



**Australian
Competition &
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Commission**

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11 April 2014

Dear Sir/Madam

Australasian Performing Right Association Ltd application for revocation and substitution A91367-A91375

I am writing to you in relation to the above applications for re-authorisation lodged by the Australasian Performing Right Association Ltd (APRA).

As you may be aware, on 15 October 2013, the ACCC released a draft determination proposing to grant conditional authorisation to APRA for three years in relation to its standard arrangements for the acquisition and licensing of the performing rights in its music repertoire. A copy of APRA's applications and the ACCC's draft determination can be found on the ACCC's website: <www.accc.gov.au/AuthorisationsRegister>.

The ACCC has revised the draft conditions of authorisation in light of the revised alternative dispute resolution scheme (ADR Scheme) proposed by Resolve Advisors and the issues raised at the recent pre-decision conference. A copy of the revised draft conditions (C1, C2 and C3) and a summary of new draft condition C3 is attached. The ACCC is also considering the appropriate period of authorisation, in preparation for the ACCC releasing its final decision.

Conditions proposed in the draft determination

In the draft determination, the ACCC proposed to:

- retain two of the conditions of authorisation previously imposed on APRA relating to APRA's expert determination process; and
- add three new conditions requiring APRA to produce plain English guides to (a) the licence schemes and (b) opt out and licence back, as well as requiring APRA to implement a revised ADR Scheme.

Revised draft conditions of authorisation

The attached revised draft conditions retain the intent of the conditions set out in the draft determination, but have been restructured and redrafted.

Relevant elements of conditions C1 and C2 from the draft determination have been, in substance, incorporated into the new draft condition relating to the ADR Scheme (new condition C3). Specifically, relevant elements of existing condition C1 have been included at

new C3.3(vi) and Schedule E while existing condition C2 has been superseded by the reporting requirements at new C3.14-C3.16.

The new proposed condition relating to dispute resolution has been drafted in light of the revised ADR Scheme proposed by Resolve Advisors and the issues raised at the recent pre-decision conference. A summary of this proposed condition is at [Attachment A](#) and the condition in full is included in [Attachment B](#). In addition to the proposals of Resolve Advisors, the draft condition requires: a consultative committee, nominated by the independent facilitator and appointed by APRA; regular audits of the ADR Scheme; ACCC approval of the independent facilitator and independent auditor appointed by APRA; and mediator/expert charges to be covered by APRA for disputed amounts of less than \$10,000.

The Scheme is intended to supersede APRA's existing expert determination process. In particular, Option 4 under draft condition C3 will require the Scheme to include a binding determination process, and the pool of independent experts will include barristers/former judges.

The proposed conditions relating to the plain English guides to licensing (new condition C1) and opt out/licence back (new condition C2) are largely unchanged from the draft determination. The guides would be required to be published within three months of the ACCC's final determination.

Period of authorisation

In the draft determination, the ACCC proposed granting authorisation for three years, noting the potential for the conduct to result in detriment, the level of interested party concern and anticipated changes in the industry. The ACCC also wanted to review the effects of the changes proposed by APRA during the ACCC's consideration of the application for reauthorisation.

There have been a number of significant developments since the draft determination. For example, the ACCC has convened a pre-decision conference (held over two days) for interested parties to present their concerns. APRA has also made arrangements to address the proposed conditions of authorisation, employing a plain English expert to assist with producing the plain English guides and engaging Resolve Advisors to review its ADR system. Resolve Advisors has now proposed a revised ADR Scheme applicable to licensees (Resolve Advisors will commence its review as it applies to APRA members shortly).

The ACCC also acknowledges APRA's willingness to discuss issues with interested parties during the reauthorisation process. Submissions following the draft determination, including at the pre-decision conference, indicate that interested parties are generally encouraged by the conditions proposed in the draft determination and APRA's progress to date.

In light of the amount of work undertaken to develop a new ADR Scheme, the progress already made to address interested party concerns, and to allow time for the new ADR Scheme to become fully operational, the ACCC is considering whether to grant authorisation for a longer period. In particular, the ACCC would like to be able to review the operation of the ADR Scheme over a reasonable period of time when considering any application for reauthorisation. The ACCC is considering a period of four or five years.

