



15 February 2019

The Association of Australian Musicians
Australian Independent Musicians Association
APRA Writer Members
Australian Musicians

SUBMISSION TO:

Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131 Canberra ACT 2601
adjudication@acc.gov.au

REGARDING:

Australasian Performing Right Association Ltd
application for revocation of authorisations A91367 – A91375
and substitution of new authorisation A1000433

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1. INTRODUCTION

AM and AIMA members would like to thank ACCC for the opportunity to comment on APRA AMCOS applications for re-authorisation.

AM and AIMA have a combined membership of more than 11,000, including some of Australia's greatest musicians and composers, many of whom are also APRA members.

I am writing this submission with regard to my current roles as Secretary of the Association of Australian Musicians (AM), admin of the Australian Independent Musicians Association (AIMA), and a founding and current member of the APRA Dispute Resolution Committee (DRC) and the APRA Peer Review Development Committee.

I am also a founding member of the band Matt Finish, owner and director of Mammal Music and Unity Gain Studios, and a professional musician, composer and producer for more than 40 years. 380 of my compositions and co-compositions are registered with APRA including hit songs, television themes and underscores, jingles, soundtracks, sound effects, production music, a concerto, rock opera and music for children's theatre. I also currently teach music at a local High School.

[https://en.wikipedia.org/wiki/John_Prior_\(musician\)](https://en.wikipedia.org/wiki/John_Prior_(musician))

2. AM's 2013 SUBMISSION TO ACCC

In 2013 and 2014, AM and AIMA members wrote submissions to ACCC and spoke at hearings regarding renewing APRA's authorisations.

We proposed a number of reforms to achieve a fairer balance between the interests of APRA's 100,000 writer members, mostly independent musicians not signed to major publishers, and the cartel of three US based major publishers that dominate APRA.

Our 2013 recommendations covered voting rules, dispute resolution, peer review, media reporting practices, music recognition technology, local content quotas, and administration costs.

APRA has addressed some concerns, introducing new voting rules and new Resolution Pathways dispute resolution services, and in each instance, they present new challenges for members.

These issues go to the core of APRA's charter, which is to act in the best interests of its members, considering the majority of APRA members are Australian independent musicians.

3. CURRENT REGULATORY CONDITIONS

- A recent article from **Council of Small Business of Australia** regarding APRA's monopoly power with the headline "**A law unto themselves: Shadow regulators must be reviewed**" was recently published in the Sydney Morning Herald and went viral online as it was discussed by thousands of Australian musicians. Many musicians agree with the views expressed in the article, and are concerned how APRA represents the interests of musicians to licensees.

The article says: “We aren’t even sure if APRA AMCOS exists to provide a realistic return on copyright to artists or has evolved into a system that is designed to simply maintain a large organisation.”

“How would APRA AMCOS know what music is played and who to forward payments?” APRA doesn’t collect playlist data from many businesses that license music and only a small percentage of the media, so they don’t obtain the data required to distribute royalties accurately.

“There is a view that only about 50 per cent of the actual members of APRA AMCOS, the musicians and authors, get any royalties.” According to recent information received from APRA, 40,000 members (40% of membership) don’t earn enough royalties to vote in elections, and the majority of members earn less than \$2,500 per year.

https://www.smh.com.au/business/small-business/a-law-unto-themselves-shadow-regulators-must-be-reviewed-20190129-p50ue0.html?fbclid=IwAR3QVgbh81pUvSAT2SJI1kSBVL-qIDNApddl_dZC00bjuMygPJg0_Ng12kM

- In response to the banking Royal Commission, former PM Malcolm Turnbull spoke about **fiduciary duties**, "you've got to put yourself in the shoes of the customer and say is this the right thing for my customer?"

In the same way, APRA AMCOS and PPCA must act in the interests of all stakeholders.

https://www.smh.com.au/business/banking-and-finance/shock-treatment-turnbull-admits-banking-royal-commission-should-have-been-called-earlier-20190205-p50vpk.html?fbclid=IwAR0QqLVqzfl_0J5rC-eStUtHrdgbZLJoH3JOM8-bczOIUOP5jdnOWkKFL_k

- The recent Royal Commission into banking was "about a lot more than banking, superannuation and insurance. Many other industries have been treating their customers or employees badly, and they too will find governments getting tough with wrongdoers. Why the change of heart? Because, in so many cases, the 30-year experiment with deregulation, privatisation and outsourcing is now seen to have ended badly."

https://www.smh.com.au/business/the-economy/never-fear-hayne-is-a-new-start-and-not-just-for-the-banks-20190205-p50vp0.html?fbclid=IwAR05r5U7-CPqu0QsNVDJAIdN4G3WxsXP_Uu6y4cot3ABWf232umtCe1S27M

4. ISSUES REGULATING OUR INDUSTRY

During ACCC hearings regarding APRA re-authorisations in 2014, ACCC, AHA, LPA AM and other stakeholders described APRA as a cartel and a monopoly.

APRA wrote in submissions to ACCC in 2014: “APRA AMCOS readily concedes, the operations of a collecting society, when considered perfunctorily and without reference to the vast regulatory oversight, can give rise to legitimate concerns about **monopolistic arrangements, and cartel conduct and agreements that might include exclusionary provisions or substantially lessen competition**. Owners of performing rights, who might otherwise be competitors, might be seen to be agreeing between themselves, by operating within and through the framework of a collective.”

