

1. In general I think the process outlined by Resolve Advisers is unnecessarily complex. There is no need to engage a 'resolution facilitator'. It is of concern (ACCC email) that submissions from licencees say that the ADR process of APRA is not accessible to them.

2. Licensing disputes are one type of commercial dispute handled routinely by the Victorian Small Business Commissioner since 2003, and by NSW, SA and WA Commissioners in the past 2-3 years. There is no reason why APRA licencees in these States should not use the mediation services of the Commissioners to attempt to resolve the dispute.

3. I agree it is desirable for the parties to attempt to resolve their dispute directly. (Step 1). However, I would argue that if the matter is not resolved, either party may lodge a dispute application with the relevant Small Business Commissioner in the jurisdiction of the licencee.

Both parties agree to participate in mediation as part of the licensing agreement. The Commissioner appoints a relevant, independent mediator.

For licencees in jurisdictions without a Commissioner:

- a) if the licensor is registered in a jurisdiction with a Commissioner, use that Commissioner;
- b) if the licensor and licencee are both in jurisdictions without a Commissioner, follow point 3 but with the mediator appointed by an independent body specified in the licence agreement (eg Law Institute, IAMA, etc. )

4. Mediation costs to be borne 50-50 by the parties, in accordance with the Small Business Commissioner fees applicable, or those of the otherwise appointed mediator.

5. If the dispute is not resolved at mediation, I would suggest two possible processes:

- a) either party may progress the matter to the relevant Court / Tribunal; or
- b) the parties may agree to the appointment of an expert to make a binding decision. If unable to agree, option a) holds.

The expert should be appointed by an independent body - for example, by the President of the Law Institute in the State of the licencee.

I would not waste time with a non-binding expert option.

In response to the questions asked by Ms. Kirchner:

1) No. Refer above.

2) No. Refer above.

3) 50-50 for mediation, and expert appointment (if that option is chosen).

Each party bears its own costs if litigation proceeds. The licensing agreement must not allow for the licensor to attribute its legal costs of any dispute raised by the licensee to the licensee.

4) Step 1 of 20 days to try to resolve directly is reasonable, although this requires the dispute to be clearly articulated and lodged with the respondent to start the process. Mediation via SBCs would be subject to SBC processes, but parties should agree to mediate as soon as practicable.

There should be a time frame (20 days) after failed mediation for parties to agree to appointment of an expert (if that option exists) - otherwise litigation may proceed.