Submissions

If you would like to provide the ACCC with further comments on the revised draft conditions of authorisation (particularly the draft condition relating to the ADR Scheme) and the appropriate period of authorisation, please lodge your submission by **30 April 2014**.

Submissions should be emailed to adjudication@acc.gov.au with the subject 'A91367-A91375 – Australasian Performing Right Association Ltd – submission'. If you have provided a submission previously, the ACCC will take your comments into account in making its determination.

Submissions will be placed on the ACCC's public register subject to any request for exclusion. Please see the ACCC's publication [Guidelines for excluding information from the public register](#).

You can also forward this letter to any other party who may be interested in this matter.

A copy of this letter has been placed on the ACCC's public register. If you require further information about this matter, please do not hesitate to contact Tess Macrae on (03) 9290 1835 or email adjudication@acc.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Richard Chadwick', with a long horizontal flourish extending to the right.

Dr Richard Chadwick
General Manager
Adjudication Branch

Summary of draft condition of authorisation C3

The draft condition C3 requires that the ADR Scheme include the following:

- four options for resolving disputes (informal resolution, mediation, expert opinion, binding determination)
- an independent dispute resolution facilitator (Facilitator) appointed by APRA and approved by the ACCC to manage the ADR Scheme
- a pool of independent mediators and independent experts, including barristers and/or former judges, established by the Facilitator
- the option for an applicant to request that a matter be managed by an independent expert rather than the Facilitator
- broad coverage, including both disputes and complaints lodged by current/potential licensees and members
- applicant contribution to costs of a matter in most cases:
 - tiered filing fees payable for disputes
 - mediator/expert charges shared between the parties for disputed amounts of \$10,000 or more and for non-monetary disputes where the applicant pays licence fees to APRA or receives payments from APRA of \$10,000 or more
 - the Facilitator, mediator/expert or the parties can decide to waive the fees/charges
 - fees and charges are not payable for complaints (the Facilitator has discretion to decide if a matter is a dispute or a complaint).
- a consultative committee (comprised of small and large licensees and members and an independent Chair nominated by the Facilitator and appointed by APRA) to provide feedback and other advisory input to APRA and to the Facilitator in relation to the operation of the ADR Scheme
- publication of binding determinations
- annual reporting about the ADR Scheme prepared by the Facilitator and provided to the ACCC by APRA
- audits of the ADR Scheme (after 12 months and in time for the authorisation expiring) by an independent auditor appointed by APRA and approved by the ACCC
- a plain English guide to the ADR Scheme
- a public website for the ADR Scheme that is separate from APRA's own website
- implementation of the ADR Scheme for both APRA members and APRA licensees by 31 December 2014.

Proposed draft conditions of authorisation

Condition C1 – Transparency of licence fees

C1.1 Within 3 months of the ACCC's final determination, APRA must publish comprehensive plain English guides that outline each of the licence categories individually. The guides, which must also be published as a single document, must also include:

- (i) a table summarising each type of licence and licence category, the basis on which fees are determined, and the range of fees payable for each licence and licence category listed
- (ii) an introduction that includes an overview of the licence categories and their use
- (iii) definitions of each of the licence categories - for example, Recorded music for dancing use, Dance party, Featured music event and TV/large screen
- (iv) examples of common types of licensees and the fees payable by them (e.g. nightclubs, hotels, gyms, cafes), the licence categories commonly utilised by each of those types of licensees, and the range of fees payable by each of those types of licensees
- (v) guidance on whether fees are negotiable and if so in what circumstances
- (vi) information that encourages licensees to contact APRA if they have any concerns, including the types of assistance available and the numbers to call
- (vii) the options available to licensees for resolving a dispute about licence fees, or about other licence terms and conditions
- (viii) links to the application forms for the licences and licence categories.

C1.2 Once published, the guide must be provided to all new or renewing licensees and must be prominently displayed on APRA's website (www.apra.com.au). The homepage must have a prominently displayed link to the guide as well as available links on the relevant section of APRA's website. APRA must also provide the comprehensive plain English guide, and information about how to obtain additional copies of the guide, to relevant industry associations (that is, industry associations that have musical work copyright holders, or licensees or potential licensees, as members) on publication.