ACCC's website says: "The ACCC is Australia's competition regulator and national consumer law champion. We promote competition and fair trading and regulate national infrastructure to make markets work for everyone."

Wikipedia states that ACCC is responsible for protecting "consumer rights, business rights and obligations, perform industry regulation and price monitoring and prevent illegal anti-competitive behaviour."

AM believes that this has not occurred with regard to APRA, considering the conditions outlined in this submission, the recent Independent Review of Resolution Pathways, and submissions from other stakeholders.

As discussed in this document, re-authorising a foreign cartel of major publishers to control the monopoly music royalty organisation in Australia has been to the detriment of almost every other stakeholder group, including APRA writer members and every Australian business that licenses music, such as public, community and commercial media, hotels, clubs, bars, festivals, Eisteddfods, gyms, retailers, governments and the general public.

But music is about more than just business, media and politics; it's about everything it is to be human, including health and fitness, relaxation, imagination, inspiration, passion and coordination. Music education raises IQs by an average of 7 points, memory and language skills by an average of 16%, it reduces crime and loneliness, and music offers many other benefits to individuals and communities,

All of these issues must be considered in regulating the music industry.

5. GENERAL DISCUSSION: HOW APRA WORKS / CONSEQUENCES OF RE-AUTHORISING A CARTEL MONOPOLY / ANTI-COMPETITIVE CONDUCT - COLLUSION, PRICE-FIXING, RIGGED ELECTIONS, SELECTIVE MEDIA PLAYLIST REPORTING / why many Australian artists don't earn royalties and can't vote in APRA elections

Most APRA members are Australian independent musicians and composers not signed to the three major global music publishers Sony ATV, Universal Music and Warner Music, or their affiliates.

Community Broadcasting Association of Australia community radio stations consistently play a high portion of Australian independent music.

<https://www.cbaa.org.au/resource/codes-practice-appendix-6-music-policy-example>

<https://www.cbaa.org.au/broadcasters/get-music-your-station-or-program>

Major publishers, labels and distributors and their affiliates consistently dominate the Weekly Aircheck Charts, with no Australian independent artists listed as receiving airplay on commercial radio.

<http://staging.aircheck.net.au/top10Songs/MediabaseChart>

Recent research found that "Commercial radio is not playing enough Australian music", "with Nova in Melbourne playing just 7 per cent Australian music in one week".

<https://www.abc.net.au/news/2018-03-22/commercial-radio-missing-australian-music-quotas-researcher-says/9575146>

APRA advises independent APRA members to seek airplay on community media, and promotes AMRAP Airt, a federal government funded service for supplying Australian music to community media.

<http://apraamcos.com.au/news/2018/june/tips-of-the-trade-promoting-your-music-to-community-radio/>

However, APRA only selects 90 out of 450+ community radio stations to report playlists, for just 4 weeks a year, **which is only about 1.5% playlist reporting.**

Community media stations are generally keen to support Australian artists and report all playlists using existing facilities to ensure all royalties go to the rightful parties.

Australian Digital Alliance Australian Libraries Copyright Committee wrote in their 2013 submission to ACCC: “By virtue of their monopoly in performance-rights licensing, they are able to set license fees without consideration as to what a competitive price may be.”

Controlling APRA licensing fees empowers the major publishers in negotiations with commercial media regarding licensing fees, playlists and local content.

APRA recently increased fees for venues, now calculating capacity instead of the old system calculated on average attendances. APRA members are concerned recent increases threaten the viability of many licensees, especially small live music venues that play a vital role in the careers of many Australian composers and artists.

For example, **Lazybones Lounge** in Marrickville Sydney is a popular music venue that mostly hosts Australian independent artists. Lazybones claims APRA fees for Lazybones almost doubled recently. This is a very large increase considering the venue has a capacity for about 200, but often only has 50 people attending.

<http://lazyboneslounge.com.au/>

According to **Eisteddfod Organisers Australia**, “dance schools and Eisteddfod competitions have had a massive increase in copyright fees which has massively effected our industry. If Eisteddfods close it will effect several other industries also like trophy businesses, venue hire, costumes, private lessons, dance wear, printing and advertising companies, video operators, photographers, food sales, adjudicators, scribes, accommodation and the travel industry will all lose revenue. Smaller regional eisteddfods will be hardest hit. The bigger picture effects many people.”

<https://www.dancelife.com.au/new-music-licensing-fees/>

Members of the **Council of Small Business of Australia claim** that the price increases for music licensing adds increased pressures to many industries, causing some businesses to close and reducing revenue that APRA writer members would otherwise receive.

The Weekly Aircheck Chart shows the 40 most played artists on radio last week, with every song distributed by majors. US based major publishers and labels generally sign Australian artists they think will appeal to US mainstream audiences.

So to gain airplay in the Australian mainstream media, Australian artists have to sound American to appeal to US audiences, and sign away considerable rights to foreign major music publishers.

