

AUSTRALASIAN PERFORMING RIGHT ASSOCIATION LIMITED
SUBMISIONS IN RELATION TO REVISED DRAFT CONDITIONS
2 MAY 2014

This is APRA's submission in relation to the revised draft conditions circulated by the ACCC on 11 April 2014.

APRA is happy to discuss any of these matters with the ACCC.

Period of authorisation

APRA welcomes the ACCC's consideration of a period of authorisation that is longer than three years, and appreciates the ACCC's acknowledgement of the work that has been done by APRA, particularly relating to the design and implementation of a new ADR system. The new ADR system has been an expensive undertaking for APRA, but one that APRA believes will have a beneficial effect on its dealings with members and licensees. Given the cost of the new system and of making these applications, APRA submits that the ACCC should determine that the authorisations of APRA's conduct and arrangements should on this occasion be for five years.

During that five year period, APRA will have also negotiated and implemented a comprehensively simplified licence for the use of music in premises such as hotels, restaurants and retail outlets. If APRA were to face reauthorisation in three years time, it is realistic to suppose that the new scheme will have been in operation for a maximum of 12 months by the time APRA commences the application process, and the impact on the market may not be able to be properly assessed. Similarly, the ADR system will have been in place for at most 18 months.

The authorisation process can be quite destabilising for the relationships between APRA and its stakeholders. APRA respects the process, and acknowledges the significant improvements to its operations that have come about from its interaction with the ACCC, it submits that this is an ideal opportunity for APRA to cement its relationship with licensees in particular, over a longer period of time.

APRA submits that there is ample ability for the ACCC to reconsider APRA's authorisation in the intervening period should circumstances change in a way that has an effect on public benefit.

Condition C1 – Transparency of licence fees

APRA has no comments in relation to this condition, other than to note that the inclusion of the words "if applicable" might be helpful in C1.4.

Condition C2 – Transparency of licence fees

APRA has no comments in relation to this condition, other than to note that in relation to the requirement to "send representatives out to talk to members and licensees" in C2.1(iv) it would be helpful if it could be clarified that this does not require APRA to send a representative to any location to speak to individual members or licensees.

Condition C3 – Alternative Dispute Resolution

APRA has the following comments in relation to this draft condition:

- C3.2(iii) – APRA submits that a more realistic timeframe where a written opinion is to be delivered is 30 – 60 days.

- C3.3(iii) APRA submits that it should also be available to APRA to seek resolution of a dispute by the Copyright Tribunal (although participation in non binding ADR could be a pre-requisite for APRA)
 - C3.3(vi) APRA submits that this provision should be removed or qualified. In the majority of cases, it is clear that APRA will be bearing all or most of the costs of the independent expert. It should not be open to an independent expert (who has been appointed as a result of his or her expertise) to seek third party expert advice at APRA's cost without any limitation. These costs could add significantly to the cost of a dispute, and an expert could in effect sub-contract the decision making process at vast cost to APRA without APRA's consent, and with no verification of whether such advice was required.
 - C3.4 APRA submits that the facilitator, rather than APRA, should ensure these matters. The expertise to ensure matters such as these is a key value added by the facilitator, and is not within APRA's expertise.
 - C3.6 APRA anticipates that the establishment of the Committee will be time consuming, and submits that the date for establishment of the Committee should be 3 months after the date of authorisation. APRA also seeks clarification relating to the use of the word "representatives" – it is unclear whether bodies that are representative of licensees or members, but are not themselves licensees or members, would be able to be members of the Committee. APRA submits that representatives of such bodies should be eligible to be members of the Committee. APRA also notes that a body such as the AHA might be representative of licensees referred to in C3.6(i) and C3.6(ii).
 - C3.6(iii) and (iv) APRA submits that the pool of members from which to choose for those referred to in C3.6(iii) will be far larger and more representative if the figure is \$5,000. APRA is able to provide information to support this submission if it would be helpful.
- C3.10 and C3.11 APRA strongly objects to the requirement to appoint an auditor. First, it is unclear why the skills of an auditor (which are primarily financial) are required when what is being assessed is compliance with the ACCC's conditions and the preparation of reports to the ACCC. APRA respectfully submits that compliance with the conditions is a matter for the ACCC to assess on receipt of APRA's reports, noting the ability (and willingness) of APRA licensees and members to approach the ACCC at any time. It is APRA's view that the addition of a further level of bureaucracy into a system that already contains a Facilitator, a Committee, and reports from APRA as well as independent experts, is misconceived and inefficient. The additional costs of this condition would be excessive, for little or no benefit. It follows that APRA submits that references to the auditor in the schedules should be removed.
- Schedule A – APRA submits that it is inappropriate to adopt the same cost structure for disputes between APRA and its members, as for disputes between APRA and licensees. Often, disputes with members cannot be quantified in terms of money. Certainly, the value of the grant of rights by a member to APRA cannot be quantified in the terms suggested in this schedule. APRA submits that references to member disputes should be removed from schedule A, and that this matter be reconsidered when APRA has completed its stakeholder consultation as process design for member disputes.