to:

- exercise objectivity and probity in the discharge of their duties and responsibilities



- act in a proper and prudent manner in the use of information acquired in the course of their duties and responsibilities
- ensure that they do not place themselves in situations which could lead to, or be perceived to, give rise to a conflict of interest
- disclose to the Consultative Committee any matter which could compromise, or be seen to compromise, the performance of their duties on the Committee or give rise to a perception of a conflict of interest.

7. Secretary

The GSC will appoint a person to act as Secretary to the Committee.

8. Performance Evaluation

The GSC will undertake a self-evaluation of its performance each year having regard to the principles and requirements of its terms of reference and the overall objective of the GSC's work.






Facilitator Established Consultative Committee C3.6 (the “Governance and Steering Committee”)



There is a group of stakeholders who provide valuable industry advice and feedback to the Resolution Facilitator. The stakeholder group provides the resolution facilitator with support in design, implementing and managing the Resolution Pathways.

From within this group there are a number of committees. New committees are constituted from time to time when a specific task arises.




There is a **Governance and Steering Committee** which meets the requirements of the ACCC authorisation [section C3.6] which ensures that the system and resolution facilitator are regularly monitored.





Name, Organisation and Location	Governance and Steering Committee Position	Description	Photo
David Cosgrave Queensland	Independent Chair	<p>Previously general counsel at the University of Southern Queensland, David has spent over 25 years helping clients solve disputes and litigation, deal with government regulations and regulators and protect their intellectual property.</p> <p>David brings substantial experience in all stages of state, Commonwealth, and international litigation and disputes.</p> <p>David has a background in both the private and public sectors across a range of industries, including investment banking, private equity, healthcare, education and information and telecommunications.</p>	




Name, Organisation and Location	Governance and Steering Committee Position	Description	Photo
Guy Gross Sydney, NSW	Member whose annual royalty receipts from APRA are over \$3,000.	Guy Gross is a leading Australian film and television composer with credits as diverse as Blinky Bill to The Adventures of Priscilla, Queen of the Desert. He is an APRA Ambassador, recipient of the APRA/AGSC International Achievement Award, past President of the Australian Guild of Screen Composers and founding member of the composer's collective Church Street Studios. More information at www.guygross.com .	 A portrait of Guy Gross, a man with dark hair and glasses, wearing a dark t-shirt, smiling slightly. He is in a room with musical instruments visible in the background.
Ben Chase Perth, WA	Member whose annual royalty receipts from APRA are \$3,000 or less.	Ben is a Perth based sound designer, composer, musician, co-writer, producer and editor. Ben started composing for theatre in 1988, then for advertising and short film. Later he also started doing sound design and mixing to evolve into two main creative areas. Film Sonic for sound design and audio post www.filmsonic.com.au and his work as a composer www.benchase.com.au . Ben has composed and recorded numerous scores, including for drama, animation, short film and commercials. He has produced for up and coming artists, and also collaborated with Paul Woseen from Screaming Jets, Dave McKinney of Flow Dynamics/Rhibosome and renowned drummer Daniel Susnjar.	 A portrait of Ben Chase, a man with a shaved head and a goatee, wearing a patterned shirt. He is looking slightly to the right of the camera against a plain, light-colored wall.




Name, Organisation and Location	Governance and Steering Committee Position	Description	Photo
<p>Joel Perricone, Fitness Australia</p> <p>Adelaide, SA</p>	<p>Licensees whose annual licence fees payable to APRA are over \$3,000</p>	<p>Joel is the National Manager of Partnerships and Advocacy at Fitness Australia Ltd, the National Health and Fitness Industry Association.</p> <p>Joel's positions on various boards including the fitness industry council for Fitness Australia have given him a depth of experience with working on committees.</p>	
<p>Maree Andrews, Yackandandah Health</p> <p>Wodonga, Victoria</p>	<p>Licensees whose annual licence fees payable to APRA are \$3,000 or less</p>	<p>Maree is the Practice Manager at Yackandandah Health Medical Centre and her role has a focus on General Practice Accreditation for the service. Maree has a broad range of experience in practice management in the medical and health industries, including knowledge of customer service, business management, project management and staff education. Maree is also a Registered BAS Agent.</p> <p>Maree has committee experience through her roles with the management committees of Toastmasters Albury Wodonga, Tallangatta Health Service, and the Wodonga Specialist Obstetricians and Gynaecologists.</p>	



