

**Australasian Performing Right Association Ltd Application For Revocation Of  
Authorisations A91187 - A91194 & A91211 And Substitution Of New Authorisations  
A91367 - A91375**

**PROPOSAL TO ACCC  
6 AUGUST 2013**

APRA has responded to the interested party submissions, and for the most part believes that this is not the appropriate forum for ventilating the issues raised. However, in relation to some matters, APRA believes that the most appropriate course would be for it to make some alterations to its operations, which might remove some of the problems apparently encountered by licensees in particular.

APRA is in the process of making significant changes to its website, including to develop online membership and licensing facilities, which means that this is an appropriate time to consider many of the proposals below.

**EXCLUDED FROM  
PUBLIC REGISTER**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**2. Communications**

As noted above, APRA is undergoing a major review of its website, including for the purpose of enabling online payment, online licence applications and online assessment. The new website is currently scheduled to be finished by the end of 2013, although it is not anticipated that online licence applications and payment will be enabled by that date.

*Proposal 2*

APRA proposes that the new website at its launch date will include prominent links from the home page and the licensee and membership likely entry points to information about ADR and complaints (see below), opt out and licence back (see below), and expenses to revenue ratios and benchmarking information. APRA will also take immediate steps to make links to that material more easily located, within the confines of its existing website.

**3. Transparency of licensing alternatives**

The complaint is made that APRA is not sufficiently transparent about the licence schemes available to licensees.

APRA is already in the process of developing standard and simplified licence terms across most licence schemes, to reduce the amount of paperwork provided to licensees with more than one licence. APRA is also in the process of developing online licensing solutions that will make the licensing process more streamlined.

### *Proposal 3*

APRA proposes that it make all general performance licence schemes publicly available on its website at its launch date, so that all potential music users can see what options are available. This may assist with music use choices – for example, a venue proprietor will be able to see that featured recorded music is less expensive than recorded music for dance use. APRA will also take immediate steps to publish existing public performance licence schemes within the confines of its existing website.

### *Proposal 4*

APRA also proposes to develop plain English guides to each general performance licence scheme, also to be published on the APRA website at its launch date. The guides will be published in a format that encourages side-by-side comparison of the licence schemes available, and the types of uses covered. The guides will include practical examples of licence fee calculation, showing, for example, the different calculation of licence fees for a venue where recorded music for dancing is played in a discrete area on two nights of operation and featured recorded music on other nights.

APRA will also take immediate steps to publish these guidelines as they are developed, within the confines of its existing website. APRA expects that all the guidelines will be developed by 31 October 2013.

## **4. Opt out and licence back information**

APRA believes that industry associations and major licensees are well aware of the opportunities afforded by opt out and licence back, contrary to many of the interested party submissions. APRA already publishes information regarding opt out and licence back on its website, under ‘Members – Managing Your Own Rights.’

### *Proposal 5*

APRA proposes to make further plain English information about members’ ability to opt out and obtain licences back, on the main licensee page of its new website at its launch date. The information will include examples of typical opt out or licence back situations, such as live music performances and music on hold, and explain what impact the opt out or licence back would be likely to have on the member and the licensee. APRA will also take immediate steps to make the existing information more obviously available to licensees, within the confines of the existing website, and will supplement the existing information as described above by 31 October 2013.

## **5. Licence negotiation**

APRA always negotiates with industry bodies and major licensees before changing licence schemes. However, APRA notes the perception expressed in some of the interested party submissions that APRA does not negotiate with licensees.

### *Proposal 6*

APRA proposes to make available on its website, at its launch date, a negotiation protocol that it will follow for all licence scheme tariff increases, based on the MOU it has already offered to enter into with the AHA (attached). The protocol will require APRA to notify licensee and potential licensee bodies of the ADR facilities available. APRA will also make the protocol immediately available on the existing website, subject to the website’s existing limitations.

## 6. ADR

It is plain from the third party submissions that many licensees regard the available dispute resolution mechanisms to be inadequate, including because the expert determination facility is considered to be too elaborate and expensive for relatively small disputes, notwithstanding the fact that APRA pays for the costs of the expert and the venue.

APRA has spent considerable time in the course of reviewing the third party submissions, considering alternative dispute resolution models. For example, APRA has investigated the procedures under the NSW Consumer, Trader & Tenancy Tribunal (**NSW CTTT**) and similar *fora* put forward by the ACCC as a desirable forum for the resolution of consumer disputes (at <http://www.accc.gov.au/consumers/complaints-problems/make-a-consumer-complaint>). APRA notes that the NSW CTTT operates in a manner not dissimilar to APRA's expert determination facility – the NSW CTTT, for example, requires parties to submit outlines of dispute and evidence. The NSW CTTT also has filing and other fees, unlike the Copyright Tribunal and unlike APRA's existing expert determination facility.

APRA does not know why more disputes are not referred to determination, or to the Copyright Tribunal, other than to make the arguments it has made previously – that, broadly, APRA's licensees are generally satisfied with APRA's licences.

However, APRA is aware that this is an area of concern for the ACCC.

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### *Proposal 8*

APRA proposes to engage a third party expert in dispute resolution to advise APRA in the design of a bespoke ADR system, taking into account the need to manage member complaints under the Code, relatively small licensee complaints, and major industry disputes. APRA will request a system that incorporates a 'small claims' tier of resolution for licensee disputes over factual matters and matters, and will ask the expert to advise APRA in relation to the appropriate licence fee level or other criteria having regard to APRA's operations. APRA will ask that the new system also incorporate timelines for the resolution of disputes, particularly so that small disputes can be resolved quickly and with minimum administrative burden to all parties. APRA will ask the expert to advise in relation to the implementation of a system that is as independent of APRA as reasonably possible. APRA expects that a design will be able to be prepared before 31 October 2013, with a view to implementation by 1 January 2014. APRA will offer the new ADR options to existing disputants.