<https://www.aircheck.net.au/top10Songs/MediabaseChart>

Many Australian singers signed to major publishers and labels work with US writers, producers, studios and other music industry professionals, reducing work for Australian music industry workers.

These market conditions restrict local artists and suppress Australian culture because rather than Australian artists sounding Australian, singing about our experiences and developing our culture, as the Federal Broadcasting Act intended, many Australian artists are compelled to tell US stories, with US accents, genres, production techniques and mainstream marketing ideology.

Considering there isn't much Australian music in the media, and that audiences generally want to hear current radio hits, more Australian artists are performing covers of US artists to work in live music venues rather than performing their own original music, so fewer Australian artists are earning APRA royalties for live performances.

As discussed in the recent article by **Council of Small Business of Australia** regarding royalties from small businesses not reaching Australian artists, royalties for music not reported by community radio also go into APRA's commercial radio pool at the board's discretion, which is then mostly distributed to the majors, because they dominate most music on commercial radio.

APRA's Annual Report 30 June 2018 states: "Distributable revenue received which cannot be allocated to a specific pool, is apportioned to those pools, which in the Board's view most accurately reflect the music performed."

Subsequently, independent APRA writer members generally don't earn enough royalties to vote in APRA elections.

For example, a well-known established Sydney musician wrote to me with evidence that his music had been broadcast many times on community radio stations over the past two years, but he didn't receive any royalties from APRA. APRA explained that because his music wasn't reported, he won't receive a royalty, can't vote, and can't nominate members for director.

But that's just one example. According to APRA, more than 50% of APRA members don't earn royalties, so they are ineligible to vote or nominate directors, and "46,920 APRA writer members were allocated an amount less than \$500 in earnings in the last financial year and therefore only have one vote". Therefore about 87,000 Australian APRA Writer members earn less than \$500.

APRA has said the cost of collecting all playlist data is too high considering amounts collected, while AM believes the cost of disenfranchising 40,000 Australian writer members is much greater.

We make music that people hear and buy. It is our intellectual property and our rights and we rely on ACCC to put in place reasonable and fair safeguards to protect the interests of 100,000 Australian composers.

6. APRA ELECTIONS

APRA's current voting arrangements are not transparent to members. KPMG manages voting and provides information to APRA's company secretary and board confidentially, without notifying members of details.

a. RECENT CHANGES TO APRA VOTING RULES

APRA members previously received one vote if they earned royalties in the preceding 2 years, and an additional vote for every \$500 earned.

<http://apraamcos.com.au/news/2018/december/apra-and-amcos-announce-changes-to-members-voting-entitlements-in-board-elections-and-agms/>

A motion was passed at APRA's AGM In November 2019 to raise the threshold for additional votes from \$500 to \$2,500. Publisher votes overwhelmingly out-numbered writer member votes. The new motion reduces voting rights for thousands of independent writers, with less members entitled to more than one vote.

APRA's selective playlist reporting processes discussed earlier in this document exclude most independent musicians, up-and-coming, and low royalty earners, while the new rules reduce total voting rights for middle royalty earners, especially musicians earning between \$500 and \$2,500, generally more established hard-working independent musicians.

APRA's website advises: "In this sense, the change will have a significant democratising effect." With this in mind, I wrote to APRA before the AGM and asked how many members earned between \$0 and \$500, \$500 and \$2,500, and more than \$2,500; which would have enabled APRA members to make a more informed decision. APRA declined to provide that information,

Considering disparity in voting entitlements, it appears to be a counter-measure to bracket creep targeting independent low and middle-income earners.

b. BOARD DISCRETION

APRA Directors have the power to make many discretionary decisions without any obligation to inform members, or explain their actions. For example, the board has power to veto candidates who win the most votes, and then appoint directors they favour, select different stations for playlist reporting, and divert royalties to various pools.

c. ONE MEMBER ONE VOTE

APRA's current voting rules prevent more than 50% of APRA's 100,000 Australian Writer Members participating in APRA elections.

The current system is unfair because members with the most votes have the power to change the rules to get more votes in a self-perpetuating cycle, which entrenches the offshore cartel oligarchy of major publishers and their affiliates, while the majority of members are independent Australian musicians.

In 2014, ACCC advised AM that reforming APRA would need to occur from within according to corporate law, however we are now convinced that is not possible under the current regime, and that ACCC must intervene to change APRA's unfair voting rules.

'One member one vote' in APRA Elections will allow more APRA Members to vote for APRA Directors and have a say in the future of the Australian music industry. One member one vote is democratic.

AM started a petition calling for one member one vote, which now has more than 1,200 signatures.

<https://www.change.org/p/apra-one-member-one-vote-in-apra-elections>

The Danish collection society is KODA and each member gets one vote. The board consists of 6 writers and 3 publishers. In Denmark the songwriters have three writer associations (DPA, DJBFA & DKF) and one publisher association (MusikForlæggerne). Writers can only vote for writer candidates and publishers can only vote for publisher candidates.

<https://www.koda.dk/music-creators>

RECOMMENDATIONS:

- Collect and process music playlists from all media.
- One vote for each member in APRA elections.
- Abolish the 6 reserved director positions for publishers; the board should represent membership, seats should be won on merit with support from members. The music industry has changed and most writers are independent now.
- Abolish directors' secret discretionary powers. All board decisions must be transparent and reported to members.
- Release all information regarding elections to members as it becomes available.
- Deloitte to independently audit APRA and report to ACCC and APRA members on how APRA is acting and not acting in the interests of members, with regard to the Australian content quota.

