



**Australian  
Competition &  
Consumer  
Commission**

GPO Box 520J  
Melbourne VIC 3001

Level 35 The Tower  
360 Elizabeth Street  
Melbourne VIC 3000

ph (03) 9290 1800  
fax (03) 9663 3699

[www.accc.gov.au](http://www.accc.gov.au)

Our Ref: C2004/763-06  
Contact Officer: Gavin Jones  
Contact Phone: 03 9290 1959

23 September 2005

*sent to attached  
list of 23/9/05.*

Dear

**Re: Australasian Performing Right Association (APRA) applications for authorisation<sup>1</sup>  
- PRE-DECISION CONFERENCE**

The Cinema Operators<sup>2</sup> have requested that the Australian Competition & Consumer Commission (the ACCC) convene a conference in relation to the draft determination issued by the ACCC on 31 August 2005, proposing to grant authorisation to the above listed applications for authorisation.

The draft determination follows applications by APRA for authorisation in respect of it arrangements for the acquisition and licensing of the performing rights in its music repertoire. The ACCC concluded in its draft determination that overall it was satisfied that the public benefit flowing from the proposed arrangements are likely to outweigh any public detriment and proposed to grant authorisation to the applications. A copy of the applications and draft determination can be found on the ACCC's website <[www.accc.gov.au](http://www.accc.gov.au)>.

A pre-determination conference provides a valuable opportunity for applicants and interested parties to make oral submissions to the ACCC about its draft determination.

The ACCC will hold the conference on **13 October 2005**, at:

The Marra Room  
Level 2  
Grace Hotel  
77 York Street, Sydney

---

<sup>1</sup> Authorisation application numbers A90918, A90919, A90921, A90922, A90924, A90925, A90944 & A90945.

<sup>2</sup> Village Cinemas Australia, The Greater Union Organisation, Birch, Carroll & Coyle, Reading Entertainment Australia, Australian Multiplex Cinemas, Hoyts Cinemas, Cinema Operators Association of Australia and Australian Entertainment Industry Association.



The conference will commence at **10am**. ACCC Commissioner Stephen King will chair the conference.

Under the *Trade Practices Act 1974* (TPA), the conference may be attended by the applicant and other interested parties. If you wish to attend, you must notify the ACCC of your intention by **cob Monday 10 October 2005** and briefly indicate why you or your company or organisation has an interest in the matter. Notifications must be in writing and addressed to:

The General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

You can also notify the ACCC by e-mail to: [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au) or by facsimile on 02 6243 1211.

You should provide details of a contact name, telephone number, mailing address and, if possible, a facsimile number or e-mail address so that you can be notified of any late changes to conference arrangements.

If you represent a company or organisation you should also provide a list of attendees and their position titles, and indicate who will be the chief spokesperson.

I would also note that, while conference participants may bring outside legal or other professional advisers to assist them, the TPA prohibits these advisers from participating in conference discussions.

Attached for your information are procedures usually followed at pre-decision conferences.

In its letter of 31 August 2005, advising of its draft decision in respect of APRA's applications for authorisation, the ACCC requested that any written submissions in response to its draft determination be lodged by 30 September 2005. In light of the request for a pre-decision conference in relation to the draft determination the period for written submission to be lodged has been extended by one week, until **7 October 2005**.

A copy of this letter has been placed on the ACCC's public register. If you require any further information in regard to the conference or wish to clarify whether you may be considered an 'interested person' within the terms of the TPA, please do not hesitate to contact me on 03 9290 1959.

Yours sincerely



Gavin Jones  
Director  
Adjudication Branch

**AN OUTLINE OF THE PROCEDURES**  
**USUALLY FOLLOWED AT PRE-DETERMINATION CONFERENCES**

The Australian Competition and Consumer Commission (the ACCC) tries to conduct such conferences as informally, flexibly and speedily as possible. Where necessary a conference may be adjourned and reconvened at a later time.

An interested party attending a conference may have the assistance of outside legal or other professional advisers. Although such persons may attend the conference to assist; they are not entitled to participate in the discussion.

The conference will serve a useful purpose in that it gives the ACCC and all interested parties the opportunity to meet face-to-face to discuss the operation and effect of the applicant's conduct and the ACCC's draft determination. The applicant and/or interested persons has/have the opportunity to persuade the ACCC to accept their view. The ACCC benefits from direct contact with the parties, and its perceptions of public benefit and competition are tested in a forum of interested parties where points are often quickly and forcefully made.