dispute resolution committee 2014-
Fair. Independent. Transparent

Name	Description	Photo
<p>Kate Bonnell ABC Sydney</p>	<p>Kate is currently the Senior Royalties Officer at the ABC. Over the past 20 years, she has also worked for the BBC, BMG and Sony BMG.</p> <p>Kate completed a Bachelor of Education and worked in teaching for 5 years. She also received a Bachelor of Commerce, majoring in Accounting and Law. Her experience from her 20 years' in broadcasting, production and music publishing has given Kate extensive knowledge in all aspects of licensing.</p>	
<p>David Cosgrave USQ Queensland</p>	<p>David is the Director of Legal Services at the University of Southern Queensland and is a regular licensee of music for various events and programs.</p> <p>He has a Master's Degree in Intellectual Property and broad experience as a Lawyer and Investment Banker. David co-founded a mobile content business which has recently been listed in Singapore.</p>	
<p>Bill Cullen Sydney</p>	<p>Bill is the founder and Managing Director of One Louder Entertainment, the management home to Sarah Blasko, Paul Kelly, Kate Miller Heidke and Ball Park Music.</p> <p>He is also the Artist Manager Director of the PPCA, and was the founding chairperson of the Association of Artists Managers (AAM). Bill is an APRA ambassador.</p>	



Name	Description	Photo
<p>Delwyn Everard Arts Law (Sydney)</p>	<p>Delwyn is the Deputy Director of the Arts Law Centre of Australia, the national community legal centre for Australia's creative community and manages its legal advice and mediation services.</p> <p>She is a passionate advocate for a society that promotes justice for artists and values their creative contribution.</p> <p>Prior to joining Arts Law in 2007, Delwyn worked as a dispute resolution lawyer in private practice specialising in intellectual property matters.</p>	
<p>Stephen Ferguson AHA- National (Queensland)</p>	<p>Stephen is the National CEO of the Australian Hotels Association. He has extensive experience with boards and committees including work with the Brisbane Racing Club and Racing NSW.</p> <p>Stephen has an Associate Degree in Law and a Master's of Business Administration. His skills range from marketing to experience in dealing with budgets, project management and alternative dispute resolution.</p>	
<p>Brendan Gallagher Sydney</p>	<p>ARIA award winner Brendan Gallagher is a singer, multi-instrumentalist, songwriter, performer, producer, composer and author.</p> <p>In a career spanning over thirty years he has played on recordings for artists from David Bowie to Kylie Minogue and produced records like Jimmy Little's instant classic <i>Messenger</i>. Out front with Karma County he has released six albums, three solo albums, toured the world and is the author of international best seller <i>The Open Tuning Chord Book For Guitar</i> favoured by guitarists from Peter Buck (REM) to Arlo Guthrie. Brendan is an APRA ambassador.</p>	
<p>Guy Gross Sydney</p>	<p>Guy Gross is a leading Australian film and television composer with score credits as diverse as Blinky Bill to The Adventures of Priscilla, Queen of the Desert.</p> <p>He is the President of the Australian Guild of Screen Composers, an APRA Ambassador and recipient of the APRA/AGSC International Achievement Award. More information can be found at www.guygross.com</p>	



