

**17 March 2014**

**By E-Mail: [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)**

The General Manager  
Adjudication Branch  
Australian Competition & Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

Dear General Manager

**Australasian Performing Right Association Ltd Application for Revocation and Substitution  
A91367-A91375  
LPA Submission to the ACCC Review of APRA's Alternative Dispute Resolution System**

Thank you for the opportunity to provide comment on the proposed Alternative Dispute Resolution (ADR) system for APRA and its licensees.

**About LPA**

This submission is made by Live Performance Australia (**LPA**), the peak body for Australia's live performance industry. Established in 1917 and registered as an employers' organisation under the *Fair Work Act 2009* (Cth), LPA has over 390 members nationally. We represent producers, venues, music promoters, performing arts companies, festivals and industry suppliers such as ticketing companies and technical suppliers.

LPA's Members are APRA licence holders for the public performance of musical works under a number of licence categories including the following:

- Festivals (Licence Code: GCLF);
- Concert Promoters (Licence Code: GCLB);
- Featured Music Events (Licence Code: GCFM);
- Live Performance (Licence Code: GCLN and GLA);
- Recorded Music for Dance Use (Licence Code: GFN);
- Special Purpose Licence Scheme (Featured Music) (Licence Code: GCSF);
- Works in Dramatic Context (Licence Code: GCDC); and
- Casual Public Performances (Licence Code: GNP).

## Submission

We provide our comments on each of the matters of interest identified by the ACCC below. We have focused on those points which we are of most significance to our Members.

### **1. Does the revised ADR system address any concerns you may have with the existing ADR system?**

1.1 LPA believes Resolve Advisors' revised independent ADR system adequately addresses our previous concerns with APRA's highly internalised dispute resolution model. In particular, we support the overarching values of the ADR system being *'fair, independent, and transparent'*.

### **2. Resolve Advisors proposes that options be made available in the ADR system (i.e. direct negotiation, assisted negotiation in the form of mediation, as well as both binding and non-binding expert processes). Are you supportive of these three options?**

2.1 LPA supports the options proposed, and believes they are appropriate for the nature of small disputes that the licensees we represent may experience.

2.2 We suggest that the options for progressing through the ADR system be made clearer in the suite of ADR documents developed by Resolve Advisors. For example, it would be beneficial to definitively clarify if a period of negotiation is required before expert determination, or if this is simply an option that can be bypassed if parties believe that mediation or expert determination is their ideal option, due to reasons such as time constraints or the nature of the dispute.

2.3 LPA suggests that the ACCC should clarify if APRA will have the right under the new ADR scheme to refer disputes to more costly options at any time. Condition 5 of the ACCC Draft Determination currently states that one of the features to be included in the revised ADR process is "a right for the complainant to refer a dispute/complaint to tier 2 or tier 3 at any time" (Section 1.C; p.63). However, the Draft Determination does not clarify if APRA will have this same right. If APRA were granted this right, it may act as a disincentive for licensees to utilise the ADR process due to the risk that the dispute could be escalated to a more costly tier by APRA.

### **3. Resolve Advisors has proposed that applicants pay a filing fee when they bring a matter to ADR and that the parties in dispute share the hourly rate for the mediator/independent expert. Is this fee structure appropriate? Who should be responsible for determining the cost to each party?**

3.1 LPA has no objections to Resolve Advisors' proposed fee structure in principle and believe it is appropriate and reasonable for small disputes.

3.2 We particularly support the option as outlined in the dispute resolution process that for expert determination both parties can agree to defer to the chosen expert to decide how costs will be apportioned to the parties of the dispute.

3.3 Further clarification should be provided as to the operation of the fee structure, as we found some details in the suite of ADR documents to be confusing.

3.3.1 It is stated that the filing fee can be waived at the discretion of the dispute facilitator or agreement of both parties for disputes in which the quantity in contention is less than \$3000, however it is not clear under what circumstances this might occur. LPA believe it would be helpful if examples were provided of situations in which the dispute facilitator or both parties might agree to wave the filing fee.

3.3.2 LPA suggests that a list of all relevant fees for all parties be put together in a table format, so as to ensure licensees understand in detail the options available in the revised ADR process and their corresponding fees.

**4. *Resolve Advisors proposes that there be a pool of mediators and independent experts available to resolve disputes (see Resolve Advisors' 'Summary of recommendations'). Do you think there should be involvement of interested parties in the initial selection of the panel of mediators and independent experts and if so what form should this involvement take?***

4.1 LPA submits that interested stakeholders should be invited to suggest names of mediators and independent experts, and have the opportunity to provide comment on the proposed panel before their selection is finalised.

**5. *How should the independence of the dispute facilitator and the independent experts and mediators appointed to the pool be assured?***

5.1 LPA submits the following recommendations:

5.1.1 The Dispute Facilitator's funding should be budgeted in such a way that it ensures transparency and is not subject to cuts by APRA.

5.1.2 Both parties to a dispute should have the opportunity to provide an equal number of preferences for the independent expert or mediator appointed to their dispute.

5.1.3 The Dispute Facilitator and independent experts should provide regular and relevant reports to both stakeholders and the ACCC.

5.1.4 The ACCC should monitor and report on the compliance of the revised ADR process annually.

**6. *What mechanism, if any, should be put in place for addressing any concerns about the way in which the dispute facilitator is managing the dispute resolution process once it is up and running?***

6.1 LPA submits the following recommendations:

6.1.1 The complainant should have the right not to use APRA's appointed Dispute Facilitator if they so choose.

6.1.2 The appointed Dispute Facilitator should abide by a Code of Ethics or Code of Conduct approved by the ACCC.

6.1.3 LPA suggests that the role of Dispute Facilitator should be clarified in the suite of ADR documents by developing a list of all the tasks and duties required of the role.

**7. Resolve Advisors has recommended that any binding decisions be published (without including the confidential information of the parties) (see Resolve Advisors' 'Summary of recommendations'). Do you support this proposal?**

7.1 LPA supports this proposal, and believes it is essential not only to ensure transparency but also as a precedent guide for others considering utilising the ADR process.

**8. Resolve Advisors has recommended that there be reporting on the ADR system. What types of information about the ADR system should be reported to the market and how (for example, the number of matters that were considered under each option, the time taken and the outcome)? Who should compile the reports (e.g. an independent marketing firm)?**

8.1 LPA would be interested in receiving feedback from licensees on how satisfactory and effective they believe the ADR process to be. We also suggest useful annual data to report on would be the nature of disputes referred to ADR, the size of disputes, and the outcomes of disputes with binding expert determination.

8.2 LPA submits that a research and evaluation company would be most appropriate to compile these reports.

**9. The ACCC would be interested in other views you may have on the proposed ADR system and the final form of condition C5.**

9.1 LPA has no objection to the appointment of Resolve Advisors as the Dispute Facilitators for the revised ADR process, on the condition that their independence can be guaranteed.

9.2 LPA submits that the revised ADR scheme should be a suitable avenue for licensees to seek refunds, and that independent experts should have the authority to determine refunds owed by APRA by binding determination.

9.3 LPA believes that a preference for face-to-face mediation can be recommended by the Dispute Facilitator or mediator; however, this may not always be a viable option for the parties involved. Therefore, the complainant should have the right to take part in the ADR process in person, or via telephone or videoconference if they so choose.

9.4 LPA has no objection to the deadline of June 2014 for the implementation of the ADR process as proposed by APRA in their letter to the ACCC dated 28 February 2014.

Thank you for inviting us to make a submission on this important re-authorisation for our industry.

Yours sincerely



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