7. AUSTRALIAN CONTENT QUOTA

AM and AIMA started The More Aussie Music petition calling for more local content in the media and it now has 12,632 signatures.

<https://www.change.org/p/more-aussie-music-please-sign-the-petition>

In 2014, AM members met staff at APRA seeking support for the petition on behalf of APRA writer members, but APRA's board declined to support it. This sent a clear message to Australian musicians that APRA didn't support the call to restore the local content quota to a minimum of 25%.

At that time, APRA was a member of AMPCOM that claimed to monitor the local content quota. AMPCOM's website also lists CRA, ARIA, AMPAL, MUA and MEAA as members. I have contacted MUA and MEAA and they were unaware of AMPCOM.

On their website, AMPCOM claim to have monitored Australian content. AMPCOM also approved commercial playlists used by APRA and PPCA to calculate royalty payments.

AMPCOM disbanded last year and APRA did not notify members. Australian media is currently not monitored for Australian content.

In fact, AMPCOM oversaw a drastic reduction of Australian content in the commercial media. Subsequently, Australian writers earn fewer royalties.

Considering APRA was a member of AMPCOM negotiating local content and commercial playlists for royalty allocation, in the best interests of it's members, it should have informed members that local content was decreasing, that AMPCOM closed in 2017, and that APRA was no longer involved in monitoring local content.

<http://www.aria.com.au/pages/ampcom.htm>

Independent research recently found that local content has been in decline for many years in the commercial media.

<https://www.abc.net.au/news/2018-03-22/commercial-radio-missing-australian-music-quotas-researcher-says/9575146>

This research puts into serious doubt the accuracy of CRA and AMPCOM playlists that APRA and PPCA used to calculate royalty distributions to Australian APRA writer members.

More recently, after AM's More Aussie Music campaign was covered in the media around Australia, Dean Ormston, now APRA CEO, spoke in support of increasing Australian content; however, he did not support important safeguards in our proposal to counter ways the quota has been circumvented in the past - that the quota should apply to 8 categories, writers, singers, musicians, producers, studios, labels, distributors and publishers.

This reform will ensure the quota supports the intent of the Federal Broadcasting Act, a minimum of 25% Australian music in the Australian media is vital to **"developing and reflecting a sense of Australian identity, character and cultural diversity"**.

This is an important issue for Australian APRA writer members for many obvious reasons. As discussed earlier, major publishers control APRA elections and voting rights, therefore they control setting royalty rates for media, which gives the cartel monopoly the upper hand negotiating playlists with CRA to increase market share for the majors, while minimising Australian content and voting rights for Australian writer members. This is anti-competitive conduct and suppresses our local culture in the mainstream media.

When a minimum of 25% local content quota is met, a minimum of 25% of royalties derived from broadcasting will flow to Australian APRA writer members, which is not presently occurring.

I invite ACCC to read the many comments supporting the petition, it is clear that many Australians have a great love of Australian music, they miss hearing it in the mainstream media, and that they feel the current industry arrangements are unfair to Australians.

8. APRA / SPOTIFY

Streaming has become a popular way for the general public to listen to music and Spotify has become the dominant streaming service.

The majors are shareholders in Spotify and major recipients of streaming royalties. They also have cartel monopoly control of royalty collection, and distribution. This enables Spotify to fix the price paid to composers.

Spotify is not a secure service, software is available to illegally download files from Spotify without any payment to artists.

Spotify has a reputation with musicians for devaluing recorded music, underpaying musicians and composers, dishonouring mechanical royalty payments, promoting major label artists above independents (with promoted playlists and search parameters), and ignoring local content regulations.

At the APRA AGM in 2017, APRA's CEO said that as Spotify became more popular, royalties decreased for Australian APRA writer members and Australian independent publishers as the Australian local content quota did not apply to streaming, and that the majority of music streamed was commercial major label artists from the US and Europe.

Australian musicians believe the local content quota does and should apply to streaming services.

Certainly the general public can't be forced to choose to stream Australian music, but a minimum of 25% of music available on Spotify in Australia should be Australian and 25% of all playlists and promotions should feature Australian artists considering 8 categories, writers, singers, musicians, producers, studios, labels, distributors and publishers to ensure the quota meets the intent of the Federal Broadcasting Act before self-regulation.

Considering the publisher cartel controls APRA and has a stake in the dominant streaming service Spotify, it is in their best interests to dominate streaming playlists to minimise royalty payments to independent artists. APRA encourages APRA members to sign up to Spotify; which benefits the major publishers, but is not in the best interests of Australia's 100,000 APRA writer members.

We anticipate recorded music will continue to be devalued, and that local musicians will continue to generally make a loss composing, recording and releasing material while APRA is controlled by the cartel of major publishers.

APRA members would like to see APRA negotiate rates for music streaming considering the best interests of its members. Members generally want higher rates for streaming.

