



**Australasian Performing Right Association Limited –
Application for revocation of AA1000433 and the substitution of
authorisation AA1000661
Interim authorisation decision
19 June 2024**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has decided to suspend the operation of authorisation AA1000433 and grant interim authorisation in respect of the application for authorisation AA1000661 in substitution for the authorisation suspended.
2. Interim authorisation is granted on the same terms as the current authorisation AA1000433, including the conditions of authorisation C1 to C6 imposed in 2020 (set out in **Attachment A**) (**Existing Conduct**). This will enable the Australasian Performing Right Association Limited (**APRA**) to continue its arrangements for the acquisition and licensing of performing rights in musical works (being the conduct authorised by the 2020 ACCC Determination). Interim authorisation will also enable the ACCC to continue its assessment of the substantive application AA1000661 for revocation and substitution.
3. Interim authorisation commences immediately and remains in place until it is revoked, the application for revocation and substitution is withdrawn, or the date the ACCC's final determination comes into effect.

The application for authorisation

4. On 6 February 2024, APRA lodged an application for revocation of authorisation AA1000433 and substitution of authorisation AA1000661 for the one revoked (**Application**).
5. APRA seeks authorisation for 5 years to engage in conduct relating to its acquisition and licensing of performing rights (which consist of the rights to perform in public and to communicate to the public) in music works. APRA describes the conduct for which it seeks authorisation as:
 - **Input arrangements:** APRA's input arrangements arising from the standard form of assignment for APRA's members (whereby APRA requires its members to assign to it the performing rights in all of the works owned or controlled by the member), subject to the resignation, opt-out and licence back provisions of APRA's Constitution
 - **Reciprocal Terms:** APRA's reciprocal arrangements with overseas collecting societies by which the collecting societies grant each other the exclusive right to license works they respectively control
 - **Blanket licences:** APRA's output arrangements, in particular APRA granting blanket licences for users to perform in public or communicate to the public any of the works in its repertoire
 - **Distribution Arrangements:** APRA's distribution arrangements arising from APRA's constitution – in particular, Article 93 and APRA's "Distribution Rules"

(the **Proposed Conduct**).¹

6. These arrangements, in earlier forms, have been authorised by the Australian Competition Tribunal (the **Tribunal**) and the ACCC since 1999, and most recently in 2020.

The authorisation process

7. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (the **Act**). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

Interim authorisation

8. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the conduct while the ACCC is considering the substantive application.
9. APRA has requested interim authorisation to the extent the ACCC is still considering the substantive Application, noting its existing authorisation expires on 4 August 2024.
10. APRA has requested interim authorisation to enable it to continue the Existing Conduct authorised by the ACCC's Final Determination in 2020.²
11. In support of its request for interim authorisation, APRA submits that:³
 - Interim authorisation will maintain the market status quo and will not permanently alter the competitive dynamics of the market, nor inhibit the market from returning to its pre-interim state if final authorisation is later denied.
 - Interim authorisation would not cause any harm to any other parties (including members and users) since the Proposed Conduct that is subject to the Application is (largely unchanged and) already authorised pursuant to the 2020 determination.
 - Refusal of interim authorisation would cause significant harm to APRA.
 - The Application was lodged on time (that is, the need for interim authorisation was not caused by any late lodgement of the Application).
 - Interim authorisation would promote the object of the Act, including enhancing the welfare of Australians through the promotion of competition (since, for the reasons stated in its Application, the Proposed Conduct (and therefore the Existing Conduct) will not, and does not have the potential to, substantially lessen competition).

Consultation

12. The ACCC invited submissions from a range of potentially interested parties including industry associations, member organisations, government organisations, APRA members and licensees.
13. The ACCC did not receive any submissions in response to APRA's request for interim authorisation.

¹ On 29 April 2024, APRA updated the description of the conduct for which it seeks authorisation: see [ACCC's public register](#).

² See APRA application, 6 February 2024, paragraph 206, available on the [ACCC's public register](#).

³ See APRA application, 6 February 2024, paragraph 208, available on the [ACCC's public register](#).