C1.3 APRA must provide a copy of the plain English guide to the ACCC, prior to publishing.

C1.4 APRA must publish a revised, and up to date, version of the guide by 30 June each year.

Condition C2 – Comprehensive plain English guide and education campaign for the opt out and licence back provisions

C2.1 Within 3 months of the ACCC's final determination, APRA must take the following steps to increase awareness of the licence back and opt out provisions provided by APRA:

- (i) APRA must publish on the APRA website, and via an email distribution to members and licensees, a comprehensive plain English guide explaining:
 - (a) the purpose, scope and content of the opt out and licence back provisions
 - (b) the situations where using those provisions might be of benefit to members and licensees
 - (c) the steps involved in applying to make use of the licence back and opt out provisions
 - (d) examples of how the opt out and licence back provisions have been used to date

and attaching the APRA application forms for the licence back and opt out provisions

- (ii) include a standard plain English paragraph in renewal correspondence sent to licensees and members each year, outlining the availability and scope of the opt out and licence back provisions, and providing the web address for the guide referred to in condition C2.1(i) above, as well as information about how to apply
- (iii) launch an education campaign to its members and licensees, following on from its email distribution of the plain English guide, which may include offering a seminar to members and licensees, outlining the situations in which opt out and licence back could be utilised and the benefits to members and licensees and the process involved
- (iv) as part of APRA's educational campaign in this regard, APRA must offer to send representatives out to talk to members and licensees that could benefit from these facilities.

Condition C3 – Alternative Dispute Resolution

Scheme Requirements

C3.1 APRA must establish an alternative dispute resolution ('**ADR**') scheme (the '**Scheme**') that is managed by an independent dispute resolution facilitator (the '**Facilitator**') for the resolution of any disputes between APRA and a licensee, or potential licensee of copyright held by APRA ('**Licensee**') or a member or potential member of APRA ('**Member**'), including complaints made

to APRA by or on behalf of a Member or Licensee. The objective of the Scheme is to resolve disputes in a timely, efficient and effective manner.

C3.2 The Scheme must include four options for resolving a dispute or complaint, or an aspect of a dispute or complaint (**'Dispute'**) notified by a Member or Licensee, or by an authorised representative of one or more Members or Licensees (**'Applicant'**), as follows:

- (i) Option 1 - informal resolution: informal resolution of the Dispute in a manner facilitated by the Facilitator, with an indicative timeframe of 20 business days for resolution of the Dispute or referral of the Dispute to Options 2, 3 or 4
- (ii) Option 2 - mediation: external mediation by an independent mediator (**'Independent Mediator'**), with an indicative timeframe of 20 business days for the resolution of the Dispute (from the date on which the Dispute is referred to Option 2)
- (iii) Option 3 - expert opinion: a non-binding written expert opinion (including reasons) delivered by an appropriately qualified or experienced independent expert (**'Independent Expert'**), with an indicative timeframe of 20 business days for the resolution of the Dispute (from the date on which the Dispute is referred to Option 3)
- (iv) Option 4 - binding determination: a binding written determination (including reasons) delivered by an Independent Expert, with an indicative timeframe (from the date on which the Dispute is referred to Option 4) of 30-60 days for resolution of the Dispute, or of 90 days for a Dispute involving more than one Applicant).

C3.3 The Scheme must provide that:

- (i) a Dispute, or an aspect of a Dispute, may be referred to Options 2, 3 or 4 at any time by agreement between APRA and the Applicant, including agreement about the identity of the Independent Mediator or Independent Expert (as relevant). The resolution of each Dispute must commence with Option 1, but APRA may not withhold agreement to progress to another Option merely because the Applicant has not agreed to continue or complete the processes available under Option 1 first. If agreement cannot be reached about the identity of the Independent Mediator or Independent Expert or about progressing a Dispute to another Option, the Facilitator must refer these preliminary matters for determination (at APRA's cost) by an Independent Expert (who must not then be otherwise appointed to hear the Dispute under the Scheme).
- (ii) the resolution of Disputes under Options 2, 3 and 4 must be carried out on terms, and in accordance with processes and procedures, established by the Independent Mediator or Independent Expert (as relevant) in accordance with practices commonly adopted in other ADR schemes for ADR options of that kind
- (iii) the Applicant may also seek resolution of the Dispute by the Copyright Tribunal or by a court, rather than under the Scheme

