



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

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For the attention of the General Manager:

Dear Dr Chadwick,

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In light of the tariff simplification process, which has come as a result of the requirement for 'Plain English' guides, Nightlife can see that — pending the release of pricing metrics — there would be far less need for dispute resolution between APRA and licensees as a result of these changes.

The previous issues we raised with C5 related to the independence of its administration, and we stated that: "the more independent this process is, the more effective it will become for licensees with disputes, and APRA respectively."

While we stand by this statement, and believe an independent system is the way forward, a few important questions must be asked of the current proposal in the context of the questions raised by interested parties and the ACCC, most importantly:

How will this proposal make it easier to access a fair, independent, transparent and cost effective resolution for all parties, in comparison to the previous system?

There will no doubt be concerns about how independence is defined once disputes arise, and getting this system right now will save many potential issues with the process in the future. With competition comes choice, and it is very hard to comment on the proposed scheme and facilitation without any form of comparison. What must be ensured is that all parties feel a sense of ownership for this scheme to be effective.

Further to this, we are concerned about how specialised qualified dispute resolvers will be well equipped enough to understand the licensing environment without input from industry specialists. Even with a simplification of tariffs, there is an incredible amount of information and knowledge required to be able to understand this framework, and yet another skillset to impart this knowledge on small business owners. If there is no requirement for dispute resolvers to investigate beyond what is presented to them, especially in regard to binding decisions, small business owners may be simply whitewashed. Acknowledging that dispute resolvers must hold specific qualifications does not negate their ability to engage industry experts who will have a far more informed approach to licensing issues, allowing the "resolver" to benefit from, but remain independent of industry specialists. Our question relating to this is: How will independent industry specialists be engaged to inform the proposed ADR scheme?



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In terms of costs, a filing fee would make certain that many are committed to the process, although it would also likely deter many from progressing with their dispute if it is perceived as the start of an expensive process. As has been described in several submissions, it would be irresponsible to raise any issues through ADR without external legal representation, and most small businesses do not have the collective negotiating power to compete either financially or in specialist accumulated knowledge in this forum. The proposed fee structure for ADR by Resolve Advisors would appear to create a further barrier for small businesses compared to the previous scheme, when many might expect that as a condition of authorisation these costs would be borne by the organisation that seeks legal protection. If the co-contribution is not removed, there would be benefit in reducing the co-payment of licensees and licensors to allow more equity in the process for smaller businesses that would be left with no other recourse as a result of these changes. Many of these smaller businesses may not even be aware of these proposed changes, and are unlikely to be active participants in the authorisation process.

There is no question that having as few disputes as possible is the most preferable roadmap for all, but this must be managed in a way that does not reduce any sense of competition. As with many other industries, and foreseeing a limited amount of disputes based on APRA's tariff simplification, we would suggest that APRA continue to cover the costs of ADR, while a filing fee is introduced to ensure licensees are genuine in their efforts to find a solution.

A number of parties put forward their willingness to provide Alternative Dispute Resolution services, such as the NSW and VIC Small Business Commissioners, but it is unclear if any of their proposals could be a viable alternative. It is also unclear if they would be eligible to facilitate the proposal designed by Resolve Advisors, or any modified version, to allow further independence and economic competitiveness. It goes without saying that user choice should be considered as a factor in the ACCC determining its position with regard to this matter, and to that end we would ask what APRA's position is with respect to this?

What may also provide useful, and would be common place in any business proposal such as Resolve Advisors', is access to some form of Key Performance Indicators (KPI's) in relation to the overall process. Suitable KPI's would offer all parties the opportunity to assess the effectiveness of any scheme implemented across a standardised format that is easy to assess. Does the ACCC intend to seek the implementation of reportable KPI's under condition C5?

As far as creating public reports on disputes, it would aid both licensees and APRA if all interactions were recorded and made available publically on at least an annual basis, if not quarterly. This should include any initial disputes, as contrary to Resolve Advisor's position; there would be no harm in simply disclaiming that they are initial cases and keeping the whole process transparent.

While Nightlife is not in a position to offer a detailed response to all the questions raised by the ACCC, we hope that this overview is of help in further consultations and discussions.

Yours sincerely,

Mark Brownlee
Managing Director | Nightlife Music