RECOMMENDATIONS:

- Advise on applying the local content quota to streaming services.
- Review APRA role monitoring the Australian content quota to ensure Australian writer members have received an equitable share of royalties.

- Comprehensive review of APRA to ensure it is acting in the best interests of members.

9. AUSTRALIAN MUSIC LEVY

Australia currently has a public levy on cassette tapes, which is out-dated considering the advent of online piracy and illegal file sharing, which have also had a profoundly negative impact on royalty income for all Australian APRA writer members.

The US, Europe, Canada and other countries have Private Copying Levies on a range of mediums, considered as compensation for illegal file sharing, online and with blank media.

The Australian Federal Broadcasting Act specifies a minimum of 25% content in the Australian media, but since self-regulation of the media, this has not been achieved.

ACCC has the authority to direct reform and APRA has the central resources to administer an Australian Music Levy, considering the imbalance of independent writer member representation within APRA is rectified to ensure payments are distributed equitably.

RECOMMENDATIONS:

- Advise ACMA to abolish industry self-regulation of the Australian content quota. Restore the quota to a minimum 25% considering 8 categories, writers, singers, musicians, producers, studios, labels, distributors and publishers. This will ensure the quota meets the intent of the Federal Broadcasting Act.
- Ensure a minimum 25% of APRA, AMCOS and PPCA royalties reach Australian copyright owners.
- Consider an Australian Music Levy with regard to declining local content quotas, private copying, illegal file sharing, unreliable playlist reporting, cartel monopoly dominance, anti-competitive conduct and the preservation and development of Australian music and culture.
- Distribute proceeds from the levy to APRA and PPCA members.

10. ADMINISTRATION EXPENDITURE

APRA spends more on administration than Australian musicians earn in royalties.

APRA administration costs were more than \$56m last year, \$38m for 380 staff and \$18m in additional costs.

APRA hires KPMG to manage a number of core responsibilities including royalty accounting and managing APRA elections. APRA also sub-contracts legal work, royalty collection and dispute resolution to other third parties.

Apart from top administration executives, most APRA staff aren't actually involved in providing core royalty administration services to members.

It appears the majority of APRA staff are focused on non-core business, managing the organisation's public image and influencing the industry with promotions, awareness campaigns, meet-and-greets, media releases, letters to aggrieved parties, legal disputes, awards, competitions, grants, seminars, Support Act, scholarships and APRA ambassadors,

According to APRA, more than 50,000 APRA writer members earn nothing and therefore don't earn enough to vote in elections for APRA directors.

Also according to APRA, 43,000 APRA writer members earned less than \$500. If average earnings are say \$250, the total would be \$10.75m, although it could be as much as \$21.5m.

Therefore 83,000 Australian APRA writer members earn less than 380 APRA staff.

APRA does not release a detailed breakdown of expenses, although APRA members have a right know exactly what APRA is doing with our royalties.

<http://apraamcos.com.au/about-us/governance-and-policy/annual-reports/>

Members are concerned APRA spends too much on awards, ambassadors, grants, seminars and sponsorship of other organisations; and that it prioritises funding social engineering projects that benefit publishers.

APRA could be more transparent with administration expenditure. A lack of transparency creates endless speculation and animosity towards the organisation from members and the general public.

I have asked APRA staff many questions that are still unanswered. How much does APRA spend on lawyers and litigation? What is APRA's projected budget for dispute resolution? How much does APRA pay KPMG? How much does APRA spend on each grant, scholarship, seminar, awards night, ambassador, Support Act, renovations and office fit-outs? How much do the CEO, company secretary and staff members earn? Considering KPMG and other sub-contractors manage many core responsibilities for APRA, what do APRA's 380 staff actually do? How much do Australian musicians earn collectively each year? How much do Australian independent musicians earn collectively each year, what percentage of revenue?

RECOMMENDATIONS:

- Establish a 15 member Writer Members Committee elected by writer members to review and report all APRA expenditure with a view to reducing non-core expenditure and increase income for Australian musicians. Instruct APRA to cooperate fully with complete transparently regarding all requests for information from the Writer Members Committee.
- Investigate whether former APRA CEO had any conflict of interest granting APRA funds to musicians charity Support Act, considering the annual salary of its CEO was allegedly \$150,000, and that the APRA and Support Act CEOs were married.
- Publish all details regarding loans to APRA administration personnel and directors.
- Publish all APRA salaries. Members have a right to know because we pay for administration costs with royalties earned from our work.

11. ALTERNATIVES TO APRA

Issues regarding APRA raised by stakeholders are typical of corporate cartels and monopolies.

Many musicians have discussed starting a second music royalty collection organisation managed by a board of musicians rather than publishers.

APRA contracts KPMG to manage areas of their business including royalty calculations and elections. Deloitte and other organisations are available to perform similar functions for a new royalty collection organisation representing Australian musicians.

AM executive committee member David Redhill is currently Global CMO, Deloitte Consulting.

A new royalty collection organisation would require support and approval from ACCC and Australian musicians.

With a minimum 25% local content quota, a minimum of 25% of royalties would be paid regularly to Australian musicians. On this basis, an alternative royalty collection organisation representing Australian musicians would be viable from the first day of operation.