**1. Preliminary procedures**

- (a) When you arrive at the conference you will find that a seating plan may be available. You should identify yourself to the ACCC staff before the conference begins and indicate clearly if you expect messages to be left for you during the conference. Further, please complete the attendance book when arriving at the conference. This assists ACCC staff to identify attendees for the purpose of recording the discussion.
- (b) The Chair (a Commissioner) will open the conference by welcoming those present and outlining the requirements of the Trade Practices Act and the manner in which the conference will be conducted. An agenda may be circulated.
- (c) If you intend to present a written comment (and you are encouraged to do so), it is helpful if the ACCC receives it before the conference date. It can then be copied and distributed at the conference. In this way, both the ACCC and other parties present are assisted, and your submission also forms part of the conference record. If you cannot complete the written submission earlier, it is helpful if you come to the conference with extra copies which can be distributed.
- (d) If you intend to present a submission at the conference and you wish it (or certain details in it) to remain confidential, you should make your confidentiality request to the Chair at the time of presenting the document, and you should state in general terms the reason for your request. The Chair may request other parties present to leave the conference for a short period, so that you may be given the opportunity, if necessary to expand on your reasons.

If your request for the document (or parts of it) to remain confidential is denied you may ask for the document (or parts of it) to be returned to you. Any material returned to you will ordinarily not be taken into consideration by the ACCC in making its final decision (unless, of course, it was supplied from another source).

Any document you present without making any request for confidentiality will be placed on the ACCC's public register, and the information it contains may be used by the ACCC in making its decision. Where confidentiality is granted, the confidential information may also be taken into account, although such material will not be placed on the public register.

## **2. General procedures**

- (a) The conference has been convened to discuss the draft determination, to canvass points of view and to assist the ACCC's weighing of issues and its interpretation of the information given to it.
- (b) The procedure is discretionary. The Chair controls the order of discussion, and may take particular topics separately, so that all the discussion, on any given topic may be heard at the one time.
- (c) The conference is not a court, and there is no right of cross-examination. You may request the Chair to ask questions of other parties present, but the Chair retains the discretion as to whether your questions will be put. The Chair, of course, may also directly question the parties at the conference, and they have discretion whether or not to answer.
- (d) ACCC staff present will make a record of the discussion. This will be in minute form, not a verbatim record. The conference record is placed on the public register, and all who attend the conference will receive a copy.
- (e) When the Chair believes that all present have been given a reasonable opportunity to express their views, he/she may terminate the conference.
- (f) The Chair (and any other Commissioner at the conference) cannot give a final decision at the close of the conference. Each Commissioner is only a representative of the ACCC and is required to report back to the ACCC, which will make the final decision.

## **3. Other matters**

- (a) Following the pre-determination conference, the ACCC will review its draft determination in the light of discussion and further submissions made at the conference (or within a set period of time after the conference), and will publish its final determination as soon as possible thereafter.
-

	<b>Name</b>	<b>End</b>	<b>Salutation</b>	<b>Address</b>
1	Ms Robyn Ayres Executive Director	sincerely	Ms Ayres	Arts Law Centre of Australia The Gunnery, 43-51 Cowper Wharf Road Woolloomooloo NSW 2011
2	Ms Helen Daniels Assistant Secretary – Copyright Law Branch	sincerely	Ms Daniels	Attorney-General's Department Central Office Robert Garran Offices National Circuit BARTON ACT 2600
3	Mr Stephen Collins General Counsel Head, ABC Legal Services	sincerely	Mr Collins	Australian Broadcasting Corporation GPO Box 9994 SYDNEY NSW 2001
4	Mr Peter Kell Chief Executive Officer	sincerely	Mr Kell	Australian Consumers Association 57 Carrington Road MARRICKVILLE NSW 2204
5	Mr Bill Healey Director – National Affairs	sincerely	Mr Healey	Australian Hotels Association PO Box 4286 Manuka ACT 2603
6	Mr Stephen Peach Chief Executive Officer	sincerely	Mr Peach	Australian Record Industry Association Ltd PO Box Q20 QVB Post Office NSW 1230
7	Mr Geoff Thorn Director	sincerely	Mr Thorn	Business Competition Branch New Zealand Commerce Commission PO Box 105-222 Auckland New Zealand
8	Mr Moses Kakaire Manager – Legal & Regulatory	sincerely	Mr Kakaire	Commercial Radio Australia Level 5 88 Foveaux Street Surry Hills NSW 2010
9	Ms Julie Flynn Chief Executive Officer	sincerely	Ms Flynn	Free TV Australia 44 Avenue Road MOSMAN NSW 2088
10	The General Manager	faithfully	Sir/Madam	Competition and Consumer Policy Division Department of Treasury Langton Crescent PARKES ACT 2600
11	Ms Helen Williams AO Secretary	sincerely	Ms Williams	Department of Communications, Information Technology & the Arts GPO Box 2154 Canberra ACT 2601
12	Ms Raena Lea-Shannon	sincerely	Ms Lea-Shannon	Michael Frankel & Co Solicitors

