

**7 May 2014**

**By E-Mail: [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)**

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

Dear General Manager

**Australasian Performing Right Association Ltd Application for Revocation and Substitution  
A91367-A91375  
LPA Submission to the ACCC Revised Conditions of Authorisation**

Thank you for the opportunity to provide comment on the revised conditions of authorisation for the Australasian Performing Right Association (APRA).

**About LPA**

This submission is made by Live Performance Australia (**LPA**), the peak body for Australia's live performance industry. Established in 1917 and registered as an employers' organisation under the *Fair Work Act 2009* (Cth), LPA has over 390 members nationally. We represent producers, music promoters, venues, performing arts companies, festivals and industry suppliers such as ticketing companies and technical suppliers.

LPA's Members are APRA licence holders for the public performance of musical works under a number of licence categories including the following:

- Festivals (Licence Code: GCLF);
- Concert Promoters (Licence Code: GCLB);
- Featured Music Events (Licence Code: GCFM);
- Live Performance (Licence Code: GCLN and GLA);
- Recorded Music for Dance Use (Licence Code: GFN);
- Special Purpose Licence Scheme (Featured Music) (Licence Code: GCSF);
- Works in Dramatic Context (Licence Code: GCDC); and
- Casual Public Performances (Licence Code: GNP).

## **Submission**

We provide our comments on each of the revised conditions and proposed period of authorisation below.

### ***Condition C1 – Transparency of Licence Fees and Condition C2 – Comprehensive plain English guide and education campaign for the opt out and licence back provisions***

LPA is pleased with the comprehensive detail included in both the Conditions C1 and C2. We support the full implementation of these conditions, and encourage both the ACCC and APRA to work closely with LPA and relevant stakeholders to ensure all licensees are sufficiently aware of the APRA fees and provisions that apply to their specific activities.

LPA recognises that APRA has engaged an external consultant to manage the drafting of these documents, and has circulated an initial draft Guide on licences for the hospitality industry through the ACCC to relevant bodies. We encourage APRA to allow LPA the opportunity to comment on draft Guides for live performance licence schemes before they are finalised. This will ensure the Guides include all the material necessary to sufficiently inform our Members about the APRA licencing procedures of which they should be aware.

### ***Condition C3 – Alternative Dispute Resolution***

LPA supports the introduction of Condition C3 and its components. We believe it addresses the broader concerns LPA has expressed in previous submissions to the ACCC. However, we are concerned that some applicants may be deterred from utilising the proposed ADR scheme due to the costs involved, specifically for disputes in which the amount in contention exceeds \$10,000. For these disputes, *Schedule A – Fees and Charges* of revised C3 states each applicant party to such a dispute must pay 50% of the fees and charges for the Independent Mediator or Expert, including any disbursements or other costs reasonably incurred. In addition to this, C3.3 (vi) states each Independent Expert may obtain such advice (e.g. financial, economic) as is considered reasonably appropriate. The amount this advice might cost applicants is left open-ended.

LPA is concerned that the cost of Mediation (Option 2), Expert Opinion (Option 3), and Binding Determination (Option 4) could quickly inflate and become unmanageable for the applicant when considering both the fees involved and other costs of an undetermined amount. We submit the cost to the applicant for referring a dispute to ADR Options 2 – 4 must be manageable and transparent. This may be achieved by applying a cap to the amount payable by the applicant for disputes referred to ADR Options 2 - 4. In addition to this, the Facilitator should ensure each applicant is made aware of the likely potential costs involved for referring the dispute to any of the ADR Options.

***Proposal to Extend the Period of Authorisation***

LPA believes the authorisation period of three years, as recommended in the ACCC draft determination (released October 2013) is the appropriate period for re-authorisation of APRA. The current proposal to extend APRA's re-authorisation period to four or five years is problematic, especially considering three of the conditions for APRA's re-authorisation will be introduced for the first time. The revised conditions are intended to improve upon the significant concerns licensees have expressed throughout APRA's re-authorisation process. If the ACCC expect to release the final determination in late May-June 2014, any problems that may arise from the implementation of the revised conditions will not be addressed by the ACCC until 2018-19. This is a significant amount of time for problems to remain unresolved. As such, LPA submits that re-authorisation of APRA for a period of three years is most appropriate.

LPA commends the ACCC and APRA for the efforts made thus far in ensuring reasonable conditions are set to address stakeholder concerns. We look forward to liaising further with the ACCC and APRA to ensure the revised conditions are efficiently implemented.

Thank you for inviting us to make a submission on this important re-authorisation for our industry.

Yours sincerely



**Evelyn Richardson**

Chief Executive