14. With respect to the substantive Application, submissions generally support the continuation of a system of collective rights licensing and acknowledge APRA's arrangements create efficiencies for members and licensees. However, a number of interested parties raised issues with the substantive Application for revocation and substitution, which the ACCC will consider in detail in its draft determination.
15. Further information in relation to the Application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's public register for this matter.⁴

Reasons for decision

16. The ACCC has decided to grant interim authorisation under section 91(2) of the Act.
17. Interim authorisation is granted to the Existing Conduct authorised by authorisation AA1000433, granted by the ACCC in 2020. That is, APRA is authorised to continue its arrangements for the acquisition and licensing of performing and communication rights in music. The arrangements cover:
 - (a) 'input arrangements'
 - the assignment of performing and communication rights by members to APRA and the terms on which membership of APRA is granted, and
 - APRA's reciprocal arrangements with overseas collecting societies by which, for the most part, the collecting societies grant each other the exclusive right to license works they respectively control
 - (b) 'output arrangements' – the licensing arrangements between APRA and the users of musical works, and
 - (c) 'distribution arrangements' – by which APRA distributes to relevant members the fees it has collected from licensees/users.
18. Interim authorisation is granted subject to conditions C1 to C6 of authorisation AA1000433.
19. The ACCC has decided to grant interim authorisation for the following reasons:
 - The current authorisation, AA1000433, is due to expire on 4 August 2024. Interim authorisation will enable the ACCC to give due consideration to the Application for revocation and substitution in circumstances where the ACCC's final determination in this matter is unlikely to come into effect before the current authorisation expires.
 - Granting the interim authorisation will maintain the status quo as APRA's arrangements for the acquisition and licensing of performing rights in musical works have been authorised, by the Tribunal, and the ACCC, since 1999.
 - The denial of interim authorisation is likely to cause significant harm to APRA and its members by creating uncertainty about their ability to continue their current arrangements, and to commercial music users who may be left, in the short term, without certainty about a method for obtaining licences to use APRA's repertoire of copyrighted musical works.
 - While interim authorisation is in place, the ACCC will consider any impacts of the Proposed Conduct on competition and its effectiveness in delivering the claimed benefits as part of its assessment of the substantive Application. The ACCC will have regard to the above considerations in deciding whether to exercise its power to, at any time, revoke the interim authorisation.

⁴ See <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/australasian-performing-right-association-limited-1>

- If interim authorisation is granted but the ACCC does not ultimately grant authorisation, APRA will have to restructure its arrangements for the acquisition and licensing of performing rights in music. The ACCC considers that this task may be significant, but notes that if interim authorisation is not granted, APRA would have to undertake the same exercise by an earlier date.

Reconsideration of interim authorisation

20. The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.

Attachment A

Conditions of authorisation AA1000433

Condition C1 – Transparency of licence fees

C1.1 APRA must continue to maintain and publish comprehensive plain English guides (which APRA now calls 'Information 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 (e.g. 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 and/or the application process for the licences and licence categories, and
- (ix) the following statement:

Even with our licence, the use of digital music streaming services by you in your business may be in breach of the terms and conditions of your end user agreement with that service. You should check with your service provider.

The statement at condition C1.1(ix) must be included in APRA's comprehensive plain English guides within 12 months of the ACCC's final determination being made (or such longer period as is agreed with the ACCC).

C1.2 Within 12 months of the ACCC's final determination being made (or such longer period as is agreed with the ACCC), APRA must revise the comprehensive plain English guide for each licence category required by condition C1.1 ('Revised Guides'). The Revised Guides must include explanations of the following (the 'Fee Methodology explanation'):

- (i) the processes and methodologies adopted by APRA for calculating licence fees for that licence category, including a description of the underlying data used, and summary of any analyses or evaluations undertaken
- (ii) whether, and if so, how APRA had regard to any decisions of the Copyright Tribunal of Australia in setting license rates for that licence category. This should include whether, and if so, how APRA used a Copyright Tribunal decision about a different licence scheme, type of licence, or type of use, as a basis or benchmark for setting fees for that licence category
- (iii) whether, and if so, how APRA had regard to the economic framework and pricing principles, and the approaches that can be used in applying that framework and pricing principles, set out in the *ACCC Guidelines to assist the Copyright Tribunal in the determination of copyright remuneration* in calculating licence rates, including:
 - (a) the hypothetical bargaining approach
 - (b) survey evidence and other supporting information, and
 - (c) appropriate benchmarks, including
 - rates or tariffs paid for the use of the same bundle of musical works in different uses
 - rates or tariffs paid for the same type of licence in other jurisdictions, and/or
 - to the extent that there are comparable, more competitive markets, the rates or tariffs paid in those comparable, more competitive markets
- (iv) whether and, if so, how APRA's blanket licences under the licence schemes are adjusted (including discounted) and/or provide for adjustment, to account for any direct licensing
- (v) any other matters APRA had regard to in setting the licence rates.

