



Ref: A91367-A91375  
Australasian Performing Rights Association Ltd  
2<sup>nd</sup> Further Submission to ACCC  
Prepared by Stephen Ferguson  
National CEO, Australian Hotels Association  
[ceo@aha.org.au](mailto:ceo@aha.org.au)  
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## **Introduction**

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AHA is pleased to advise the ACCC that since the hearing on 21 March, APRA and AHA have worked together to try and reach agreement in those areas not yet agreed. AHA would like to record its thanks to APRA for the good will and transparency it has shown to AHA in trying to resolve the issues. Whilst agreement was reached in some areas, some areas remained outstanding.

## **How decisions should be made**

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AHA respectfully repeats its submission that in making decisions, ACCC should offer the greatest protection or benefit of the doubt to licensees and members given they suffer from the unfair market aspects of a monopoly cartel.

## **C2: ADR Reporting**

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AHA understands that at the hearing on 21 March, there was general agreement that ADR “Reasons for Decision” would be published on the ADR website within 2 business days (or other reasonable time in the circumstances) of the written decision.

## **C3: Transparency of forms, terms & conditions, licence fees, etc**

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AHA and APRA have made progress, but no final agreement, in the areas of plain English documentation, tariffs, terms and conditions, etc. The ACCC has only instructed that the Guide be in plain English. With respect, AHA submits that is an unsatisfactory solution. It does not make sense to have two “forms”, when one would suffice. If all the forms, etc, are simple, there is no need to have a guide to interpret them. AHA repeats its submission that

- The “end to end” plain English guides, forms, applications terms & conditions and tariffs should be provided to the satisfaction of ACCC prior to the final authorisation (not 6 months after determination)
- All materials including licence applications, tariffs, terms and conditions, forms and the renewal applications, need to be in Plain English and should be approved by ACCC
- In particular, the fee structure needs to be set out in plain English. This is not clearly stated yet by the ACCC and a clear statement from the ACCC in regard to plain English fees needs to be made

## C5: Alternative Dispute Resolution

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Since the hearing on 21 March, APRA and AHA have worked together to determine a model of fees that both parties agree will provide equity and fairness in the circumstances. The joint submission of APRA and AHA is set out below.

<b>Amount in dispute</b>	<b>Fees and costs</b>
First call to resolution facilitator concerning and issue (up to 45 minutes)	No charge
Referral where the amount in dispute is less than \$2,000	Filing fee only of \$50
Referral to the system where the amount in dispute is \$2,000 to \$10,000	Filing fee only of \$200
Referral to system where the amount in dispute is over \$10,000	\$200 filing fee Plus Licensee pays 50% of costs of mediator / expert (or other amount agreed by parties or determined by expert).

Further, at the hearing on 21 March, AHA understands that there was general agreement that the “amount in dispute” means the difference in dollars that APRA states should be paid and that the licensee states should be paid.

### ADR committee

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The ACCC has asked whether an ADR committee should be established comprised of APRA members and licensees, with an independent Chair, to oversee the Scheme. AHA supports this initiative and believes the ADR Committee could undertake tasks relevant to the oversight of the successful operation and independence of the Scheme. In answer to questions from the Commissioner, AHA suggests the following.

<b>ACCC question</b>	<b>AHA response</b>
• Do you support the introduction of an ADR Committee?	Yes
• How should the ADR Committee be funded?	APRA
• Who should be on the committee?	Representatives of at least APRA, AHA, Nightlife and also other interested parties as decided by the ACCC
• What should be the responsibilities of the ADR Committee? For example: <ul style="list-style-type: none"><li>○ Approving the appointment of the facilitator.</li><li>○ Appointing future members of the ADR Committee.</li><li>○ Seeking feedback from APRA licensees and members and mediators/experts about their experience of the operation of the Scheme.</li><li>○ Commissioning reviews of the Scheme.</li><li>○ Monitoring the Scheme’s budget.</li></ul>	Yes

### Conclusion

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AHA thanks the Commission for the opportunity to have made further submissions.