



# AUSTRALIAN HOTELS ASSOCIATION

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9 December 2013

Dr Richard Chadwick,  
General Manager,  
Adjudication Branch ACCC,  
GPO Box 3131  
Canberra ACT 2601

Dear Dr Chadwick,

## **ACCC Authorisation for APRA**

We refer to the invitation by ACCC to make further submissions on the authorisation.

We refer to the minutes of the Pre-Decision Conference of the 8 November 2013 and note the summary of the AHA submission. We attach a more detailed submission which the writer spoke to at the conference.

We note the consultation being conducted by APRA through their consultant Resolve Advisors. We understand that there will be an opportunity to comment about those findings at another pre hearing conference to be convened by the ACCC.

We do raise the issue of the costs of the ADR matter as the consideration for this should be made in the context of the authorisation process and not just as another ADR matter. In this regard the exemption authorisation granted by the ACCC to APRA should

- require the cost of the ADR administration, facilitation, mediation and adjudication to be met by APRA;
- include a modest filing fee;
- provide that the costs of parties should be at the cost of each party except in the case of vexatious proceedings;
- provide that APRA should bear the reasonable cost of travel and accommodation of the other party where the forum is not near the place of business of the other party.

We can elaborate more on these matters during the next ACCC Pre-Decision Conference.

Yours sincerely

Des Crowe  
National Chief Executive Officer

## **Introduction**

The ACCC generally summarised the AHA submissions to the APRA authorisation application on measures to deal with the allegation of APRA's misleading or deceptive conduct of APRA with respect to contractual negotiations as follows:

1. Require Licence application forms disclosing tariff options, the basis for determining the applicable tariffs, the ability to negotiate terms. The clause relating to audit, playlists and reconciliation to be removed.
2. Address alleged coercive and bullying behaviour by requiring a staff manual to be approved by the ACCC, requiring staff training and introducing a small claims process (less than \$20k) and a fairer Alternative Dispute Resolution process (greater than \$20k).
3. The ACCC setting guidelines on setting tariffs.
4. Allow licence assessment procedures to be performed by agents.
5. APRA to publish its repertoire of works and distribution revenues.

The three year proposed authorisation addressed our submissions by imposing conditions on APRA to prepare plain English guides and to vary the Alternate Dispute Resolution Procedures.

### **Condition C3: Transparency of Licence Fees.**

The Draft Authorisation required that within 6 months of the ACCC's final determination, APRA must publish, as a single document a comprehensive plain English guide that outlines all of the licence categories individually. It contains further conditions including providing information on types of licences, basis on which fees are determined, range of fees payable, overview and definition of licence categories, example of common licences, guidance on what is negotiable, contact details for APRA assistance and disputes.

Given the devil is in the detail the AHA has objected to this proposed condition being a condition subsequent to the authorisation. The guidelines should be provided to the satisfaction of ACCC prior to the final authorisation.

In addition to the guide the licence application itself needs to be in Plain English.

The AHA requires prior to authorisation APRA supplying to ACCC satisfaction:

- Plain English licence application form
- Guide: Background Music Hospitality
- Guide: Recorded Music for Dance Use
- Guide: Featured Recorded Music
- Guide: Live Performances
- Guide: Restaurant

### **ACCC Guidelines Setting Tariffs**

The AHA requests that the ACCC release their guidelines to the Copyright Tribunal on setting tariffs prior to APRA being authorised. These guidelines could assist the AHA in discussions with APRA in the Hospitality Tariff Review.

The AHA would also query the transparency of discussions between APRA and other industry associations given many of these other associations, if not all, do not have an authorisation for collective bargaining. Given APRA will be negotiating with many parties over licensing then the ACCC should give some guidance to parties as to what collective negotiation or consultation is permitted.

### **Repertoire and Distribution Revenues**

As per the original submission by the AHA the authorisation should include the requirement that APRA publish its repertoire and distribution revenue.