

## APRA'S RESPONSE TO AHA SUBMISISON DATED 21 AUGUST 2013

APRA makes this submission in response to the misleading and inflammatory submission by the national body of the Australian Hotels Association (**AHA**) dated 21 August 2013. APRA is disappointed that the AHA has chosen this forum to ventilate previously unexpressed concerns about APRA, particularly when it has an open dialogue with APRA regarding licence schemes and other aspects of the complementary businesses of AHA members and APRA members. The written submissions made to the ACCC by the AHA bodies are so at odds with APRA's actual experience of dealing with the AHA that APRA can only conclude that the agenda of the AHA in making these submissions goes well beyond the terms of APRA's authorisation.

For a period of more than ten years, APRA has worked closely with the AHA, including the national body and its state branches, in an effort to make APRA's licensing systems accessible to and more easily understood by AHA members, and to ensure an open dialogue between APRA and the AHA. APRA is able to provide a schedule of meetings held between senior APRA staff members and AHA representatives that will show an intense level of consultation and interaction between APRA and the AHA. Examples of APRA's work with the AHA include:

- In 2012, APRA and the AHA Victorian branch worked closely together on the Victorian Government's Live Music Roundtable established to address liquor licensing issues affecting live music.
- In 2011, the AHA NSW branch described APRA as "one of the music industry's most respected bodies" in its discussion of APRA's promotion of the Pub Song Competition.
- The AHA Victorian branch has published a fact sheet for its members that says, among other things:

*Both APRA and PPCA are based on a self assessment review of your venue. We encourage you speak with AHA (Vic) staff to assist you in determining the correct licences you require for your venue. This will ensure you meet your copyright obligations without having to pay unreasonable fees for doing so.*

- In March 2008, APRA invited hotels, clubs, restaurants and catering businesses to complete a Live Music Survey to help identify the issues that prevent them from presenting live music and to identify the real benefits of live music. Following on from that survey, APRA launched a national campaign, The Live Music (R)evolution, in direct support of live music venues in dealing with state-based regulatory issues. The campaign formed the basis for ongoing lobbying of state and federal governments to raise awareness of the issues inhibiting the live music industry and to develop and implement strategies to support the growth and viability of venues that host live music.
- In 2011, APRA commissioned Ernst & Young to prepare a report on the *Economic Contribution of the venue-based live music industry in Australia*. APRA consulted with the AHA, Clubs NSW and the Restaurant & Catering Association in preparing a survey to go out to all venues presenting live music and the survey was promoted through the industry associations. In the context of this initiative, the AHA's National CEO, Des Crowe (the author of the AHA's recent submission to which APRA objects), made the following comments to the AHA ALP Friends of Tourism event, held at Parliament House in Canberra, 22 March 2011:

*Over the last few years our industry has battled with state based regulation that has made the presentation of live music extremely difficult. In those battles we've found an ally in APRA and developed a strong collaborative relationship. In*

*recent years APRA and the AHA have successfully lobbied state governments on reducing barriers to live music performance, specifically; the NSW government in relation to draconian planning regulation; the SA QLD and ACT governments in relation to noise regulation and first occupancy legislation; and most recently the Vic government in relation to regulation surrounding security requirements.*

- In 2013 APRA, together with other industry stakeholders including the AHA, commissioned Ernst & Young to undertake a business study in relation to the feasibility of tax offsets for venues presenting live music. The AHA endorsed a survey relating to proposed tax offsets to be sent to all AHA members by APRA, with the inclusion of the AHA logo. The AHA agreed to follow up the survey with its members.
- APRA has lobbied the Federal Government to establish the National Live Music Office, established in July 2013. The key goals of the Office include a) review and amendment of regulation that impacts venues presenting live music, b) venue education in relation to live music presentation opportunities and, c) audience development.
- APRA and the AHA NSW are current members of the City of Sydney Live Music Taskforce and have had several side meetings to investigate the opportunity of co-producing a Live Music Week in Sydney.
- APRA has sponsored the AHA award for best entertainment venue at its National Awards and State Awards since 1999.
- APRA estimates that in excess of 80% of its licensees are AHA members, a group that APRA believes to be broadly satisfied with the service that APRA offers.