C1.3 APRA is not required to disclose any information about a third party in the Revised Guides that was provided to it by that third party or is otherwise in APRA's possession and which that third party claims is confidential, or to disclose any information that is subject to legal professional privilege.

C1.4 Once updated, the Revised Guides to each license category must be provided to all new or renewing licensees and must be prominently displayed on APRA's website (www.apraamcos.com.au) and the OneMusic website (www.onemusic.com.au). The APRA website and OneMusic website must have a prominently displayed link to the Revised Guides on all pages of the websites, which must be visible on landing on all pages of these websites. APRA must also provide the Revised Guides, and information about how to obtain additional copies of the Revised Guides, to relevant industry associations (that is, industry associations that have musical work copyright holders, or licensees or potential licensees, as members) on publication.

C1.5 APRA must provide a copy of the Revised Guides by email to the ACCC at adjudication@acc.gov.au, prior to publishing.

C1.6 APRA must publish a revised, and up to date, version of each of the Revised Guides by 30 June each year (if any aspect of the content of a guide, including the content

required to be published under condition C1.1 or C1.2, will no longer be current as at that date).

- C1.7 APRA must publish on its website, and make available to any party upon request, each time there is a percentage increase in a licence rate in any licence category that exceed the rate of growth in CPI, an explanation of the matters taken into consideration in determining the increase in the licence rate. APRA is not required to disclose any information about a third party in these explanations that was provided to it by that third party or is otherwise in APRA's possession and which that third party claims is confidential, or to disclose any information that is subject to legal professional privilege.
- C1.8 Any time a person using the 'Get a Quote' function on the OneMusic website answers yes to a question about the use of a digital music service or device to play music in their business APRA must ensure that the following statement is prominently displayed before the next question appears:

Even with our licence, the use of digital music streaming services by you in your business may be in breach of the terms and conditions of your end user agreement with that service. You should check with your service provider.

Condition C2 – Transparency of distribution arrangements

- C2.1 APRA must detail in annual publications, at an anonymised or aggregate level where appropriate, the accounting and distribution of licence revenue. Categories for reporting must include, but are not limited to:
- (i) classes of licensees from whom licence revenue is received
 - (ii) classes of members to whom licence revenue is paid, and
 - (iii) categories of copyright material copied / licensed in respect of which licence revenue is received.
- C2.2 APRA must, in response to a request by a licensee or their representative, provide detailed information about particular rights payments (distributions) made pursuant to a licence. The provision of such information is only required to the extent that the information is not commercial-in-confidence and does not otherwise directly affect a commercial negotiation between APRA and the licensee or potential licensee. Such information is to be provided:
- (i) on an anonymised basis, and
 - (ii) where APRA can do so at a reasonable cost.
- C2.3 Commencing 1 July 2021, APRA must detail in its annual publications the proportion of licence revenue collected which is distributed using each of the following techniques as defined in APRA's *Distribution Practices August 2018 version*:
- (i) Direct allocation – blanket
 - (ii) Direct allocation – transactional
 - (iii) Census analysis
 - (iv) Sample analysis

- (v) Sample/direct allocation – blanket or transactional
- (vi) Third-party data
- (vii) Music Recognition Technology (MRT), and
- (viii) Distribution by analogy

C2.4 In reporting the information required in condition C2.3 APRA must provide an explanation about the reasons for changes in the proportion of licence revenue distributed using each technique each year. C2.5 APRA must detail in its annual publications, at an anonymised or aggregate level, the proportion of licence revenue collected which is distributed to:

- (i) international affiliate societies, and
- (ii) APRA members in each of the following categories:
 - (a) the top ten percent of members, by royalties earned, who receive a distribution
 - (b) the top twenty five percent of members, by royalties earned, who receive a distribution, and
 - (c) the top fifty percent of members, by royalties earned, who receive a distribution.

C2.6 APRA must consult with members prior to making any substantive changes to its distribution policies.

C2.7 APRA must publish 'plain English' guidelines on its distribution policy and make them available to members and licensees.

