

**21 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 re APRA's response to ACCC's Revised Conditions of Authorisation**

Thank you for the opportunity to provide further comment on the revised conditions of authorisation for the Australasian Performing Right Association (APRA), particularly in response to APRA's submission dated 2 May 2014.

**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 particular points raised by APRA in their letter to the ACCC dated 2 May 2014 below.

### ***Period of Authorisation***

LPA restates our objection, as noted in our submission to the ACCC dated 7 May 2014, to a period of authorisation exceeding three years. To extend the authorisation period by 24 months presents an unacceptable risk to public detriment for the reasons outlined below.

#### 1. The Potential for Public Detriment as Determined by the ACCC

The ACCC stated in the Draft Determination of October 2013 that:

*The level of concern raised by interested parties and the potential for the arrangements to generate significant public detriment, mean the ACCC considers it appropriate to review the authorisation after three years. This will also allow the ACCC to consider the effectiveness of the proposed conditions and the steps that APRA has voluntarily undertaken to improve its processes.*

LPA supports this statement and believes that no significant change has occurred since October 2013 to suggest that the authorisation period should be extended. We recognise that APRA has actively and co-operatively prepared for operational changes, as required by the ACCC. However, this does not address the need to ensure that the actual implementation of the ACCC's conditions mitigates public detriment. Three years is the appropriate period to both analyse the effectiveness of the implementation of the ACCC's conditions and monitor the potential for these arrangements to generate significant public detriment, as noted by the ACCC in the above statement.

#### 2. Prior Periods of Re-authorisation for APRA set by the ACCC

Since the initial authorisation of APRA in 1999, the ACCC has never authorised APRA for a period exceeding four years. Most recently in 2010, APRA was only authorised for a period of 3.5 years. LPA is not aware of any evidence that would suggest less of a potential public detriment exists now than in 2010. In fact, based on the increase in public concern identified in this latest re-authorisation process we would argue that the risk of public detriment requires careful management.

It is unprecedented for the ACCC to re-authorise APRA for more than four years, and logically this should only occur if there has been a proven decrease to the risk of public detriment. We believe an authorisation period of three years appropriately reflects the level of concern raised throughout this re-authorisation process, while still allowing APRA a practical period of implementation before being considered for re-authorisation again in 2017.

### 3. Changing Nature of the Industry and APRA Operations

The nature of the industry APRA operates within is constantly changing at a rapid pace. Additionally, APRA has stated previously that it intends to make changes to the operation of its licence schemes, and is considering the introduction of a new royalty payment scheme. These are significant changes that effect both licensees and APRA Members, the implementation of which should not go without review by the ACCC for an extended period. A five year period of authorisation would be undesirable, as it would allow any problems that arise from these changes to continue for half a decade without being addressed, potentially exacerbating the risk of public detriment.

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

##### **C3.2 (iii)**

LPA has no issue with the timeframe of 30-60 days which APRA state to be “more realistic”, as this timeframe reflects standard commercial terms.

##### **C3.3 (iii)**

LPA submits that APRA should be required to attempt to resolve disputes outside of the Copyright Tribunal and only refer disputes to the Tribunal as a last resort, as most licensees and APRA Members are not in a financial position to address disputes at the Copyright Tribunal.

##### **C3.6**

LPA agrees with APRA that representative bodies of licensees, such as LPA, should have representation on the ADR Committee on behalf of Members. LPA intends to nominate a representative to the ADR Committee once established.

##### **C310 and C3.11**

LPA recognises the concerns raised by APRA in regard to the appointment of an auditor, and understands the difficulties with regard to administrative burden and cost. We also acknowledge that the revised conditions set annual reporting requirements for APRA, the independent facilitator and consultative ADR committee. As such, LPA does not object to APRA’s request for the removal of the requirement to appoint an auditor on the condition that APRA is re-authorised for a maximum period of three years.

If it becomes apparent following APRA’s re-authorisation that an auditor is required to mitigate public detriment, this can be reasonably addressed in 2017. However, it is not acceptable for such a problem to remain unaddressed until 2019. Therefore, we do not believe the appointment of an auditor at this time needs to be a mandatory condition of authorisation providing that the ACCC sets a re-authorisation period for APRA not exceeding 3 years.

Thank you for inviting us to make a submission on this important re-authorisation for our industry. We look forward to liaising further with the ACCC and APRA to ensure the conditions of re-authorisation are implemented.

Yours sincerely

A handwritten signature in black ink, appearing to read 'E. Richardson', with a long horizontal flourish extending to the right.

**Evelyn Richardson**  
Chief Executive