- (iv) the Facilitator must, if requested by an Applicant, refer a function set out in Schedule C (in respect of the Applicant's Dispute) to an Independent Expert (at APRA's cost)
- (v) subject to condition C3.3(vii) and conditions C3.14-C3.16, the resolution of Disputes under the Scheme is to be carried out confidentially unless all parties to a particular Dispute agree otherwise in respect of that Dispute
- (vi) each Independent Expert may obtain such advice (including, but not limited to, economic or financial advice) as the Independent Expert considers reasonably appropriate for the purposes of resolving a Dispute. The costs of any such advice are to be included in the costs of the Independent Expert in relation to the Dispute.
- (vii) each Independent Expert who issues a binding written determination under Option 4 is to prepare and issue, to the Facilitator, a public version of that determination (excluding any confidential information of APRA, the Applicant, a Licensee or a Member) within 7 days of the date of the determination.

C3.4 APRA must ensure that each Independent Mediator or Independent Expert:

- (i) is suitably qualified, by reason of their training and / or experience, for resolving the kinds of disputes, and for carrying out the kinds of dispute resolution processes, for which they are engaged under the Scheme
- (ii) has an understanding of copyright or the ability to properly acquire such understanding
- (iii) takes into account the matters referred to in Schedule E, if requested to do so by the Applicant.

Fees and Charges

C3.5 The Scheme must also provide that:

- (i) the fees and charges payable by Applicants under the Scheme, including provision for the reduction or waiver of those fees and charges, will be set in accordance with Schedule A ('**Fees and Charges**')
- (ii) the relevant Fees and Charges for Option 1 are payable for all Disputes that are then referred to Options 2, 3 or 4, even if the Applicant does not complete the processes that are available under Option 1
- (iii) the Fees and Charges are payable to the Facilitator (who will then distribute them as appropriate)
- (iv) other than the Fees and Charges, each party must bear their own costs of resolving the Dispute

- (v) an Applicant may withdraw a dispute from the Scheme, except after a hearing when awaiting a written expert opinion or a binding determination under Option 3 or 4 above (in which case the Applicant may only withdraw if the withdrawal is the result of APRA and the Applicant having reached an agreed settlement of the Dispute). Unless otherwise agreed as part of the settlement of the Dispute, the Applicant must pay all Fees and Charges incurred up until the date of withdrawal.

Establishment and role of consultative committee

C3.6 By 31 August 2014 APRA must establish, and must thereafter maintain, a consultative committee (the '**Committee**'). The members of the Committee (as appointed by APRA) must have been nominated by the Facilitator, and must consist of an equal number of representatives of:

- (i) Licensees whose annual licence fees payable to APRA are \$3,000 or less
- (ii) Licensees whose annual licence fees payable to APRA are over \$3,000
- (iii) Members whose annual royalty receipts from APRA are \$1000 or less
- (iv) Members whose annual royalty receipts from APRA are over \$1000
- (v) an independent Chairperson who is not a Licensee or a Member and who has no other relationship with APRA or with a Licensee or a Member.

If an insufficient number of Members or Licensees in a particular category are willing to be members of the Committee, APRA must appoint another Member or Licensee (as relevant), nominated by the Facilitator in the Facilitator's sole discretion, to fill that position on the Committee.

C3.7 APRA must also ensure that:

- (i) the Committee operates with the objective set out in Schedule B and performs the functions set out in Schedule B
- (ii) APRA or the Facilitator periodically invites all Members and Licensees to nominate for the Committee, and takes all nominations and other input from Members and Licensees into account in determining the members of the Committee
- (iii) 50% of the members of the Committee (excluding the Chairperson) are replaced from 1 July 2016 (and every two years thereafter), and that the other 50% (excluding the Chairperson) are replaced from 1 January 2017 (and every two years thereafter), in each case by a Licensee or Member (as relevant) who has not previously been a member of the Committee
- (iv) the annual funding provided by APRA for the operation of the Scheme (including the costs of the Facilitator but otherwise excluding costs

incurred by APRA in connection with individual Disputes) are adequate for the operation of the Scheme (taking into account the level of funding recommended by the Committee)

- (v) it provides to the Committee all information requested by the Committee that the Committee considers necessary or appropriate for performing its functions under Schedule B (including information about the actual costs of operating the Scheme).