Condition C3 – Comprehensive plain English guide for the resignation (cessation of membership), opt out and licence back provisions

C3.1 APRA must maintain on the APRA website a plain English guide to the resignation, opt out and licence back provisions, which includes:

- (i) the purpose, scope and content of the resignation, opt out and licence back provisions
- (ii) the situations where using those provisions might be of benefit to members and licensees
- (iii) the steps involved in resigning APRA membership and applying to make use of the opt out and licence back provisions (including guidance about the minimum information that an applicant must provide to APRA)
- (iv) examples of how the opt out and licence back provisions have been used to date

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

C3.2 APRA must also maintain information about the matters listed in condition C3.1 on the Managing Your Rights page on its website.

C3.3 At least once each calendar year, APRA must include a standard plain English paragraph in correspondence sent to licensees and members, 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 C3.1 above, as well as information about how to apply.

Condition C4 – Annual Transparency Report

- C4.1 Within five months of the end of each financial year, commencing with the 2020/21 financial year, APRA must publish an annual Transparency Report which includes:
- (i) information on rights revenue, including
 - (a) total rights revenue generated per type of use
 - (b) total distributable revenue per type of use
 - (c) income on investment of rights revenue, and use of such income
 - (ii) information on APRA's operating costs, including
 - (a) total operating costs
 - (b) total remuneration paid to APRA's board directors
 - (c) APRA's cost to revenue ratio
 - (iii) amounts due to members, including
 - (a) total revenue attributed to members
 - (b) total amount paid to members
 - (c) total amount attributed but not yet distributed to members
 - (iv) information about expired undistributed funds, including:
 - (a) reasons why funds remain undistributed
 - (b) steps taken to locate and distribute funds to rightsholders
 - (c) the uses for which funds are to be applied
 - (v) information about international collecting societies, including
 - (a) total amount received from other collecting societies
 - (b) total amount paid to other collecting societies
 - (vi) details of any social, cultural or educational services provided by APRA which are funded through deductions from rights revenue, including the total amount deducted from rights revenue. The amount provided to any individual through APRA's music grants program is not required to be reported.

Condition C5 – Independent Report on the methodologies adopted by APRA in determining licence fees for each license category

- C5.1. Within 60 days of receiving notice under condition C1.5, the ACCC may formally notify APRA in writing that it is not satisfied that the Fee Methodology explanation in one or more of the Revised Guides is sufficiently clear and detailed to provide

licensees with a reasonable understanding of the methodologies APRA adopts in setting its licence fees for the relevant licence category or categories. The ACCC will provide reason in its written notification.

C5.2 APRA must, within 120 days of receiving notice from the ACCC under condition C5.1, and in accordance with this condition 5, appoint an independent person or persons ('Independent Reporter') to prepare a report ('Independent Report'). The Independent Report is to:

- (a) explain the methodologies adopted by APRA in determining licence fees for the affected licence category or categories, and
- (b) be prepared in accordance with criteria, objectives and terms of reference approved by the ACCC.

The Independent Report is not to be a review of the individual licence fees that APRA charges or the reasonableness of APRA's licence fees.

C5.3 The Independent Reporter must be approved by the ACCC prior to their appointment by APRA. In deciding whether to approve a proposed Independent Reporter, 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 Independent Reporter (as relevant), and
- (ii) the proposed remuneration arrangements for the Independent Reporter (as relevant).

C5.4 Prior to the ACCC making a decision about whether to approve a proposed Independent Reporter, APRA must provide to the ACCC:

- (i) the agreement, or proposed agreement, setting out the terms and conditions on which the proposed Independent Reporter (as relevant) will be engaged
- (ii) any other information requested by the ACCC that the ACCC considers relevant.

C5.5 APRA must:

- (i) fund the Independent Reporter to carry out their functions, including paying for any external expertise, assistance or advice reasonably required by the Independent Reporter to perform their functions as the Independent Reporter
- (ii) enter into an agreement with the Independent Reporter consistent with this Determination, on terms acceptable to the ACCC. The agreement must include terms:
 - (a) requiring the Independent Reporter not to disclose any information that was provided to APRA by a third party and which that third party claims is confidential, or information that is subject to legal professional privilege; and
 - (b) requiring APRA to provide the Independent Reporter with all such third party confidentiality claims that it has received in writing:
- (iii) not interfere with, or otherwise hinder, the Independent Reporter's ability to carry out their functions as the Independent Reporter
- (iv) provide to the Independent Reporter any information or documents that the Independent Reporter considers necessary for carrying out their functions as the Independent Reporter, and
- (v) provide the Independent Reporter with a copy of Attachment B of this determination "Background to the independent report process."