In this context of a close working relationship, the attacks on APRA made by the AHA as part of APRA's authorisation process must be regarded with scepticism.

The AHA's persistence in alleging, here in paragraph 4 of the AHA submission, that APRA has an "inequitable advantage" over users in respect of litigation is absurd. On the occasions that APRA has taken licence schemes to the Copyright Tribunal for approval or variation, the opposing party has always been an industry body or a group of powerful licensees. That is, proceedings regarding licence schemes are by their nature conducted on an industry level. APRA has never had a contested hearing in the Copyright Tribunal involving the AHA. The most recent Copyright Tribunal proceedings in which the AHA was involved were against PPCA, and the AHA engaged a national law firm and senior expert intellectual property counsel. The Tribunal was constituted by the Honourable Justice Emmett of the Federal Court of Australia, Professor Dennis Pearce of the Australian National University, and Dr Rhonda Smith (currently of the University of Melbourne, formerly a Commissioner with the ACCC). That the AHA was dissatisfied with the determination of the Tribunal is not a valid basis for mounting a sustained attack on the Tribunal as a rate setting forum, nor on collecting societies in general.

The allegation that APRA has a "systemic coercive and bullying culture" made in paragraph 5 is without foundation, and is defamatory of APRA licensing staff. APRA rejects the allegation utterly. There is absolutely no evidence of such a culture at APRA, and baseless allegations of this kind can only irreparably damage the relationship between the AHA and APRA. If there were any such culture at APRA, it would have been uncovered by the annual review of APRA's conduct under the Code of Conduct Review. The Code Reviewer investigates each complaint disclosed by APRA as well as complaints made directly to him. Complaints can be made directly to the Code Reviewer on condition of anonymity.

The allegation, in paragraph 14 of the AHA submissions, that APRA does not negotiate licence schemes with industry is nonsense. Contrary to the AHA's submission in paragraph 2, the AHA did not receive information relating to APRA's licence schemes as part of an AHA "investigation" into APRA's licences generally. In February 2013, APRA contacted the AHA national body to discuss a proposed simplification of APRA's hospitality licence schemes. Separately in February 2013, APRA contacted the AHA Victorian Branch, and discussed APRA's intention to simplify tariffs with the General Manager. He said he would supply APRA with some preliminary data on how the AHA Victorian office assesses its members for the purpose of paying membership fees. APRA did not receive this information. APRA then met and corresponded with the AHA national body on a number of occasions in March and April 2013 to discuss the proposal, including APRA's willingness to consult in connection with its tariff simplification process. APRA also indicated its support for a variation to the AHA's own collective bargaining authorisation subject to all State branches being around the negotiation table. It was in this context (contrary to the suggestion in paragraph 3 of the AHA submission) that on 17 May 2013, APRA provided to the AHA national body a comprehensive document outlining all relevant tariffs and their origins, together with a draft MOU setting out APRA's proposal for the consultation process. Following its provision of this information, APRA's CEO, Head of Corporate Services and Director of Licensing travelled to Canberra on 25 June to present to the AHA's National Board Meeting.

The AHA complains, in paragraph 12 of the AHA submissions, that APRA notifies industry bodies of "unilateral decisions" rather than negotiating licence schemes. Leaving aside the fact that the AHA has repeatedly told APRA that it is not itself in a position to negotiate licence schemes, the allegation is unfounded. The history of the dealings between APRA and various AHA bodies clearly demonstrates that APRA does take the views expressed by the AHA (and other industry bodies) into account. The current background music scheme was negotiated with the AHA and others, and was withdrawn from the Tribunal on the basis of an agreement between the parties. The current nightclub licence fee is based on attendance rather than capacity, because of the views expressed by licensees and their representatives. It is ridiculous to suggest that APRA would approach a negotiation without a view as to a preferred outcome, but there is absolutely no evidence of APRA's intransigence in relation to those outcomes.

With regard to the demands made by the AHA in relation to industry consultation in paragraphs 10 and 15 of the AHA submission, APRA is committed to stakeholder engagement, and proposes to continue to negotiate with all AHA branches and with national branch (to the extent it is permitted to engage in such negotiation).