

## Condition C3- Alternative Dispute Resolution Annual Reporting Report Pursuant to Condition C3.16. 1 January 2016- 31 December 2016.

### Overall

There have been 19 referrals in the period of which 17 are concluded and 2 ongoing. A short summary of the type of matters is set out on pages 9-11 without attribution.

The consultative Committee has functioned well. We have set up a peer sub-committee comprising of John Prior and Shirli Kirschner and a governance sub-committee comprising of David Cosgrave and Shirli Kirschner. We have had one resignation, Kate Bonnell (ABC) on account of a change of positions. We intend to replace her in 2017.

We have trialled one iteration of a member-to-member peer assist program with mixed results and we are working on a second and different trial. The focus for this year is to set up a governance committee to monitor the performance indicators for the system. The terms of reference for that committee are included at page 12. .

The APRA AMCOS legal group received an award for the project which was accepted on behalf of the consultative committee and with thanks to the ACCC.

### Total Referrals:

Quarter	Total matters	Licences	Writer members
January- March	5: [008-012]	x	5
April- June	6: [013-018]	2	4
July- September	5: [019-023]	x	5
October -Dec	3: [024-026]	1	2
<b>Total for 2016</b>	<b>19</b>	<b>3</b>	<b>16</b>

**Carried over to 2017 - 2 [006 and 010]**



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## Summary by Intervention (numbers in brackets are the matter numbers)

**Not referred** –(no consent from both parties): 3 (009M,021M,024M)

### Licensee (3 referrals):

Process	Number	Time taken	comment
<b>Option 1:</b> Informal resolution of disputes. Resolution facilitator working with APRA and party.	2 [014L, 26L]	[014]- 1 week	no further action (NFA)
		26L -72 hours	Resolved.
<b>Option 2</b> Independent mediator	1 [018L]	4 months due to overseas licensee. Not settled at mediation	NFA
No binding decisions			

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### Members (13 referrals):

Process	Number	Time taken	comment
<b>Option 1:</b> Informal resolution of disputes. Resolution facilitator working with APRA and party.	<b>10</b>	See page 12	
<b>Option 2</b> Independent mediator/ mapper	<b>3</b> [008 mapping, 011 mediation 019 mapping]		
Mapping Michael McMartin	008	24 Feb-9 May	Exchange of information and shuttle. Resolved.
Mediation Peter Singer	011	21 March-26 April	Exchange of information and two half days mediation. Resolved.
Mapping Keith Welsh	019	8 July- September	Third party information required. Resolved.
No binding decisions.			



**Matters outstanding in 2016:** 2 moved to 2017 [010 and 016] both of these are legacy issues.

**Costs:**

APRA paid for the Resolution facilitator.

Mediation [016] paid for by the parties 50/50

Mediation [020] ` paid by APRA and the party 50/50]

(See C3.16 (v) pf the Authorisation).

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**Participant Feedback:** see Survey Monkey responses  
4 surveys received (out of 7 sent) see **pages 6-8** inclusive below  
Multiple private emails of thanks.

## C3.6 Consultative Committee Report:

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**Member's representatives:**

Bill Cullen

Brendan Gallagher

Delwyn Everard (Arts Law Center)

Guy Gross

John Prior

John Schumann (special projects and communication)

Kevin Stanton

**Licensee's representatives:**

Stephen Ferguson (National AHA)

David Cosgrave (USQ)

Harley Sedman

Holly Crain/Evelyn Richardson (Live Performance)

Joel Perricone (Fitness Australia)

Kate Bonnell (ABC) (part year)

Sarah Nicholson

Stuart Watters (Nightlife)

**Full committee meetings in the period:**

**Date:** 29 August 2016 **time:** 3.00pm-5.00pm

**Date:** 30 March 2016 **time:** 2.00pm-4.30pm

Governance sub-committee head: David Cosgrave (2016 meeting 3)

Peer-assist sub-committee head: John Prior (2016, meetings 2)



## Other matters:

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APRA AMCOS wins Australian Dispute Centre Award for Resolution pathways.

[http://themusic.com.au/news/all/2016/08/23/heres-why-apra-amcos-is-making-business-easier-for-music-creators-and-users/?utm\\_medium=email&utm\\_campaign=YDS+230816&utm\\_content=YDS+230816+CID\\_e639e04cd78fe281cf11216135b5fbe6&utm\\_source=Daily+SPA](http://themusic.com.au/news/all/2016/08/23/heres-why-apra-amcos-is-making-business-easier-for-music-creators-and-users/?utm_medium=email&utm_campaign=YDS+230816&utm_content=YDS+230816+CID_e639e04cd78fe281cf11216135b5fbe6&utm_source=Daily+SPA)

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Shirli Kirschner

Dispute Resolution Facilitator

**28 February 2017**

Below: summary of background reading

Survey Monkey responses (4)

Summary of matters by reference number

Governance paper.

