



## AUSTRALIAN HOTELS ASSOCIATION (VICTORIA)

ABN 79 948 978 376

3 June 2013

The General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601  
Email: [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)

Dear Sir/Madam

Thank you for the opportunity to provide comment in relation to the application by the Australian Performing Rights Association (APRA) for revocation, substitution and re-authorisation. The Australian Hotels Association (Victoria) (AHA (Vic)) represents 990 licensed hotel businesses in Victoria, almost all of which hold at least one music copyright licenced issues by APRA.

Whilst we understand and appreciate the rights of the parties that APRA represents we are concerned regarding some behaviours by APRA in pursuing those interests as evidenced by the examples below.

The AHA (Vic) has read and supports the submissions provided by the Queensland Hotels Association (QHA) and the Australian Hotels Association National Office (AHA National).

We provide the following additional comments to bring to the Commission's attention some examples of APRA's interaction with our members in Victoria. The following is a selection of case studies detailing the conduct of APRA in dealing with specific members of the AHA (Vic) in recent times:

### **Hotel 1 – Hotel with a party night, one night per week**

This multi-functional, suburban hotel with a family focus was approached by APRA in 2012 claiming the hotel was being operated as a nightclub every Wednesday night and demanded additional music licensing fees of over \$5,000 per year. The owner did not accept the characterisation of the venue as a 'nightclub'. The hotel features a party DJ operating from the bistro section one night per week, with furniture pushed to the side. The event acts as a meeting place for young people in the area.

AHA (Vic) argued on behalf of the hotel, and highlighted to APRA that the nightclub tariff was intended to cover established nightclubs with dance floors and those that levy a cover charge on entry. It was an exhaustive and stressful experience for the hotel's owners, who eventually settled with APRA for a licence based on lower attendance numbers.

### **Hotel 2 – Small suburban hotel, sports bar and bistro**

In this case, a first time hotel operator complained to the AHA (Vic) about the cost of licensing for the venue's ten television screens, which amounted to nearly \$4,000 per year in screen tariffs. Upon

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inspection by AHA VIC staff, it became obvious the hotel was paying for far too many screens, as only a couple were ever synchronised to sound and most were displaying vision only. Under the terms of APRA's licence structure, TVs without sound are considered display panels and are not subject to any APRA licence fee. This is an example of the lack of explanation on any of APRA's literature regarding how a screen tariff is applied, which leads to small, unsophisticated operators wrongly believing they are liable for licensing fees.

### **Hotel 3 – Small suburban hotel (bistro and bar operation)**

This hotel is a multi-purpose venue with three distinct and separate areas. The owner has installed sound ceiling to minimise the impact of music from one bar area to another. One of the main marketing points for this hotel is the ability to get away from the dancing zone to a more relaxed and quiet area. Despite this, APRA insisted on classifying the entire venue as a nightclub whenever there was entertainment available in the dancing zone. APRA insisted the attendance figures on which the tariff is based reflected the capacity of the entire venue, rather than the room in which the entertainment was being provided. This stance by APRA contradicts its definition of 'nightclub' in its own licence terms, which provides for dedicated nightclub areas within a larger venue to be assessed separately.

This hotel was visited by APRA on at least ten occasions over a four-month period, and a dispute between the hotel owner and APRA continued for many months. The hotel owner paid \$5,000 to APRA up front in a show of good faith as negotiations continued, but APRA threatened legal action and their onerous dispute resolution process until both parties agreed on reduced attendance numbers that were far below what APRA were demanding, but from the hotel's perspective far above what should have been payable.

### **Hotel 4 – General licence nightclub**

This venue operates as a genuine nightclub but holds a general liquor licence. A key element of its attractiveness to patrons is its outdoor beer garden capable of holding up to 200 people. It is a popular late night venue, as people can enter without having to listen to music for dancing. It is clear that many patrons attend the venue to enjoy the more relaxed and quiet atmosphere in the beer garden rather than the indoor nightclub areas. In a similar outcome to what occurred with Hotel 3, Hotel 4's owners paid almost \$12,000 upfront to APRA while negotiating on the licence definitions, only for APRA to threaten legal action and their dispute resolution process. As with Hotel 3, the parties eventually agreed on an arrangement where Hotel 4 paid a licence fee based on attendance numbers below APRA's original demand, but still far above what the owner believed was reasonable.

### **Hotel 5 – Suburban food and bar pub**

This hotel is part of a small chain of similar venues. A new venue manager had inadvertently ticked boxes on the blank APRA reassessment sheet. He had only been at the venue a short time, and did not understand the correct classification of the DJ that operated in the venue (which was a foreground and not nightclub manner) instead simply 'ticking boxes'.

APRA responded with an assessment demanding increased tariffs. Although APRA in this case relented and accepted the form had been incorrectly completed, the experience of Hotel 5 highlights concerns with APRA's licensee engagement processes.

Over the course of the past few years there have been a number of questionable practices observed that have been detrimental to the commercial interests of AHA (Vic) members. Some of these observations are listed below as well as further thoughts.

- APRA's preference to send out details on only those tariffs to their advantage rather than the full range of options available to the hotelier. This has the effect of APRA representing higher tariffs rather than canvassing cheaper tariff option.
- APRA varying the declaration of a member's tariff to apply an assessment in another tariff. Information provided by hotelier for tariffs in Featured Recorded Music yet an invoice is sent for "Recorded Music for Dance Use in Nightclubs".
- There are re-occurring disputes relating to the application of the "Recorded Music for Dance Use in Nightclubs". In recent years APRA has commenced classifying many pubs as nightclubs.
- APRA has targeted hotels with mixed uses and areas where one of those areas includes a space which "Recorded Music for Dance" is applicable.
- Disputes regularly arise. APRA staff do not assist users with the initial complaint process. The initial response from APRA is usually a letter of demand.
- APRA employees will often use telephone marketing techniques to persuade users to complete tariff forms in a manner that is advantageous to APRA. These telephone calls are persistent and have a coercive effect on members.
- There are examples of APRA seeking to collect several classes of tariffs for the one event when only one tariff is applicable.
- The standard licence agreement includes a provision that the user must provide APRA with a list of all music performed or reproduced at the venue in the form and for the period specified by APRA. In most cases this is a most difficult demand to meet.

If further information is needed in relation to the Victorian examples provided submission, please contact AHA (Vic) General Manager – Operations and Membership, Mike Barouche, at

For information of a more general nature please refer to the AHA National submission and the AHA National CEO, Des Crowe, at [crowe@aha.org.au](mailto:crowe@aha.org.au).

Yours sincerely,



Brian Kearney  
Chief Executive Officer