RECOMMENDATIONS:

- Review the potential of a new Australian music royalty collection organisation for musicians, with regard to the Australian content quota and subsequent royalty payments to Australian copyright owners.

12. RESOLUTION PATHWAYS

In 2014, acting on submissions from AM and licensees, ACCC instructed APRA to reform dispute resolution options for members and licensees.

ACCC negotiated conditions with licensees and APRA major publishers, while APRA's 100,000 writer members were not a party to negotiations.

ACCC approved APRA's appointment of resolution facilitator and mediator from the company Resolve Advisors to manage APRA's dispute resolution services, who then formed the APRA Dispute Resolution Committee (DRC) and invited me to be a founding member.

The resolution facilitator and APRA's company secretary both previously worked at copyright law firm Allens, which manages Sony's copyright. Members have raised concerns about conflict of interest with regard to their roles at APRA.

APRA's current company secretary was also in-house counsel for Sony and EMI Records before working at APRA. Sony ATV and EMI Music are always represented on APRA's board of directors. Musicians have voiced concerns that this is a further conflict of interest regarding APRA and dispute resolution and discourages members' involvement with the scheme.

The selection committee for the DRC included APRA's CEO, an artist manager and publisher member, and the resolution facilitator.

Writer members were not included in the selection committee, although APRA is based on the works of writer members, the dispute resolution service is primarily for members, and APRA is an association of members.

Musicians are concerned that APRA administration and sub-contractors micro manage disputes, that there are conflicts of interest, and that the new “independent” scheme prolongs outcomes while reducing APRA’s liability.

When the APRA Dispute Resolution Committee was first formed in 2014, the resolution facilitator advised committee members that APRA had not kept any records of complaints. AM and AIMA members believe this requires further investigation by ACCC.

This concerned me personally considering the time and effort I had spent trying to resolve many issues with APRA over the years. I realised that every time I contacted APRA I had to start from the beginning with a new staff member, and that the story and list of complaints were growing each time until it was too much for anyone to understand, overcomplicating and prolonging every possible dispute resolution process that I have experienced with APRA, including mediation and expert determination, and more recently mapping and peer review.

The independent review also recommended that APRA Resolution Pathways could be made available to all musicians, including PPCA members, and that PPCA and other organisations could contribute to the costs of the scheme.

AM and AIMA support the recommendations in the independent review.

16. DISPUTE RESOLUTION COMMITTEE

The DRC is an advisory body only. Committee members don’t review or vote on issues. The resolution facilitator chairs all meetings and makes all decisions regarding Resolution Pathways.

DRC is not an oversight committee, committee members are not privy to details of any disputes, only receiving a “matter list” provided by the resolution facilitator, with a coded summary of cases, for example: “(code reference) of 2018 – Dispute over writer splits. The writer has been difficult to connect with.”

The independent review of Resolution Pathways recommended that a member of the committee should chair meetings, while the resolution facilitator would continue to report to the committee regarding matters. This would go towards musicians’ concerns regarding conflict of interest, lack of transparency, and a fair balance to APRA administration management of processes.

There has been an imbalance of writer members to music licensees on the DRC, with only two writer members in 2017 and 2018. During that time I was often the only writer member on the committee. I wasn’t selected for the sub-committee selecting new writer members.

A balance has now been restored with new writer members on the committee.

It is not relevant or respectful to choose writer members for the DRC according to income brackets as writers earnings can vary greatly year to year due to innumerable factors. Writer members should be chosen for experience with the music industry and dispute resolution, with preference to members representing musicians’ organisations.

13. PEER REVIEW

The Peer Review process was originally designed by members of AM, AIMA, the Media, Entertainment & Arts Alliance (MEAA), Musicians Union of Australia (MUA) to be managed autonomously by elected APRA writer members.

Peer review is a “ground up” approach to dispute resolution that enables independent assessment of matters between writers.

This is a balance to the current “top down” approach where ACCC instructs APRA/publisher lawyers to hire other lawyers to select lawyers and mediators to work with APRA lawyers micro managing independent member disputes behind closed doors protected by confidentiality.

AM, AIMA, AGSC and AFMA proposed peer review to ACCC in 2013 and APRA DRC in 2014. Members of the DMC have consistently supported its development.

There have been many delays introducing Peer Review over the past few years. The resolution facilitator explained it was not a priority because it was not specifically noted in ACCC instructions to APRA. She also said it would never be democratic or autonomous while it was managed by Resolve Advisors due to liability issues. We believe participants signing plain English confidentiality and liability agreements could resolve this.

Writer members support Peer Review as a balance to the overwhelming influence of the corporate machine, including the board, major publishers, administration staff, lawyers and sub-contractors.

Rather than following the letter of the provisions set down by ACCC and sidelining peer review, APRA can hopefully now acknowledge member requests for peer review managed by peers and request ACCC to add conditions regarding peer review as outlined by members.; that peer review is managed and operated exclusively by elected APRA writer members who register as peers, otherwise it isn't a credible peer review system.

14. APRA DATA LOSSES

I am aware of 15 other APRA writer members who claim APRA lost song registrations in the 1980s and 1990s.

Evidence indicates APRA lost song registrations from Matt Finish in the 1980s, possibly when transferring records from paper and microfilm to computers; and that APRA has not kept records of complaints.

