

Association of Liquor Licensees Melbourne

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30 March 2013

Tess Macrae

Senior Project Officer | Adjudication Branch

Australian Competition & Consumer Commission

Level 35 | 360 Elizabeth Street Melbourne 3000 |

Dear Tess,

Our further submission in response to your email of 24 March 2104 follows.

Plain English Documents

The ALLM asserts that all APRA licenses and ancillary documents should be written in plain English. The present licenses are difficult to understand. They are complex. Legal documents such as license agreements are often the catalyst for litigation. Legal documents that are difficult to understand due to their complexity magnify this propensity.

A license agreement that is clearly drafted assists in preventing litigation - each party to the agreement better understands their rights and obligations. The Office of the Small Business Commissioner seemingly supported our views in relation to plain English licenses at the most recent stakeholder meeting convened by the ACCC on 21 March 2014.

APRA catalogue and dispute resolution

Our members report that searching the APRA web site data base for works licensed to APRA is inconclusive as to whether the search results are accurate. The results are important. The results could form part of the evidence central to a dispute.

To remedy this complaint, APRA should be required to provide warranties that the search results are accurate and current. APRA should be asked to comment on how frequently their database is updated. If required APRA should meet the costs of putting in place a reliable search engine to remedy any faults or short comings.

Most disputes turns on evidence. If accurate evidence cannot be tabled then the ADR process is thwarted and the dispute remains potentially unresolved. A lack of access to accurate evidence creates a nonsense of any dispute resolution process. To permit the ADR process the best chance of succeeding the fundamentals need to be in place. Evidence is fundamental.

The expert determination process will be adjudicated on by individuals with long standing legal backgrounds - to whom evidentiary issues are vital given their vocation and training - therefore the opportunity to table accurate evidence is paramount.

ADR Dispute Committee

Our views on the ADR Committee follow:

- Does the ALLM support the introduction of an ADR Committee:
Yes, subject to the provisos below.
- How should the ADR Committee be funded:
By APRA. If funded by APRA the expectation would be that the cost is not passed on to licensees or payments to artists reduced.
- What should be the responsibilities of the ADR Committee:
Approving the appointment and removal of the facilitator.
Appointing and removing future members of the ADR Committee.
Seeking feedback from APRA licensees and members and mediators/experts about their experience of the operation of the Scheme.
Commissioning reviews of the Scheme.
Monitoring the Scheme's budget.
Ensuring ADR results are published in a way that is not prejudicial to the parties to the dispute.
- Do you have any other comments regarding the possible ADR Committee:
The Committee should take guidance from the Small Business Commissioner on best practice procedures or one of the statewide Law Institutes.
- Transparency and impartiality are key issues. A committee would go some way to alleviating these concerns.

Conclusion

The ALLM is concerned about their members being in dispute with APRA. Disputes cost our members time and money. Disputes could be better avoided if simple to understand documents were available and user confidence in the APRA catalogue was improved. We do not believe such a request to be onerous of APRA. APRA are unquestionably well resourced.

The ADR system would be less of a burden on licensees and APRA if the costs associated with obtaining an APRA license were more affordable and in line with the costs required by APRA's foreign affiliates for the same service.

The proposed ADR mechanism is very important. Like any fledgling concept, there appears to be uncertainty on how effective it may be. For this reason and for others not stated in this submission, the reauthorization period should be no greater than three years duration.

The ALLM is enthusiastic about working further with stakeholders in relation to the ADR process and other matters.

Yours Sincerely,
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