### Summary for background reading

Resolution Pathways is a dispute resolution service established for disputes between APRA AMCOS, its music creator members and its music customers (referred to as music users in the Resolution Pathways).

Resolution Pathways is designed to assist parties to effectively resolve disputes, or to arrange an independent decision on outstanding issues where appropriate. It is intended to streamline resolutions and prevent disputes becoming a commercial roadblock.

The service has an independent advisory committee who advise on the management of the Pathways. There is also a dedicated web site [www.resolutionpathways.com.au](http://www.resolutionpathways.com.au). The Pathways comply with parameters set by the ACCC in its condition of authorisation.<sup>1</sup>

There are three principle Resolution Pathways available and an independent resolution facilitator to assist the parties to select the one that best suits their dispute. Shirli Kirschner was appointed as the first Resolution Facilitator with the ACCC's approval. In addition, each Pathway will have available trained professionals to provide a high level service. Pathways differ in the level of formality, the level of involvement and the cost. The primary Pathways include:

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<sup>1</sup> Australian Competition & Consumer Commission, 'Determination: Application for revocation and substitution of authorisations A91187-A91194 and A91211' p. 90  
<<http://apraamcos.com.au/media/3438/2014finaldetermination.pdf#page=99>>



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**Mediation:** An informal, flexible process utilising a skilled mediator trained in assisting participants to resolve disputes, without the mediator providing a view. A panel of mediators and their profiles is available on the web site. A hybrid is available for music creators where the trained mediator is also an industry expert who can provide guidance (mapping).

**Expert View:** A non-binding evaluation given to those in dispute jointly, by a person who is an expert in the area(s) in dispute. The expert will be selected by the resolution facilitator in consultation with the people in dispute.

**Binding Decision:** A binding decision on the issues in dispute provided by a person who is an expert in the area(s) in dispute. The expert will be selected by the resolution facilitator in consultation with the people in dispute

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## Costs: Resolution Facilitator

Action	Maximum fee to Music User/Music Creator
Initial phone discussion with the Facilitator (up to 45 minutes)	No charge
Subsequent involvement of the Resolution Facilitator where the amount in dispute is less than \$1,500 or there is a Dispute on matters that are not monetary.	\$50.00 incl. GST
Subsequent involvement of the Resolution Facilitator where the amount in dispute is \$1,500-\$3,000.	\$75.00 incl. GST
Subsequent involvement of the Resolution Facilitator where the amount in dispute is over \$3,000.	\$150.00 incl. GST

## Costs: Mediation, Expert View & Expert Decision

Rates vary depending on the amount in dispute, the Pathway chosen, and the expert used. An estimate will be provided by the resolution facilitator together with her recommendation on Pathway. Contact can be made by phone, email or through the website.



## Survey Monkey responses (4) (most recent on top)



#7

### COMPLETE

- **Collector:** Web Link 1 (Web Link)
- **Started:** Friday, November 18, 2016 7:44:18 AM
- **Last Modified:** Friday, November 18, 2016 7:47:57 AM
- **Time Spent:** 00:03:38
- **IP Address:** 124.170.14.55

#### PAGE 1: Resolution pathways survey

**Q1: Considering the recent dispute referred to us, how satisfied were you with the outcome you achieved?**

- (no label)Extremely satisfied

**Q2: How satisfied were you with how quickly the dispute was dealt with?**

- (no label)Very satisfied

**Q3: Leaving aside the outcome of the dispute process, how would you rate your ease of access to the dispute process?**

- (no label)Met expectations

**Q4: Leaving aside the outcome of the dispute process, how user-friendly did you find the dispute process?**

- (no label)Met expectations

**Q5: How would you rate the value for money of the dispute process?**

- (no label)Good

**Q6: How did you rate the resolution facilitator?**

- (no label)Excellent

**Q7: How likely are you to recommend our service to others?**

- Quite likely

**Q8: Please provide any additional comments, compliments or complaints.**

*Respondent skipped this question*

**Q9: Please provide a testimonial for use on our web site if that is appropriate:**

Smooth and efficient, professional and supportive.