15. PEER REVIEW PILOT

When I first proposed peer review to the DRC IN 2014, the resolution facilitator and other on the committee suggested the pilot could be regarding Matt Finish. After many delays, we conducted a pilot Peer Review regarding Matt Finish royalties in January 2018.

I stepped back from developing the process to participate as an applicant for the pilot.

***Review of Matt Finish Peer Review Pilot:** The resolution facilitator said that due to limited resources, a mediator would oversee the process with Resolution Pathways, rather than an elected committee of peers as proposed by AM, AIMA, AFMA, MEAA, GSC and APRA members.*

Also due to limited resources, only 300 APRA Writer Members were invited to apply to be a peer in the pilot, and 30 applied. A comprehensive peer system would ideally require all APRA members to be invited to register as peers.

I am not sure who decided which 300 writers to contact, or how they were contacted. The mediator compiled a shortlist of 6 names and I chose three respected and accomplished Australian songwriters.

After considering evidence supplied by Matt Finish members, the peer review report supported all of the band's claims to authorship and issues regarding APRA.

A year later, we still haven't received any acknowledgement from APRA, haven't received royalties, and there are still outstanding issues regarding the process, which I can't list publicly due to confidentiality agreements.

I am grateful for the opportunity to be involved in the pilot peer review to address my concerns and assess the process, as recommended by the resolution facilitator.

The peer system will have more credibility, flexibility and appeal to members managed exclusively by elected peers, in consultation with the resolution facilitator.

Resolution Pathways has conducted several other 'peer reviews' managed by mediators selected by Resolution Pathways.

The proposed elected peer committee will manage all peer membership, confidential peer data and peer review processes, and provide applicants a short list of peers relevant to each matter as they arise.

This will provide a more confidential, democratic and targeted dispute resolution option to compliment existing options, including mediation, expert determination and mapping, which are currently managed by APRA lawyers, mediators, managers and publishers.

17. RESOLUTION PATHWAYS WEBSITE

The independent reviewer of Resolution Pathways advised: "The Scheme website would benefit from a review that rectifies the above-listed "glitches"; it may also be appropriate to seek stakeholder input to the future design and focus of the website."

<http://www.resolutionpathways.com.au/>

Musicians are largely unaware of Resolution Pathways as the website hasn't been promoted widely to membership, it's not easy to find a link on APRA's website, it's not easily identified as being an APRA service, and the Resolution Pathways website is confusing and out of date.

At the top of the Resolution Pathways website's home page it says "Resolution Pathways / fair. independent. transparent." At the bottom of the home page it says "Walk a mile in another's shoes / Serving APRA AMCOS members and licensees".

A number of musicians have said these claims are misleading considering APRA is a cartel monopoly.

The page for APRA Peer Review is called Peer Assist, which is not the name used by members and sends the wrong message to members. The page data is corrupted and some text appears over the footer, which also sends the wrong message to members about Peer Review, Resolution Pathways and APRA, and reflects poorly on my work negotiating its development with Resolution Pathways and APRA over the past 7 years.

The Peer Assist page says “COMING SOON! This service is due to be finalised and available in December 2015.” This is 4 years out of date and doesn’t inspire members’ confidence in Resolution Pathways, especially musicians in our association who have been awaiting developments. <http://www.resolutionpathways.com.au/Peer-Assist>

On the costs page (<http://www.resolutionpathways.com.au/Costs>), it says “Maximum fee to Music User/Music Creator” and the highest amount is \$150, yet I am aware that Resolution Pathways quoted \$10,000 for mediation to an APRA writer member.

RECOMMENDATIONS:

- Rebrand Resolution Pathways as ‘APRA Resolution Pathways’ and Peer Assist as ‘APRA Peer Review’.
- Redesign the Resolution Pathways website in consultation with the DRC.
- Integrate Resolution Pathways website into APRA’s website, in the same style, with clear links on APRA’s home page and navigation bar on all pages.
- Inform members of APRA’s responsibilities regarding the scheme on the website.
- Expand the scheme to all Australian Musicians.
- AMCOS, PPCA and other organisations contribute to costs.
- The scheme should be free for all musicians to use.
- Pay mediators and peers a pre-determined common flat rate per day.
- Writer committee members to select new writer members and licensee committee members to select new licensee members.
- Writer members of the DRC elect a writer member on the committee as chair, and licensees on the committee elect a licensee on the committee as deputy chair. A musician should be chair because APRA is an association of musicians, musicians are paying for the process from royalties and most disputes relate to musicians.
- The writer and licensee chair and deputy chair co-chair meetings.
- Resolution facilitator to advise the committee regarding the scheme, the committee to discuss and vote on issues, and instruct resolution facilitator regarding all aspects of the dispute resolution system.
- Writer members should select new writer members for the DRC, and licensees on the committee should select new licensees, as positions become available.
- Release all available information relating to Resolution Pathways to DRC committee members so they can make informed decisions regarding the scheme.
- DRC report regularly to ACCC and members regarding dispute resolution.
- Prioritise peer review as originally developed by AM.
- APRA to facilitate a mail-out composed by the current peer review committee inviting members to register as peers, with links to online peer registration form, and for registered peers to vote for a 7-member peer committee to manage the peer review system, considering the best interests of members.
- Peer registration data to be managed confidentially by the peer committee and only made available to peer committee members and the resolution facilitator.
- Resolution facilitator to communicate confidentially with peer committee regarding details of all matters as they arise.