Appointment and role of the Facilitator

C3.8 Within 1 month of the ACCC's final determination, APRA must appoint a Facilitator to operate and manage the Scheme, and must then ensure that there is an appointed Facilitator in place at all times throughout the term of the authorisation. The Facilitator (including any replacement Facilitator) must:

- (i) be approved or reapproved by the ACCC, within 20 business days, in accordance with condition C3.12 and for a specified period of time, prior to the appointment or reappointment taking effect for the purposes of these Conditions
- (ii) have specialist training in ADR and have a detailed understanding and experience of dispute resolution practice and procedures which do not involve litigation
- (iii) have the capacity to determine the most appropriate alternative dispute resolution procedures in particular circumstances
- (iv) have an understanding of copyright or the capacity to quickly acquire such an understanding.

C3.9 APRA must ensure that each Facilitator:

- (i) operates with the objective set out in Schedule C, and performs the functions set out in Schedule C
- (ii) complies with conditions C3.3(i) and (iv)
- (iii) does not perform any work for APRA other than work relating to the Scheme or to any extensions of the Scheme
- (iv) can be, and is, removed by APRA from the position of Facilitator if the ACCC considers, having regard to the performance of the Facilitator in that role, that the Facilitator is likely to fail to adequately perform the functions set out in Schedule C.

Appointment and role of the Auditor

C3.10 No later than 30 June 2015, and then again by no later than 9 months before the date on which this authorisation expires, APRA must appoint an independent auditor ('**Auditor**'), to review and report on the operation and management of the Scheme. Each Auditor must:

- (i) be approved by the ACCC in accordance with condition C3.12, prior to the appointment taking effect
- (ii) have appropriate qualifications, training and experience in auditing or accounting.

C3.11 APRA must ensure that each Auditor operates with the objective set out in Schedule D, and performs the functions set out in Schedule D.

ACCC approval of the Facilitator and Auditor

C3.12 In considering whether to approve a proposed Facilitator or a proposed Auditor, the ACCC may take into account any matter it considers relevant, including:

- (i) any previous or existing relationships between APRA (or a Member or Licensee) and the proposed Facilitator or proposed Auditor
- (ii) the proposed remuneration arrangements for the proposed Facilitator or proposed Auditor.

C3.13 Prior to the ACCC making a decision about whether to approve a proposed Facilitator or proposed Auditor (as relevant), APRA must provide to the ACCC:

- (i) the agreement, or proposed agreement, setting out the terms and conditions on which the proposed Facilitator or proposed Auditor (as relevant) will be engaged in connection with the Scheme
- (ii) any other information requested by the ACCC that the ACCC considers relevant.

Annual Reporting

C3.14 APRA must provide the ACCC with an annual public report, for publication on the public register of authorisations maintained in accordance with Section 89 of the *Competition and Consumer Act*, about Disputes notified to APRA under the Scheme for the previous calendar year (the '**ADR Report**'), in accordance with condition C3.15 and C3.16.

C3.15 Each ADR Report must be submitted to the ACCC prior to 1 March of each year and must concern disputes for the 12 months ending 31 December of each year.

C3.16 Each ADR Report must include (broken down into Licensee Disputes and Member Disputes):

- (i) the number of Disputes considered, and the number of Disputes resolved, under each Option
- (ii) a statistical summary, in weeks, of the time taken to refer Disputes from Option 1 to Options 2, 3 and 4, and of the time taken to resolve Disputes under each of Options 2, 3 and 4, measured from the time at which the Dispute was referred to that Option

- (iii) a summary, for Options 2, 3, and 4, of the subject matter of the Disputes considered under that Option
- (iv) for Disputes considered under Options 2, 3, or 4 but not resolved, a summary of the reasons why those Disputes were not resolved
- (v) a summary, for each Option, of the range of Fees and Charges, and of the average Fees and Charges, incurred by Applicants for Disputes considered under that Option, and of the extent to which the fees and disbursements of Independent Mediators or Independent Experts (as relevant) were borne by APRA
- (vi) a summary of feedback received by APRA, and by the Facilitator, in relation to the operation of the Scheme, including the feedback and recommendations provided by the Committee (see Schedule B).

