

A91367-A91375 – AUSTRALASIAN PERFORMING RIGHT ASSOCIATION LTD – SUBMISSION

Further to the request for submission on the above matter on behalf of the five operating businesses which we own and are listed below, we submit as follows:

1. Introduction of the ADR Committee

We fully support the proposal of the introduction of the ADR Committee as a means of progressing to a more independent, accessible, equitable and transparent dispute resolution scheme for the following reasons:

- a) APRA holds a monopoly position in respect of providing licences for businesses which utilise music in the operation of their business.

It is our experience that APRA uses this monopoly position to the detriment of licensees and that the current dispute resolution options are weighted heavily in favour of APRA. In addition to its monopoly position, APRA is also able to utilise its immense financial power (net operating income for the year ended 30 June 2012 was \$161 million) and its own extensive internal and external legal teams to overpower individual licensees which are mostly small businesses with limited resources.

- b) APRA's proposal to appoint its nominee Ms Kirschner to the position of "Dispute Facilitator" on the basis that APRA would directly engage and pay Ms Kirschner for her services eliminates any possibility of licensees having a truly independent Dispute Facilitator that they could approach with confidence.
- c) The APRA organised seminars (we attended the one in Perth) were conducted by Ms Kirschner under instructions which strictly limited what type of disputes could be discussed with the result that important areas of concern and dispute raised by licensees at the meetings were expressly excluded from being discussed as part of the proposed dispute resolution process.

The proposed Committee structure would ensure that there is no limitation on the Dispute Facilitator's obligations to hear all licensees disputes.

- d) APRA is established under the status of a "Not-for-Profit Collecting Society" and therefore not subject to Australian Taxation on the profits it annually generates from licence fees collected from Australian businesses.

With this status and its voluntary Code of Conduct whereby APRA is committed to treat all licensees equally, fairly and in a transparent manner the dispute resolution scheme should be implemented and conducted in a way that also reflects these principles.

Without an effective and independent ADR Scheme licensees (nearly all of which are small businesses) have limited options accessible for dispute resolution.

- e) The introduction of an ADR committee comprised of APRA members and licensees, with an independent chair, to oversee the Scheme would provide a fundamental and significant change in the balance of power between licensees and APRA. In doing so it would create a far more independent and unbiased oversight of the Scheme with the direct consequence of a much more successful and equitable dispute resolution process.

2. Funding of the ADR Committee

- a) The funding of the Committee together with the funding of the position of the Dispute Resolution Facilitator should be achieved by a levy on the Not-for-Profit Collecting Society, namely APRA.
- b) As APRA generates its substantial annual profits from the licence fees it receives from the numerous Australian businesses subject to licensing agreements the requirements for APRA to pay a levy to meet the cost of the proposed Committee and Facilitator indirectly results in the numerous licensees paying for the cost of such oversight and operation of the ADR system.
- c) The cost of the Committee and the Facilitator would require a levy which is totally insignificant to the profitability of APRA. In any event a large portion of this proposed levy is already being proposed to be met by APRA in its funding of the Facilitator.

The introduction of the levy on APRA would remove the perception and enhance the independence of the dispute resolution as ultimately the Dispute Facilitator would then be appointed and totally responsible to the ADR Committee and not be obligated in any way to APRA.

3. Responsibilities of the ADR Committee

- a) The examples provided in the email requesting submission are fully supported namely:
 - Approving the appointment of the facilitator
 - Appointing 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.
- b) Further responsibilities of such a Committee's responsibilities could be extended to achieve:

- i) Research and collation of the licensing schemes that are operated in other overseas jurisdictions to achieve the highest level of efficiency, fairness and best practice in dealing with dispute resolutions.
- ii) The introduction of a process whereby there is a required transparency achieved in dispute resolution processes so that the overall effect is to ensure that all licensees are treated equally and fairly.

Currently dispute resolutions in our experience are subject to APRA's requirement that results of dispute resolutions are subject to strict confidentiality agreements.

Without transparency in dispute resolutions it creates the situation whereby certain licensees who achieve a favourable result from a dispute resolution process have an unfair commercial advantage over their competitors.

The Not-for-Profit Collecting Society has as its primary undertaking pursuant to its adherence to its voluntary Code of Conduct to ensure that all of its operations are transparent and that all licensees are treated equally and fairly. It is not the case with the current dispute resolution scheme.

Thank you for the opportunity to make this submission and we re-iterate our full support for the proposed introduction of an ADR Committee to undertake the tasks relevant to the oversight of the successful operation and independence of the scheme.

For and on behalf of:

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 Empire Hotel
Penzance Pty Ltd t/as Varga Lounge Tavern