Name	Description	Photo
<p>Sarah Nicholson Small business (Victoria)</p>	<p>Sarah is currently the Business Manager of a small fashion manufacturing and retail business, Sa Dot Na Pty Ltd based in Fitzroy, Melbourne.</p> <p>Previously, Sarah worked as a Lawyer at Middletons (now K & L Gates) in their Intellectual Property team. Sarah has been involved in advisory work regarding music licensing requirements for retail and other customer service industries. With a combination of experience in both legal and business fields, Sarah has a broad range of knowledge in reviewing legal matters, business operation and administration.</p>	
<p>Joel Perricone Fitness Australia Adelaide</p>	<p>Joel is the Manager of Business Services at Fitness Australia Ltd, the National Health and Fitness Industry Association.</p> <p>Joel's positions on various boards including the fitness industry standing committee for recreation South Australia and the fitness industry council for Fitness Australia have given him a depth of experience with working on committees.</p>	
<p>John Prior Sydney</p>	<p>John Prior is an independent multi-award-winning composer, producer and multi-instrumentalist (drums, keys, guitar), director of Mammal Music and Unity Gain Studios and current Secretary of the Association of Australian Musicians.</p> <p>Best known for his work with Matt Finish, Adrian Belew (King Crimson), Mick Taylor (The Rolling Stones), Roy Buchanan, Champion Jack Dupree, Iota, Wicked Beat Sound System, Oz Rock Roadshow and Dale Barlow, John has also composed and produced many original themes and soundtracks for theatre, film, television and advertising.</p>	
<p>Evelyn Richardson LPA- National (Victoria)</p>	<p>Evelyn is the Chief Executive of Live Performance Australia, the peak body for the live performance industry.</p> <p>With her experience in the broader entertainment industry, Evelyn represents all sectors of live performance, including a range of music promoters, music festivals, dance companies, symphony orchestras and independent cinemas. Evelyn has extensive project management and Board experience with more than 20 years in government, NPO and private sectors. She has a BA, MA (First Class Hons) and Diploma in Company Directorship (Order of Merit) and is a Graduate Member of the AICD.</p>	



Name	Description	Photo
<p>John Schumann OAM South Australia</p>	<p>South Australian singer---songwriter John Schumann is best known for his leadership of the legendary folk---rock band Redgum, and his Vietnam veterans’ anthem, “<i>I Was Only</i>”. He hastens to add that “19” is not the only song he has ever written</p> <p>As well as his work in the music industry, John is currently deputy chair of the Maxima Group and a graduate of the Australian Institute of Company Directors. He runs his own strategic communications consultancy, Schumann and Associates. Among his many accolades, John Schumann is the recipient of the Order of Australia Medal and a Distinguished Alumni Award from the Flinders University</p>	
<p>Harley Sedman Victoria</p>	<p>Harley is currently Head of General Licensing and Founder/CEO of Media Stream. Media Stream provide unique consumer engagement services, specialising in Brand Sound, In-Store Audio, Background music - system design and installation.</p> <p>Harley has over 10 years’ experience in Film/ Television/ Music/ Brand and Digital Product Development. He has worked as a freelance camera operator, sound recordist and mix engineer. His skills and business acumen relate to digital content access and consumption.</p>	
<p>Kevin Stanton Noosa</p>	<p>Kevin Stanton is the founding member, lead guitarist and composer from the legendary New Zealand band Mi-Sex, with an extensive repertoire of hit singles and albums.</p> <p>Kevin is an acclaimed soundtrack composer and producer and was appointed Head of A&R and Production for Red Bus Recoding Studios UK. He has also served with The Creative Noosa Music & Arts Board and The Indigenous Rights Advocacy Board, taught at the Queensland Conservatorium of Music, Griffith University and numerous TAFE campuses and was involved with developing the National Music Curriculum</p>	



Name	Description	Photo
<p>Stuart Watters Nightlife- National (Queensland)</p>	<p>Stuart has been working in the music industry for 20 years and brings with him a diverse collection of experiences. His previous roles vary broadly from CEO of Australian Independent Record Labels Association (AIR), running the Queensland Music Network (Q Music), serving on the Worldwide Independent Network (WIN) and holding a position on the International Honorary Committee at MIDEM for five years. He is also currently the Director of Licensing & Business Affairs for Nightlife Music, serves on the Q Music Board of Directors and consults to AIR as their Industry Advocacy and Government Relations Spokesperson.</p>	
<p>Shirli Kirschner Sydney</p>	<p>Shirli is the Independent Resolution Facilitator for Resolution pathways</p>	