Other matters

- C3.17 APRA must establish and maintain a link to the Scheme website in a prominent location on its own website.
- C3.18 APRA must make the Scheme fully available for Disputes involving Licensees by 31 December 2014 and for Disputes involving Members by 31 December 2014.
- C3.19 APRA must educate licensees, potential licensees, industry bodies and members about the operation of the new Scheme by publishing a plain English guide to the process within 6 months of the ACCC's final determination, and by making that guide available in a prominent position on its website, and on request.

SCHEDULE A – Fees and Charges (Condition C3.5)

Option 1

Action	Maximum fee to Licensee / Member
Initial phone discussion with the Facilitator (up to 45 minutes)	No charge
Subsequent involvement of the Facilitator (Option 1) where the amount in dispute is less than \$1,500.00 or there is a Dispute on matters that are not monetary.	\$50.00 incl. GST
Subsequent involvement of the Facilitator (Option 1) where the amount in dispute is \$1,500.00 to \$3,000.00	\$75.00 incl. GST
Subsequent involvement of the Facilitator (Option 1) where the amount in dispute is over \$3,000.00	\$150.00 incl. GST

1. Each Member or Licensee who wishes to become a party to a Dispute must pay this fee (if any) separately.
2. Where the Dispute relates to only a part of an amount specified by APRA, the undisputed parts of that amount are not to be taken into account in determining the fee payable by the Applicant.
3. The fee payable by an Applicant may be waived or reduced by the Facilitator, or with the agreement of APRA. The Facilitator must waive the fee where the Facilitator determines that the Dispute consists of a complaint.

Options 2, 3 and 4

1. Subject to paragraphs 2 and 3 below, each Applicant who is a party to a Dispute must pay 50% of the fees charged, and 50% of the disbursements or other costs reasonably incurred, by the Independent Mediator or Independent Expert for the resolution of the Dispute, each divided equally amongst all Applicants who are parties to the Dispute and who have agreed to that particular Option for resolution of the Dispute.
2. Subject to paragraph 3 below, fees and costs are only payable by an Applicant where the Dispute is about:
 - (i) the terms and conditions of a grant, or potential grant, of a licence of copyright by a Member to APRA, or by APRA to a Licensee

- (ii) the implementation of the terms and conditions of a grant, or potential grant, of a licence of copyright by a Member to APRA, or by APRA to a Licensee

or where the Facilitator determines that fees and costs are to be payable in respect of the Dispute.

3. Fees and costs are not payable in respect of a Dispute where:

- (i) the amount disputed by a Member or Licensee is less than \$10,000
- (ii) the Dispute does not involve a disputed amount, but the annual amount payable for a grant, or potential grant, of a licence of copyright by a Member to APRA, or by APRA to a Licensee, that is the subject of the Dispute is less than \$10,000
- (iii) the Facilitator determines that the Dispute consists of a complaint.

4. Where the Dispute relates to only a part of an amount specified by APRA, the undisputed parts of that amount are not to be taken into account in determining the fees and costs payable by the Applicant.

5. The fees and costs payable by an Applicant may be waived or reduced by the Facilitator, the Independent Mediator or the Independent Expert (as relevant) or with the agreement of APRA.

SCHEDULE B – objective and functions of the Committee (Condition C3.7)

The objective of the Committee is to provide feedback and other advisory input to APRA and to the Facilitator in relation to the operation of the Scheme.

The functions of the Committee must include:

- (i) monitoring the operation of the Scheme, including the actual costs of the Scheme
- (ii) receiving feedback on the Scheme and communicating that feedback to the Facilitator and APRA (where appropriate)
- (iii) in consultation with the Facilitator and for each calendar year, making an annual recommendation to APRA about the budget for the operation of the Scheme
- (iv) making other recommendations to the Facilitator and to APRA about the operation of the Scheme.

but not intervening in individual Disputes.

SCHEDULE C – objective and functions of the Facilitator (Condition C3.9)

The objective of the Facilitator is to manage the operation of the Scheme, and to participate in the resolution of Disputes, in a way that facilitates the resolution of Disputes in a timely, efficient and effective manner.