- C5.6 APRA must publish a copy of the public version of the Independent Report prominently on its website and on the OneMusic website within 30 days of receiving the final version of that report. The APRA website and OneMusic website homepage must have a prominently displayed link to the Independent Report on their toolbars, which must be visible on landing on all pages of these websites.
- C5.7 If a confidential version of the Independent Report is produced, APRA must provide a copy of the confidential version of the report to the ACCC within 30 days of receiving it.

Condition C6 – Alternative Dispute Resolution

Scheme Requirements

- C6.1 APRA must maintain 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.
- C6.2 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, and 30-60 days for preparation of the written opinion 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).
- C6.3 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 (or APRA, if a non-binding written opinion has been delivered under Option 3) 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 of the Facilitator set out in Schedule C (in respect of the Applicant's Dispute) to an Independent Expert (at APRA's cost)
- (v) subject to condition C6.3(vii) and conditions C6.17–C6.21, 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, provided that the estimated costs of obtaining that advice have been approved by APRA and the Applicant, or by the Facilitator, or by another Independent Expert (at APRA's cost) if APRA or the Applicant is dissatisfied with the Facilitator's decision to approve (or not approve) those estimated costs. The actual 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.
- (viii) the Independent Mediator or Independent Expert (as relevant) may determine that a Dispute under Options 2, 3 or 4 be discontinued if, in the view of the Independent Mediator or Independent Expert, the Applicant is not making a reasonable effort to engage in the process being undertaken by the Independent Mediator or Independent Expert for the resolution of the Dispute. Before determining that a Dispute be discontinued the Independent Mediator or Independent Expert must provide the Applicant with a written warning:
 - setting out why they consider that the Applicant is not making a reasonable effort to engage in the resolution of the Dispute
 - explaining that unless the Applicant does make a reasonable effort to engage in the resolution of the Dispute the Dispute will be discontinued, and

- explaining that if the Dispute is discontinued the Applicant cannot seek to have the same dispute resolved through the ADR Scheme unless APRA agrees to do so.
 - (ix) If the Independent Mediator or Independent Expert does discontinue a Dispute under this condition 6.3(viii) the Applicant cannot seek to have the same dispute resolved through the ADR Scheme unless APRA agrees to do so.
- C6.4 APRA must not make any representation, or express any view, to the Independent Mediator or Independent Expert about any of the matters referred to in condition 6.3(viii) unless asked to do so by the Independent Mediator or Independent Expert.
- C6.5 APRA must procure that the Facilitator ensures 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

- C6.6 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.

The role of the consultative committee

- C6.7 APRA must maintain a consultative committee (the **'Committee'**). APRA must also permit the Facilitator to establish and maintain additional committees where the Facilitator considers it appropriate to do so. APRA must ensure that the members of

the Committee (as appointed or reappointed from time to time by the Facilitator) 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 \$3,000 or less, other than members who have not received any royalties from APRA in the previous 24 months
- (iv) Members whose annual royalty receipts from APRA are over \$3,000

Where a representative of a Licensee or a Member is appointed to the Committee, that appointment must be as a representative of one Licensee or Member (as relevant), but a representative of a Licensee may also represent the interests of one or more other Licensees, and a representative of a Member may also represent the interests of one or more other Members.

If an insufficient number of Members or Licensees in a particular category are willing to be members of the Committee, APRA must ensure that the Facilitator appoints another Member or Licensee (as relevant) to fill that position on the Committee.

C6.8 In addition to the composition of Committee members required by condition C6.7, the Committee must have an Independent Chair, approved by the ACCC. In deciding whether to approve the Independent Chair the ACCC may take into account any matter it considers relevant, including any previous or existing relationships between APRA (or a Licensee or Member) and the proposed Independent Chair.