**Q10: If you would like to speak to someone further about your response to the previous question, please provide us with your contact details here:**

*Respondent skipped this question*



#6

### COMPLETE

- **Collector:** Web Link 2 (Web Link)





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- **Started:** Thursday, September 22, 2016 12:21:28 PM
- **Last Modified:** Thursday, September 22, 2016 12:25:08 PM
- **Time Spent:** 00:03:39
- **IP Address:** 110.143.132.84

## PAGE 1: Resolution pathways survey

**Q1: Considering the recent dispute referred to us, how satisfied were you with the outcome you achieved?**

- (no label)Extremely satisfied

**Q2: How satisfied were you with how quickly the dispute was dealt with?**

- (no label)Very satisfied

**Q3: Leaving aside the outcome of the dispute process, how would you rate your ease of access to the dispute process?**

- (no label)Excellent

**Q4: Leaving aside the outcome of the dispute process, how user-friendly did you find the dispute process?**

- (no label)Excellent

**Q5: How would you rate the value for money of the dispute process?**

- (no label)N/A

**Q6: How did you rate the resolution facilitator?**

- (no label)Excellent

**Q7: How likely are you to recommend our service to others?**

- Quite likely

**Q8: Please provide any additional comments, compliments or complaints.**

*Respondent skipped this question*

**Q9: Please provide a testimonial for use on our web site if that is appropriate:**

*Respondent skipped this question*

**Q10: If you would like to speak to someone further about your response to the previous question, please provide us with your contact details here:**

*Respondent skipped this question*

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#5

## COMPLETE

- **Collector:** Web Link 1 (Web Link)
- **Started:** Wednesday, June 08, 2016 7:23:50 AM
- **Last Modified:** Wednesday, June 08, 2016 7:24:34 AM
- **Time Spent:** 00:00:44
- **IP Address:** 1.152.97.60

## PAGE 1: Resolution pathways survey

**Q1: Considering the recent dispute referred to us, how satisfied were you with the outcome you achieved?**

- (no label)Extremely satisfied

**Q2: How satisfied were you with how quickly the dispute was dealt with?**

- (no label)Very satisfied

**Q3: Leaving aside the outcome of the dispute process, how would you rate your ease of access to the dispute process?**

- (no label)Excellent



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**Q4: Leaving aside the outcome of the dispute process, how user-friendly did you find the dispute process?**

- (no label)Excellent

**Q5: How would you rate the value for money of the dispute process?**

- (no label)Good

**Q6: How did you rate the resolution facilitator?**

- (no label)Excellent

**Q7: How likely are you to recommend our service to others?**

- Extremely likely

**Q8: Please provide any additional comments, compliments or complaints.**

*Respondent skipped this question*

**Q9: Please provide a testimonial for use on our web site if that is appropriate:**

*Respondent skipped this question*

**Q10: If you would like to speak to someone further about your response to the previous question, please provide us with your contact details here:**

*Respondent skipped this question*



#4

## COMPLETE

- **Collector:** Web Link 1 (Web Link)
- **Started:** Monday, May 09, 2016 8:34:15 PM
- **Last Modified:** Monday, May 09, 2016 8:38:30 PM
- **Time Spent:** 00:04:15
- **IP Address:** 124.187.238.140

## PAGE 1: Resolution pathways survey

**Q1: Considering the recent dispute referred to us, how satisfied were you with the outcome you achieved?**

- (no label)Extremely satisfied

**Q2: How satisfied were you with how quickly the dispute was dealt with?**

- (no label)Extremely satisfied

**Q3: Leaving aside the outcome of the dispute process, how would you rate your ease of access to the dispute process?**

- (no label)Excellent

**Q4: Leaving aside the outcome of the dispute process, how user-friendly did you find the dispute process?**

- (no label)Excellent

**Q5: How would you rate the value for money of the dispute process?**

- (no label)Excellent

**Q6: How did you rate the resolution facilitator?**

- (no label)Excellent

**Q7: How likely are you to recommend our service to others?**

- Extremely likely

**Q8: Please provide any additional comments, compliments or complaints.**

Shirli was a gem. A thorough professional, and someone who "follows up" religiously. When someone follows up it means they care. Extremely happy.

**Q9: Please provide a testimonial for use on our web site if that is appropriate:**

Ms Kirschner has an invaluable perspective on resolving disputes, and most importantly provides meaningful tools to avoid the same pitfalls.

**Q10: If you would like to speak to someone further about your response to the previous question, please provide us with your contact details here:**

*Respondent skipped this question*

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## Summary of Matters

Number L= licensee M= writer member	Type of matter	Dates	Result
008M	Writer splits	24 Feb-9 May 16	Mapping resolved.
009M	Writers splits	22 March. N/A	No consent to process from one side. No further action (NFA)
010M	Various (complex legacy issue involving number of parties)	N/A	Ongoing
011M	Writers splits and commercial fee with 3 <sup>rd</sup> party	21 March-2 May	Mediation Peter Singer.  Resolved
012M	Writers splits	7 Feb-13 April	Coaching. Resolved
013M	Writers splits and the role of producer in electronic music	4 April- 23 September	Peer process with chair and RF.  Resolved
014L	The status of royalties in a not for profit- review conducted	13 April- 21 April.	NFA