The functions of the Facilitator must include:

- (i) ensuring the effective set-up (in the case of the initial Facilitator) and the effective operation of the Scheme
- (ii) nominating the members of the Committee (including the Chairperson)
- (iii) informing Members and Licensees about the Scheme and being available to answer enquiries and questions about the Scheme
- (iv) resolving Disputes under Option 1, including by discussing issues with Applicants on a confidential basis, assisting with communications between APRA and Applicants, and narrowing down issues between APRA and Applicants
- (v) establishing a pool of suitably qualified or experienced Independent Mediators and Independent Experts (the '**DR Pool**'), including barristers and / or former judges, across a range of areas of expertise and geographic locations, and reviewing the composition of the pool annually
- (vi) making recommendations to APRA and to Applicants about the suitability of Options 2, 3 or 4 for resolving a particular Dispute, including recommendations about appropriate Independent Mediators or Independent Experts for resolving that Dispute (whether drawn from the DR Pool or otherwise), with the objective of resolving the Dispute quickly and efficiently
- (vii) collecting and distributing the Fees and Charges
- (viii) assisting the Independent Mediator or Independent Expert in the making of timetabling and other administrative arrangements for resolving each Dispute under Options 2, 3 and 4, including:
 - (a) arranging meetings or conferences
 - (b) receiving submissions from the parties
 - (c) distributing submissions and other relevant materials to the parties and to the Independent Mediator or Independent Expert (as relevant)with the objective of ensuring that the resolution of each Dispute progresses in a timely and efficient manner (including the objective of ensuring that all preliminary steps in relation to a dispute be completed without the need for travel)
- (ix) preparing the annual ADR Report (see condition C3.14 to C3.16)
- (x) establishing and maintaining a public website for the Scheme that is separate from APRA's own website, and publishing on that website information and documents relating to the Scheme, including:

- (a) the plain English guide to the operation of the Scheme (see condition C3.19)
- (b) each public ADR Report, which the Facilitator must publish no later than 1 business day after receiving it from the relevant Independent Expert, and each audit report (see Schedule D)
- (c) the curriculum vitae of each Independent Mediator and Independent Expert in the DR Pool
- (d) the public version of each binding written determination under Option 4 (see condition C3.3(vii)).

SCHEDULE D – objective and functions of the Independent Auditor (Condition C3.11)

The objective of the Independent Auditor is to monitor and report on the operation of the Scheme (including whether the Scheme is resolving Disputes in a timely, efficient and effective manner).

The functions of the Independent Auditor must include:

- (i) reviewing the operation and performance of the scheme, and the performance of the Facilitator, in accordance with the requirements of condition C3 and the Scheme's objective of resolving Disputes in a timely, efficient and effective manner.
- (ii) auditing the preparation and content of the ADR Report (see conditions C3.14 to C3.16)
- (iii) as part of item (i) above, obtaining feedback from APRA, the Committee, Members, Licensees and Independent Mediators/Independent Experts about the operation and performance of the Scheme, and the performance of the Facilitator
- (iv) by 30 September 2015, preparing and publishing a public report on the matters reviewed under items (i) and (ii) above in respect of the period between the commencement of the Scheme and 30 June 2015.
- (v) no later than six months before this authorisation expires, preparing and publishing a public report on the matters reviewed under items (i) and (ii) above in respect of the period between 1 July 2015 and that date that is nine months before this authorisation expires.

SCHEDULE E – Relevant Matters (condition C3.4)

1. Consider whether APRA offered the user (being a Licensee) a licence that takes into account any direct dealing or potential future direct dealing between the user and a copyright owner.
2. If so, whether in the Independent Expert's opinion, APRA offered the user (being a Licensee) a licence that reflects a genuine and workable commercial alternative to the user's blanket licence to take into account past, or potential future direct dealing between the user and a copyright owner. In expressing this opinion, the Independent Expert must have regard to whether any increase in administrative costs, charges and expenses contained in the modified blanket licence are reasonable, having regard to the administrative costs to APRA of offering and providing to the user a modified blanket licence.
3. Whether any amendments could be made to the user's licence (or if the user is not a licensee, to the blanket licence offered) so that the licence provides a genuine and workable alternative to the user relying on a blanket licence.