Resolution Pathways Stakeholder Group 2019



Name, Organisation and Location	Description	Photo
Guy Gross Sydney, NSW	Guy Gross is a leading Australian film and television composer with credits as diverse as Blinky Bill to The Adventures of Priscilla, Queen of the Desert. He is an APRA Ambassador, recipient of the APRA/AGSC International Achievement Award, past President of the Australian Guild of Screen Composers and founding member of the composer's collective Church Street Studios. More information at www.guygross.com .	 A portrait of Guy Gross, a man with dark hair and glasses, wearing a dark t-shirt, smiling. He is in a room with musical instruments in the background.
Joel Perricone Fitness Australia Adelaide, SA	Joel is the National Manager of Partnerships and Advocacy at Fitness Australia Ltd, the National Health and Fitness Industry Association. Joel's positions on various boards including the fitness industry council for Fitness Australia have given him a depth of experience with working on committees.	 A portrait of Joel Perricone, a man with short hair and glasses, wearing a dark suit, light shirt, and dark tie, smiling. He is in an indoor setting with a blurred background.

Name, Organisation and Location	Description	Photo
John Prior Sydney, NSW	<p>John Prior is an independent multi award winning composer, producer and multi-instrumentalist (drums, keys, guitar), director of Mammal Music and Unity Gain Studios and current Secretary of the Association of Australian Musicians.</p> <p>Best known for his work with Matt Finish, Adrian Belew (King Crimson), Mick Taylor (The Rolling Stones), Roy Buchanan, Champion Jack Dupree, Iota, Wicket Beat Sound System, Oz Rock Roadshow and Dale Barlow, John has also composed and produced many original themes and soundtracks for theatre, film, television and advertising.</p>	
David Cosgrave Queensland	<p>Previously general counsel at the University of Southern Queensland, David has spent over 25 years helping clients solve disputes and litigation, deal with government regulations and regulators and protect their intellectual property.</p> <p>David brings substantial experience in all stages of state, Commonwealth, and international litigation and disputes.</p> <p>David has a background in both the private and public sectors across a range of industries, including investment banking, private equity, healthcare, education and information and telecommunications.</p>	

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Stephen Ferguson AHA-National Queensland	Stephen is the National CEO of the Australian Hotels Association. He has extensive experience with boards and committees including work with the Brisbane Racing Club and Racing NSW. Stephen has an Associate Degree in Law and a Master's of business Administration. His skills range from marketing to experience in dealing with budgets, project management and alternative dispute resolution.	
Evelyn Richardson LPA-National Victoria	<p>Evelyn is the Chief Executive of Live Performance Australia, the peak body for the live performance industry. With her experience in the broader entertainment industry, Evelyn represents all sectors of live performance, including a range of music promoters, music festivals, dance companies, symphony orchestras and independent cinemas.</p> <p>Evelyn has extensive project management and Board experience with more than 20 years in government, NPO and private sectors. She has a BA MA (first Class Hons) and Diploma in Company Directorship (Order of Merit) and is a Graduate Member of the AICD.</p>	

Name, Organisation and Location	Description	Photo
<p>Harley Sedman Victoria</p>	<p>Harley is the founder and CEO of POSmusic, a music marketing platform built for business. POSmusic assists brands by finding and leveraging the right mix of music and digital to drive sales and ROI. Harley oversees senior management, business development, product, licensing and operational teams at POSmusic.</p> <p>Harley has been building scaleable business processes specialising in branding, content marketing and music technology over a 13 year period. Prior to founding POSmusic in 2015, Harley was the Head of General Licensing and Founder/CEO of Media Stream.</p> <p>Harley has over 10 years' experience in film/ television/ music/ brand and digital product development, and has also worked as a freelance camera operator, sound recordist and mix engineer.</p>	
<p>Stu Watters Queensland</p>	<p>Stu is the Director of Licensing & Public Affairs at Nightlife Music. Previously, Stu has held a broad range of roles including CEO of AIR, EO of Q Music, has served on the boards of the Worldwide Independent Network and Q Music, curator of Indie-Con Australia, the Industry Advocacy and Government Relations Spokesperson for AIR and also is a sub-committee member of the WIN Performing Rights Committee.</p> <p>Stu runs his own music services and consulting service whose clients (past and present) include Nightlife Music, AIR, Hydric Media, The Seed Fund, Arts Queensland, QPAC, Hunted Media, Brisbane City Council, Mix It Up, Fieldworx, The Gin Club, The Medics, Mountain Goat Brewery and Q Music. Stu is unashamedly parochial about Australian independent music and about independent music globally.</p>	

