



**Australian
Competition &
Consumer
Commission**

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Dear Sir/Madam

Australasian Performing Right Association Ltd application for revocation of authorisations A91187-A91194 & A91211 and substitution of new authorisations A91367-A91375 - draft determination

The Australian Competition and Consumer Commission (the ACCC) has issued a draft determination in respect of the application for re-authorisation (application for revocation and substitution) lodged by the Australasian Performing Right Association Ltd (APRA) on 30 April 2013.

Please see the ACCC's publication [Authorisation process - the basics](#) for a summary of the authorisation process and how to make a submission to the ACCC.

The application for re-authorisation relates to APRA's standard arrangements for the acquisition and licensing of the performing rights in its music repertoire.

Draft determination

A copy of the ACCC's draft determination and summary of its reasons is attached.

For the reasons set out in its draft determination, the ACCC proposes to grant re-authorisation subject to conditions for three years.

In summary, the proposed conditions:

- continue to require any independent expert appointed to determine a dispute to provide a written report to APRA stating whether APRA offered the user a licence that reflects any direct dealing, where relevant (C1)
- continue to require APRA to provide the ACCC with a report on an annual basis about disputes notified to APRA under its alternative dispute resolution process, including a version for publication by the ACCC (C2)
- require APRA to publish, within 6 months of the ACCC's final determination, as a single document, a comprehensive plain English guide that outlines all of the licence categories individually and includes other specified information (C3)
- require APRA, within 3 months of the ACCC's final determination, to take certain steps to increase awareness of the licence back and opt out provisions provided

by APRA, including publishing a plain English guide and launching an education campaign (C4)

- require APRA to implement a revised ADR scheme (C5). The ACCC invites interested parties to comment on the proposed features of that scheme before the ACCC finalises the wording of this proposed condition.

Interim authorisation

The ACCC is also considering granting interim authorisation for APRA's arrangements. Relevantly, APRA's existing authorisation expires on 31 October 2013. Interim authorisation would apply to APRA's existing arrangements and would be subject to the conditions of authorisation C1 and C2 imposed by the ACCC in 2010.

Interim authorisation protects the arrangements for which authorisation is sought from legal action under the relevant provisions of the *Competition and Consumer Act 2010* while the ACCC considers and evaluates the merits of the application.

The ACCC decides whether to grant interim authorisation on a case by case basis. The ACCC will usually consider a range of factors, including:

- harm to the applicant and other parties if interim is or is not granted
- possible benefit and detriment to the public
- the urgency of the matter and
- whether the market would be able to return to substantially its pre-interim state if the ACCC should later deny authorisation.

Next steps

Once the ACCC issues a draft determination, the Applicant or any interested party may make a written submission and/or request that the ACCC convene a 'pre-decision conference'.

If you wish to make a submission in response to the ACCC's draft determination, please lodge your submission by **4 November 2013**.

A pre-decision conference provides the opportunity for interested parties to make oral submissions in relation to the draft determination. Conferences are conducted informally and while legal or professional advisers are able to attend they are not entitled to participate in the discussion.

In the event a pre-decision conference is requested, it will likely be held on **Friday 8 November 2013**. Video conferencing facilities will be available in most of the ACCC's offices.

If you wish the ACCC to hold a pre-decision conference in relation to the draft determination you must notify the ACCC in writing by **29 October 2013**.

If you wish to make a submission in relation to the proposed interim authorisation, please lodge your submission by **22 October 2013**.

The ACCC will consider any submissions it receives, including any oral submissions made should a pre-decision conference be called, and will then release a final determination in relation to these applications. The ACCC will also release a separate decision in relation to interim authorisation.

Submissions will be placed on the ACCC's public register subject to any request for exclusion. Please see the ACCC's publication [Guidelines for excluding information from the public register](#).

Timetable

The ACCC will continue to progress its assessment of the application in a timely manner. An updated indicative timetable is set out below for your information.

Indicative date	Stage in assessment process
30 April 2013	Lodgement of application and supporting submission.
3 May 2013	Public consultation process begins.
15 October 2013	Draft determination.
October/November 2013	Public consultation on draft determination including any conference if called.
October 2013	ACCC decision regarding interim authorisation.
November/December 2013	Final determination.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter please do not hesitate to contact Tess Macrae on (03) 9290 1835.

Yours sincerely



Dr Richard Chadwick
General Manager
Adjudication Branch