	Solicitor			268 Devonshire St SURRY HILLS NSW 2010
13	Ms Margaret Brown Partner	sincerely	Ms Brown	Minter Ellison PO Box 7844 Waterfront Place QLD 4001
14	Dr Richard Letts Executive Director	sincerely	Dr Letts	Music Council of Australia PO Box 287 Double Bay NSW 2028
15	Ms Gillian Clyde Corporate Counsel	sincerely	Ms Clyde	Screenrights PO Box 1248 Neutral Bay NSW 2089
16	Mr Lyn Maddock Acting Chair	sincerely	Ms Maddock	Australian Broadcasting Authority Level 15, Darling Park 201 Sussex Street, Sydney NSW 2000
17	The General Manager	faithfully	Sir/Madam	Australian Guild of Screen Composers 247 Oxford St Paddington NSW 2021
18	Managing Director	faithfully	Sir/Madam	Australian Music Association Inc 45 Glenferrie Road Malvern VIC 3144
19	Managing Director	faithfully	Sir/Madam	Australian Music Publishers Association Ltd Locked Bag 3456 St Leonards NSW 2065
20	The General Manager	faithfully	Sir/Madam	Australian Music Retailers Association MBE 148/45 Glenferrie Rd Malvern VIC 3144
21	Mr Stan Moore CEO	sincerely	Mr Moore	Australian Retailers Association Level 11, 45 Market Street Sydney NSW 2000
22	The General Manager	faithfully	Sir/Madam	Australian Screen Sound Guild Suite 360, 3 Holtermann Street, Crows Nest NSW 2065
23	The General Manager	faithfully	Sir/Madam	Australian Subscription Television and Radio Association Wharf 8 Pyrmont NSW 2009
24	Mr David Costello Chief Executive Officers	sincerely	Mr Costello	Clubs NSW Level 1 499 Kent St Sydney NSW 2000
25	Managing Director	faithfully	Sir/Madam	Clubs Victoria Lvl 1/ 17 -21 Argyle Pl

				Sth Carlton VIC 3053
26	Mr Neil Pentecost President	sincerely	Mr Pentecost	COAA Secretariat PO Box 5009 Nowra DC NSW 2541
27	Managing Director	faithfully	Sir/Madam	Community Broadcasting Association of Australia POBox 564 Alexandria NSW 1435
28	The General Manager	faithfully	Sir/Madam	Copyright Agency Limited Level 19, 157 Liverpool Street Sydney NSW 2000
29	Mr Mike Potter Chief Executive Officer	sincerely	Mr Potter	Council of Small Business Organisations of Australia PO Box E445 Kingston Act 2604
30	Managing Director	faithfully	Sir/Madam	Country Music Association 21 Russell St Watsons Bay NSW 2030
31	Ms Anne Wilde General Counsel	sincerely	Ms Wilde	David Jones 86-108 Castlereagh Street Sydney NSW 2000
32	The General Manager	faithfully	Sir/Madam	EMI Music Publishing Australia Pty Ltd 1 Gurrigal St Mosman NSW 2088
33	The General Manager	faithfully	Sir/Madam	Federation of Australian Radio Broadcasters Level 5, 88 Foveaux St Surry Hills NSW 2010
34	Ms Libby Blakey	sincerely	Ms Blakey	Festival Mushroom Records PO Box 16 Pyrmont NSW 2009
35	Ms Carol Harrison Solicitor	sincerely	Ms Harrison	Coles Myer Ltd PO Box 41 Nth Geelong VIC 3215
36	Mr Stephen Peach Chief Executive Officer	sincerely	Mr Peach	Phonographic Performance Company of Australia Ltd Box Q20 QVB PO Sydney NSW 1230
37	Mr Con Castrisos President	sincerely	Mr Castrisos	Restaurant and Catering Australia Suite 32 401 Pacific Highway Artarmon NSW 2064
38	Mr Milton Cockburn Executive Director	sincerely	Mr Cockburn	Shopping Centre Council of Australia Property Council of Australia House Level 1, 11 Barrack Street

				Sydney NSW 2000
39	The General Manager	faithfully	Sir/Madam	Songseekers International Lvl 1/ 47 Murray St Pymont NSW 2009
40	Mr Robert Childs President	sincerely	Mr Childs	Songwriters, Composers and Lyricists Association PO Box 228 Kensington Park SA 5068
41	The General Manager	faithfully	Sir/Madam	The Australian Music Association BE 148/45 Glenferrie Road Malvern VIC 3144
42	The General Manager	faithfully	Sir/Madam	The Australian Music Centre PO Box N690 Grosvenor Place, NSW 1220
43	The General Manager	faithfully	Sir/Madam	The Australian Society of Authors PO Box 1566 Strawberry Hills NSW 2012
44	Professor Brian Fitzgerald	sincerely	Professor Fitzgerald	QUT Law School 2 George Street Brisbane QLD 4000