- Investigate allegations that APRA did not keep records of complaints and how this has affected members. Compensate affected members.
- Investigate historic APRA data losses. Invite all APRA writer members to report data losses and compensate affected members.
- Investigate why APRA has not paid members of Matt Finish royalties, and whether APRA has responded to complaints in a fair and reasonable manner.
- Investigate conflicts of interest for APRA board members and staff regarding Matt Finish.

18. CONCLUSION

Serious questions arise regarding APRA's ability to provide core services for members. APRA spends \$98m/year on administration costs, yet it does not collect sufficient playlist data to be able to identify composers to pay royalties. There is concern regarding conflicts of interest for directors and staff members. Members claim APRA has lost song registration data. APRA hasn't kept any records of complaints. When composers don't receive royalties they should have received, they can't vote.

Dominated by a cartel of foreign major publishers, APRA's board makes many discretionary decisions privately that are contrary to the interests of the majority of members, including decisions regarding royalty collection and distribution, voting rights, members services, expenditure and dispute resolution.

It is ACCC's responsibility to regulate APRA as it is a cartel controlled monopoly engaging in anti-competitive conduct and abusing market powers to the detriment of all stakeholders, including 100,000 APRA writer members, mostly independent musicians, Australian independent publishers, the media, tens of thousands of music licensees and the general public.

APRA has a responsibility to members, and is the only existing organisation with the necessary resources, to ensure that a minimum 25% local content quota is upheld.

AM proposes the local content quota in 8 categories, composers, singers, musicians, producers, studios, labels, publishers and distributors.

Subsequently, 25% of APRA AMCOS and PCCA distributions worth more than \$100m each year would flow back to Australian composers, musicians and copyright owners.

Honouring the local content quota will also revive the live music scene and boost inbound tourism, both worth billions of dollars a year to Australian businesses.

Re-authorising the current APRA cartel monopoly will continue to cost Australia billions of dollars and adversely affect our national culture considering the meaning of the Broadcasting Act, **“developing and reflecting a sense of Australian identity, character and cultural diversity.”**

To ensure APRA operates in the best interests of its membership, AM respectfully requests ACCC consider all recommendations in this document together as a comprehensive plan to reform the music industry.

AM recommends fundamental reform as proposed in this document before ACCC re-authorises APRA.

Australian musicians endorse a comprehensive review of APRA by ACCC as recommended by the independent review of Resolution Pathways.

AM's music industry, legal, copyright, management and marketing advisors are available to discuss proposals in this submission with ACCC to achieve better outcomes for all stakeholders.

Thank you for considering our submission.

Yours sincerely,

John Prior, Adrian Keating, Tim Williams, Bob Spencer, David Redhill, Peter Bayliss, Sean Wayland, Tania Smith, Grace Knight, Johnny Kannis, Allison Carpenter, Anita Monk, Martin Glanz, Matt Gaertner, Andrew Barnum, Julie Storer, Peter Prize, Jo Volta, Phil Brommers, Trudy Fielding, Rodney Harris, Mark Gardner, Sandra Sinclair, Trevor Ledgie Sylvester, Mark Tucker, Dave Dempsey, Karen Hinds, Sonyia Walsh, Corinna Jane, John Sheehan, Peter Davey, Ian Chambers, Kevin Hinds, Wayne Hall, Antony Coppens, Peter Kelly, Rob Greaves, Ross Osborn, Rob Ritchie, Byron Hall Daniel Joshua Ross, Mal Ronay, Cal Miller Amanda Kay, Ned Branchi, Calvin J Pelado, Peter McFarlane, Gye Bennetts, Colin Booth, Axelle Dee, Brian Holcz, Andrew Leask, Tim Austin, Hob Raddin, Rellie, John Prior, Murray Robertson, Hed Fogger, Will Clayfield, Alan Johnston, Eddie Brown, Jamie Baily, Ian Nash, John O'Suilleabhain, Moira Partridge, William Turner, Scott Davis, Tony Elwood, Stephen Caskey, Daniel Pearn, Jaydon KV, Maz Salt, Emilio Corso, Charmain Woods, Ian Rodwell, Ian William, David Holloway, Michael Balcombe, Jimmy VanZeno, Dan Nebe, Andrew Ayres, Nathan Young, Bronnie Gordon, Greg Bold, Ian Mason, Ray Bassett, Lennie Edgerton, Gary Hammond, Mal Cook, Crag Ramsay, Wazza Priddis, Desmond Le Bherz, Andrew Harbinson, Shannon Trotman, Tim Dennis, Gav Murray, Douglas Skene, Karl Schenk, Ron Josephs, Mark Tindall, Geoff Horsnell, Casey Rogan, Shane Reynolds, Gee Man, Jo McCann, Andrew McClean, David Hatoon, Lane Saramore, Neil Rankin, Trevor Bartle, Matt Joe Gow.

The Association of Australian Musicians (AM)
Australian Independent Musicians Association (AIMA)