Name, Organisation and Location	Description	Photo
Xavier Fijac Sydney, NSW	<p>Xavier Fijac is a Sydney based composer/writer and lawyer who has worked in popular music, film and television soundtrack and music, advertising and promotional music and sound design. Most recently Xavier supervised the soundtrack for an Australian feature with a theatrical release (Teenage Kicks 2016). Xavier is also a recording artist and was a member of the Sydney band 'Decoder Ring' from 2004.</p> <p>As a lawyer Xavier has experience in technology contracting and IP litigation, including acting for clients in the music industry. He currently works in technology for the banking and financial services sector.</p> <p>Since 2016 Xavier also been a member of the board of directors at FBi Radio. He has a Graduate Diploma in Sound from AFTRS, a Bachelor of Arts (Media and Communications) and a Juris Doctor (Law) from UNSW.</p>	
Andree Greenwell Sydney, NSW	<p>Andrée Greenwell is a composer and artistic director, working across mainstream and experimental platforms within the Australian performing arts, screen arts, and radio.</p> <p>Andrée's catalogue of around 100 scores includes credits for Australia's leading performing arts organisations including Sydney Theatre Company, Symphony Australia, Australian Dance Theatre, Bell Shakespeare, Belvoir and Queensland Music Festival. As the director of Green Room Music, Andrée regularly brings together unusual combinations of musicians from contemporary classical, popular music, indie and improvisation scenes. Andrée is the 2017 recipient of the Australia Council Music Fellowship to create works in 2018 and 2019.</p> <p>More information can be found at www.andreegreenwell.com.</p>	

Name, Organisation and Location	Description	Photo
<p>Ben Chase Perth, WA</p>	<p>Ben is a Perth based sound designer, composer, musician, co-writer, producer and editor. Ben started composing for theatre in 1988, then for advertising and short film. Later he also started doing sound design and mixing to evolve into two main creative areas. Film Sonic for sound design and audio post www.filmsonic.com.au and his work as a composer www.benchase.com.au.</p> <p>Ben has composed and recorded numerous scores, including for drama, animation, short film and commercials. He has produced for up and coming artists, and also collaborated with Paul Woseen from Screaming Jets, Dave McKinney of Flow Dynamics/Rhibosome and renowned drummer Daniel Susnjar.</p>	
<p>Maree Andrews Yackandandah Health Wodonga, Victoria</p>	<p>Maree is the Practice Manager at Yackandandah Health Medical Centre and her role has a focus on General Practice Accreditation for the service. Maree has a broad range of experience in practice management in the medical and health industries, including knowledge of customer service, business management, project management and staff education. Maree is also a Registered BAS Agent.</p> <p>Maree has committee experience through her roles with the management committees of Toastmasters Albury Wodonga, Tallangatta Health Service, and the Wodonga Specialist Obstetricians and Gynaecologists.</p>	

Name, Organisation and Location	Description	Photo
<p>Paul Greene</p> <p>New South Wales</p>	<p>Paul Greene is a writer and producer based in rural NSW. Paul has a lifetime of experience in all areas of the creative and entertainment music industry. Paul has run his own independent record label since 2000 (Red Shelf Productions / Whirl Records) and also worked as a producer and co-writer for dozens of artists.</p> <p>In 2000 Paul joined the Australian band Ghostwriters with Rick Grossman. In 2001 he released his first solo album <i>The Miles</i>, followed by <i>This Way</i> (2003), <i>Happy Here With You</i> (2004), <i>Reset</i> (2006), <i>Distance Over Time</i> (2008), and then <i>Everywhere Is Home</i> in 2010. This release has seen him move into the role of producer and engineer.</p> <p>Through his events company, Sounds Delicious, Paul runs programs and camps for kids, teaching music, songwriting, recording and performance, he also arranges pop-up dinner shows featuring top level Australian artists.</p> <p>Paul is an APRA Ambassador and has been an APRA PDA awards judge. He has also been a Culburra festival committee organiser.</p>	