C6.9 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) 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) a fixed amount of funding is provided by APRA for the administration of the Scheme (including the costs of the Facilitator and an honorarium for the Committee Independent Chair but otherwise excluding costs incurred by APRA in connection with individual Disputes) each year which is adequate for the operation of the Scheme (taking into account the level of funding recommended by the Committee each year)
- (iv) if the fixed amount of funding provided under condition C6.9(iii) is exhausted prior to the end of the year, bridging funding is provided for the remainder of the year to support those aspects of the administration of the Scheme necessary to directly support the consideration of Disputes, and
- (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

C6.10 APRA must ensure that there is an appointed Facilitator in place to operate and manage the Scheme at all times throughout the term of the authorisation. The Facilitator (including any replacement Facilitator) must:

- (i) have specialist training in ADR and have a detailed understanding and experience of dispute resolution practice and procedures which do not involve litigation
- (ii) have the capacity to determine the most appropriate alternative dispute resolution procedures in particular circumstances
- (iii) have an understanding of copyright or the capacity to quickly acquire such an understanding.

C6.11 Any replacement Facilitator must be approved by the ACCC, within 20 business days, in accordance with condition C6.15 and for a specified period of time, prior to the appointment taking effect for the purposes of these Conditions:

C6.12 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 C6.3(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 Independent Reviewer

C6.13 No later than 18 months before the date on which this authorisation expires, APRA must appoint an independent reviewer (**'Independent Reviewer'**), to review and report on the operation and management of the Scheme. The Independent Reviewer must:

- (i) be approved by the ACCC, within 20 business days and in accordance with condition C6.15, prior to the appointment taking effect for the purposes of these conditions
- (ii) have substantial experience in reviewing the operation and performance of alternative dispute resolution schemes.

C6.14 APRA must ensure that the Independent Reviewer operates with the objective set out in Schedule D, and performs the functions set out in Schedule D.

ACCC approval of the Facilitator and Independent Reviewer

C6.15 In considering whether to approve a proposed Facilitator or a proposed Independent Reviewer, 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 Independent Reviewer (as relevant)
- (ii) the proposed remuneration arrangements for the proposed Facilitator or proposed Independent Reviewer (as relevant).

C6.16 Prior to the ACCC making a decision about whether to approve a proposed Facilitator, 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 Independent Reviewer (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

C6.17 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 C6.19 and C6.21.

C6.18 The Committee must decide the format of the ADR Report and must prepare the ADR Report (in consultation with and with the assistance of the Facilitator, where appropriate) .

C6.19 Each ADR Report must be submitted to the ACCC prior to 1 March of each year and must concern disputes which commenced in a 12 month period ending 31 December of each year.

C6.20 Upon receipt of each ADR Report, the ACCC has the right to request additional information from Resolution Pathways and/or request Resolution Pathways to make changes to the ADR Report format.

C6.21 Each ADR Report must include:

- (i) the number of Disputes considered, and the number of Disputes resolved
- (ii) a summary of each Dispute resolved, including:
 - i. the type of dispute
 - ii. the subject matter of the dispute
 - iii. time taken to resolve the dispute
 - iv. fees incurred by Applicants and the fees borne by APRA
 - v. any outcomes, including details of any evaluations received
- (iii) for Disputes considered but not resolved, a summary of the:
 - i. reasons why those Disputes were not resolved
 - ii. the fees incurred by Applicants and the fees borne by APRA

- (iv) 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)
- (v) the number and nature of all complaints received about the Facilitator or the Scheme (including APRA's engagement with the Scheme)
- (vi) an evaluation of the Scheme's operations, by reference to any key performance indicators and metrics set for the scheme
- (vii) an evaluation of the Scheme's performance, by reference to any key performance indicators and metrics set for the Facilitator
- (viii) an evaluation of the governance and funding arrangements for the Scheme.

Other matters

C6.22 The APRA website (www.apraamcos.com.au) and OneMusic website (www.onemusic.com.au) must have a prominently displayed link to information about available dispute resolution processes on all pages of the websites, including the Scheme, which must be visible on landing on all pages of these websites.

C6.23 APRA must display contact details for, and information about, available dispute resolution processes, including the Scheme, prominently on the following APRA documents:

- (i) licence forms
- (ii) member statements
- (iii) licence invoices
- (iv) licence agreements, and
- (v) all initial legal correspondence with licensees, prospective licensees and members. This requirement does not extend to legal correspondence where: APRA has advised the licensee, prospective licensee or member about the Scheme in previous legal correspondence about the matter in dispute, the matter in dispute is being considered by the Copyright Tribunal or has already been referred to the ADR process.

