

Pfitzner, Laura

From: Graham Hardie <Graham@entent.com.au>
Sent: Monday, 17 March 2014 1:37 AM
To: Adjudication
Cc: Macrae, Tess
Subject: Fwd: A91367-A91375 - Australasian Performing Rights Association - Submission

Categories: Submission

> Dear Sir/ Madam

> Further to your email of 4th March 2014 we wish to make a submission on the proposed appointment of Ms Kirschner on behalf of our five operating venues listed below.

> We do not consider that the appointment of Ms Kirschner is appropriate for the following reasons:

> 1. Ms Kirschner has been nominated by APRA which follows the engagement and remuneration of Ms Kirschner by APRA for her services in conducting seminars with stakeholders in each state - this immediately compromises her independence now and ongoing.

> 2. If as has been foreshadowed following precedents set with other review officers, Ms Kirschner is to have her ongoing costs directly paid for by APRA this inevitably creates an untenable situation of ongoing compromise.

3. At the seminar in Perth conducted at the offices of APRA, which I attended, it was very evident that Ms Kirschner had been strictly briefed by APRA that certain areas of dispute and concern to licensees were to be expressly excluded from the discussions. These limitations imposed by Ms Kirschner made the discussions on dispute resolution ineffectual with several licensees leaving in frustration when it became obvious that principal and very important areas of concern to all licensees were specifically not on the agenda following instructions within her brief from APRA.

4. The inability of licensees to discuss at that meeting with Ms Kirschner all areas of dispute and therefore presumably those areas would also not be part of any future ongoing role if she is engaged as APRA's choice of Dispute Resolution Officer totally compromises her independence and reduces the faith of licensees to approach her on important matters of dispute.

Due to the monopoly position of APRA and its virtual unlimited financial resources (as reflected by its annually net income being in the hundreds of millions of dollars) it is absolutely imperative that to provide individual licensees with their very limited financial resources fairness and confidence in bringing forward disputes that the Dispute Resolution Officer is totally independent of APRA.

This could be achieved by the relevant Government body choosing and making its own appointment of a totally independent Dispute Resolution Officer whose only responsibility is to that Government body. Payment for the services of the appointed Dispute Resolution Officer would be made by the Government body which would in turn receive the necessary funding by way of a levy on the Collecting Society. This does not alter the cost to the Collecting Society but would ensure independence and remove the conflict of interest and compromise that would inevitably and unavoidably follow the situation where the Collecting Society had its nominee of Dispute Resolution Officer selected and that person's ongoing services paid for by APRA.

The above is not meant in any way to reflect on the integrity of Ms Kirschner personally. However licensees deserve that the person appointed to the position is totally independent and not compromised by having previously been instructed by and received remuneration from APRA especially if it is also proposed that their nominated person will receive ongoing remuneration from the Collecting Society.

Yours Faithfully

Graham Hardie

Representing Explorer Cruise lines Pty Ltd t/as Paramount Nightclub

CHB Charters Pty Ltd t/as Library Nightclub

Loganbay Pty Ltd t/as Tiger Lil's Tavern

Empire Bar Pty Ltd t/as the Empire Hotel and
Penzance Pty Ltd t/as the Varga lounge Tavern

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> Sent from my iPad