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015M	Writers splits on royalty for children's CD	N/A	Coaching- NFA
016M	Various (complex legacy issue involving number of parties)	N/A	Ongoing
017M	Dispute on authorship of a musical (not APRA)	27 April- N/A	Referral for pro-bono mediation referral through Arts Law  Resolved.
018L	License fee for the fitness industry	May- September	Mediation.  Not resolved
019M	Writers splits re a badge	8 July – 12 December	Mapping.  Resolved
020M	JV with writers splits and money	1 September- 22 September	Exchange of information and coaching.  Resolved.
021M	Use of a badge under a contract	n/a	No consent to referral

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022M	Query re writers splits under an offshore agreement	n/a	Referral offshore
023M	Alleged plagiarism and writers splits	31 October to 19 December	Resolution facilitator shuttle.  Resolved
024M	Alleged plagiarism and writers splits	N/A	No consent to referral
025M	Writers splits and producer tension	31 October-December	Resolution facilitator shuttle information exchange and legal advisers.  Resolved.
026L	Request for pari passu refund on closure of shop	7 November – 10 November	Resolved.



## GOVERNANCE SUB-COMMITTEE (GSC)

### OBJECTIVES

It has been proposed that the Facilitator establish a governance capability, as foreshadowed in the ACCC 6 June 2014 APRA determination, by creating a sub-committee of the Consultative Committee that will address relevant governance aspects of the Consultative Committee's work.

The governance sub-committee will be a sub-group, and meet the criterion outlined by the ACCC, potentially meeting more often than the Consultative Committee.

### SUGGESTED WAY FORWARD

The ACCC 6 June 2014 APRA determination ensures that the Facilitator is empowered to establish and maintain sub-committees of the Consultative Committee where the Facilitator considers it appropriate to do so.

Following the Consultative Committee's discussion of this topic on 29 August 2016, it is proposed that the following Consultative Committee members, along with the Facilitator, constitute the GSC:

Artist larger royalty

Artist smaller royalty

Licensee larger

Licensee smaller.

APRA AMCOS observer.



## DRAFT TERMS OF REFERENCE FOR THE GOVERNANCE SUB-COMMITTEE (GSC)

### 1. Purpose

The GSC's primary purpose is to provide support by overseeing and monitoring the dispute resolution system, how decisions are made within the system and how effectively and efficiently the system discharges its function.

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### 2. Responsibilities

The GSC's responsibilities are:

#### **2.1 Risk Management**

- Ensure there is a common understanding of the key risks within the dispute resolution system.

#### **2.2 Compliance with ACCC Authorisation**

- ensure that the ACCC guidelines are met
- Oversee the review of the dispute resolution system's framework and processes.
- Consider the findings of any reviews carried out
- Evaluate the effectiveness of the dispute resolution facilitator
- Monitor budgets and priorities.

### 3. Membership

- GSC members shall have skills and experience, which may include legal, communications, management, an understanding of the industry as appropriate to the GSC's role and responsibilities.
- The GSC Chair shall be elected from and by the GSC members but cannot be the Facilitator.



## 4. Meetings

The GSC will meet at least twice per year.

The Chair shall call meetings as required or if requested to do so by any GSC member, the Consultative Committee, the facilitator, APRA-AMCOS or the ACCC.

The GSC may invite other persons to attend meetings and provide information as necessary.

For meeting purposes, a quorum exists if 4 GSC members are present.

For voting purposes, the GSC Chair has a second, casting, vote.

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## 5. Consultative Committee Succession

The GSC will, in a structured manner and taking a multi-year view, regularly assess the overall skills, experience, independence and knowledge required to competently discharge Consultative Committee's responsibilities, having regard to the Consultative Committee's roles and objectives, and report the outcome of that assessment to the Consultative Committee.

Having regard to the assessment, the GSC will implement a succession planning process for the identification of suitable candidates for appointment to the Consultative Committee. This process will focus on the short, medium and long term.

The GSC will make recommendations to the Consultative Committee on candidates it considers appropriate for appointment.

## 6. Ethical Practices, Confidentiality and Independence

GSC members are to:

- exercise objectivity and probity in the discharge of their duties and responsibilities





- act in a proper and prudent manner in the use of information acquired in the course of their duties and responsibilities
- ensure that they do not place themselves in situations which could lead to, or be perceived to, give rise to a conflict of interest
- disclose to the Consultative Committee any matter which could compromise, or be seen to compromise, the performance of their duties on the Committee or give rise to a perception of a conflict of interest.

## **7. Secretary**

The GSC will appoint a person to act as Secretary to the Committee.

## **8. Performance Evaluation**

The GSC will undertake a self-evaluation of its performance each year having regard to the principles and requirements of its terms of reference and the overall objective of the GSC's work.