SCHEDULE A – Fees and Charges (Condition C6.6)

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: (i) in the case of a Licensee, the annual amount payable by the Licensee for the licensing (or potential licensing) of copyright by APRA to the Licensee is less than \$10,000 or (ii) in the case of a Member, the amount paid by APRA for the licensing of copyright by the Member to APRA in the previous twelve months is less than \$5,000.	\$50.00 incl. GST
Subsequent involvement of the Facilitator (Option 1) where: (i) in the case of a Licensee, the annual amount payable by the Licensee for the licensing (or potential licensing) of copyright by APRA to the Licensee is \$10,000 to \$15,000, or (ii) in the case of a Member, the amount paid by APRA for the licensing of copyright by the Member to APRA in the previous twelve months is \$5,000 to \$7,500.	\$75.00 incl. GST
Subsequent involvement of the Facilitator (Option 1) where: (i) in the case of a Licensee, the annual amount payable by the Licensee for the licensing (or potential licensing) of copyright by APRA to the Licensee is more than \$15,000 or (ii) in the case of a Member, the amount paid by APRA for the licensing of copyright by the Member to APRA in the previous twelve months is more than \$7,500.	\$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. 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, APRA, and the Applicant who is a party to a Dispute must each pay 50 per cent of the fees charged, and 50 per cent of the disbursements or other costs reasonably incurred, by the Independent Mediator or Independent Expert for the resolution of the Dispute. In the event that more than one Applicant is a party to the Dispute, 50 per cent of the fees charged, and 50 per cent of the disbursements or other costs reasonably incurred, by the Independent Mediator or Independent Expert for the resolution of the Dispute must be 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 Licenseeor where the Facilitator determines that fees and costs are to be payable in respect of the Dispute.
3. Fees and costs are not payable by an Applicant in respect of a Dispute where:
 - (i) in the case of a Licensee, the annual amount payable by the Licensee for the licensing (or potential licensing) of copyright by APRA to the Licensee is less than \$20,000
 - (ii) in the case of a Member, the amount paid by APRA for the licensing of copyright by the Member to APRA in the previous twelve months is less than \$10,000; or
 - (iii) the Facilitator determines that the Dispute consists of a complaint.
4. If fees and costs are not payable by an Applicant in respect of a Dispute, APRA must pay 100 per cent of the fees charged, and 100 per cent of the disbursements or other costs reasonably incurred, by the Independent Mediator or Independent Expert for the resolution of the Dispute.
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 (Conditions C6.7 and 6.8)

The objectives of the Committee are to provide feedback and other advisory input to APRA and to the Facilitator (where appropriate) 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
- (v) setting annual key performance indicators for the Facilitator and the scheme
- (vi) reviewing any complaints about the Facilitator or the Scheme (including APRA's engagement with the Scheme)
- (vii) where relevant, planning for succession of the Facilitator, in conjunction with APRA
- (viii) preparing the annual ADR Report, in consultation with the Facilitator (where appropriate) (see condition C6.18)

but not intervening in individual Disputes.

SCHEDULE C – objective and functions of the Facilitator (Condition C6.10)

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 operation of the Scheme
- (ii) appointing, reappointing, replacing and terminating the appointment of members of the Committee from time to time
- (iii) informing Members and Licensees about the Scheme (including informing individual Members or Licensees (as relevant) about the costs that those Members or Licensees are likely to incur under the Scheme in relation to a particular dispute) 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, and persons with relevant industry and / or commercial experience, 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
- (ix) 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)
- (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) each public ADR Report, which the Facilitator must publish no later than 1 business day after receiving it from the relevant Independent Expert, and

the public version of the report of the Independent Reviewer (see Schedule D)

- (b) the curriculum vitae of each Independent Mediator and Independent Expert in the DR Pool
- (c) the public version of each binding written determination under Option 4 (see condition C5.3(vii)).

SCHEDULE D – Independent Reviewer (Condition C6.13)

The objective of the Independent Reviewer 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 Reviewer must include:

- (i) reviewing:
 - (a) the operation and performance of the Scheme (including without limitation the processes and procedures established under the Scheme, and the extent to which any concerns expressed by Members and or Licensees have been addressed by APRA and / or the Facilitator), and
 - (b) 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) 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
- (iii) no later than six months before this authorisation expires, preparing a report, and providing the report to the ACCC and publishing a public version of the report, on the matters reviewed under items (i) and (ii) above in respect of the period between the commencement of the Scheme and that date that is twelve months before this authorisation expires.

SCHEDULE E – Relevant Matters (condition C6.5)

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.