



**Small Business
Development Corporation**

Your ref: AA100661
Our ref: D24/1670

Ms Tess Macrae
Director, Competition Exemptions
Australian Competition & Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

via email: exemptions@accc.gov.au

Dear Ms Macrae

**AUSTRALASIAN PERFORMING RIGHT ASSOCIATION LTD – APPLICATION FOR
REVOCATION OF AUTHORISATION AA1000433 AND SUBSTITUTION OF NEW
AUTHORISATION AA1000661**

Thank you for your letter dated 19 February 2024 inviting interested parties to submit feedback to the Australian Competition and Consumer Commission (**ACCC**) regarding the application of the Australasian Performing Right Association Ltd (**APRA**) for revocation of authorisation AA1000433 and substitution of new authorisation AA1000661 (**the application**).

The Small Business Development Corporation (**SBDC**)¹ welcomes the opportunity to provide the following views in relation to the application.

The SBDC is an independent statutory authority of the Government of Western Australia (**WA**) established in 1984 to support and facilitate the growth and development of small businesses in this State. We offer a wide range of services designed to meet the needs of small businesses, including general business and specialist commercial tenancy advice, dispute resolution services, and advocacy and advice to all tiers of government.

The application by APRA impacts a vast number of small businesses across WA, including both the artists on whose behalf APRA is collecting and distributing licence revenue as well as the businesses that pay licence fees.

In 2019, the SBDC provided feedback in relation to the ACCC's determination of APRA's application for re-authorisation at the time. Following that consultation, the ACCC determination granted conditional authorisation to APRA on 13 July 2020 for a

¹ This submission outlines the views of the SBDC and does not necessarily represent the views of the Western Australian Government.

period of four years, until 4 August 2024 (with several conditions that are referred to later).

The SBDC made several points in our earlier submission that are still pressing: namely, transparency; licence fees and OneMusic; and payment of royalties. This is pertinent as APRA have had a period of four years to address these concerns.

Transparency

The SBDC is aware that many parties to the authorisation process in 2019 raised concerns regarding APRA's lack of transparency and accountability both to its members and its licensees.

Consequently, the SBDC appreciated APRA publishing and making available:

- Guides (Condition C3 – Comprehensive plain English Guide for resignation (cessation of membership), opt out, and licence back provisions);
- Annual transparency reports with information on rights revenue, APRA's operating costs, and payments to members (Condition C4 – Annual Transparency Report); and
- The Independent Report dated 15 February 2023 (Condition C5 – Independent Report on methodologies adopted by APRA in determining licence fees for each licence category).

The SBDC strongly believes in the importance of providing access to low-cost Alternative Dispute Resolution (**ADR**) services to resolve business disputes (Condition C6 – Alternative Dispute Resolution). The SBDC reiterates that more effort should be taken by APRA to promote the independent ADR scheme available to APRA members and licensees (music users).

As noted in the ACCC determination dated 13 July 2020, there is a lack of awareness particularly among licensees about the ADR scheme. While it has been noted on the APRA website and in licence fee guides, the ADR scheme should be more widely publicised or given more prominent placement on the different material produced by APRA.

Licence fees and OneMusic

The launch on 1 July 2019 of the OneMusic Australia (**OneMusic**) bundled licensing initiative between APRA and the Phonographic Performance Company of Australia (**PPCA**) effectively joined the two platforms into one.

In 2019, the SBDC noted concerns that under the new OneMusic initiative, certain venues would be required to pay licence fees based on their capacity rather than the actual number of patrons in attendance. This issue was raised in several submissions to the 2019 consultation and concern about using capacity as a metric on which to base fees was also raised in consultations listed in the 2023 Independent Report.

Taking into account businesses' preference of attendance over capacity, it is of concern that some licence fees continue to be calculated based on capacity. It is noted that attendance is how costings are calculated for several licence categories, including:

- "Child Care Services" licence guide has costings per Licensed Place at Child Care Service.
- "Dance Schools And Performance Instructors" licence guide has costings per number of classes per week and, for music used in dance events, how many events are held over the year and different factors for average number of students.
- "Fitness Centre and Fitness and Wellbeing Instructors" licence guide has costings per member per year (background music) and Fitness Class per year or for each Fitness Class with more or less than 10 participants per year (music in class).
- "Recorded Music for Dance Use" licence fee is per person admitted specifically for the purpose of dancing (such as a nightclub or a venue providing recorded music for dance use).

However, the "Hotels, Pubs, Taverns, Bars & Casino" licence fee for background music is costed per TV screen, radio, music system and music video screen, while background music for dining is based on dining area capacity (for example, 7-15 seating, 16-30). The "Hotels, Pubs, Taverns, Bars & Casino" licence fee for live performance is costed by a percentage of gross expenditure on the performer and percentage of gross sums paid for admission, while recorded music performance is costed by a percentage of gross expenditure on the performer and percentage of gross sums paid for admission and cost per person for the PPCA sound recordings.

All these scenarios can be covered by an 'all-inclusive' fee, which is costed at the licensed capacity (person) rate. Not included in the all-inclusive fee is the playing of Recorded Music for Dance Use – this is costed per person admitted.

The 2023 Independent Report stated that "capacity represents a much simpler, clearer and nonconfidential metric on which to base fees" (Hotels, Pubs, Taverns, Bars, Accommodation Hotels and Casinos Second Consultation Paper, dated 1 November 2018). Given this, why does the "Hotels, Pubs, Taverns, Bars & Casino" licence fee include attendance (Recorded Music for Dance Use) as well as capacity for costings? Additionally, there are other licence fees based on attendance, and not capacity.

Noting the claims by APRA that there are varied industry views on the use of capacity or attendance as multipliers, the SBDC believes that APRA should respect the views of the relevant industry associations and individual licensees it works with and be flexible in the use of different multipliers that work best for them.

Payment of royalties

The SBDC's submission to the 2019 consultation noted that concerns had been raised about the distribution of licence fees and some smaller performers not receiving their rightful royalties, as well as queries regarding the sampling methods for community radio, internet radio and certain venues to ensure that members' actual airplay was sufficiently captured. This was captured in the ACCC determination Condition C2 – Transparency of distribution arrangements.

In its submission in support of its application, APRA lists three types of reporting (*APRA Distribution Practices* (updated December 2023) Attachment 4B): licensee reporting, third party data, and Music Recognition Technology (**MRT**). The application explains that MRT is used in Audoo devices and is capable of monitoring and identifying music *in situ* to enable accurate data collection (Section C Relevant Background).

APRA reports it has installed 450 devices in Australia in locations including to “general public performance licensees, including retail, hospitality, fitness and dance schools”. Given the number of businesses that pay licence fees, 450 is unlikely to be considered an adequate number of devices to collect music data.

The 2023 Independent Report also lists the total OneMusic Australia Licensees and locations (Tab N). As of 10 January 2023, there were 44,257 total OneMusic Licensees and 93,350 total locations. Overall, there are devices at only one per cent of total OneMusic Licensees and half a per cent of total locations.

Even if only businesses in which Audoo devices are currently installed in are considered, rates are still low. In the subset of venues, the 450 devices signify just 1.59 per cent devices installed in industries of total OneMusic Licensees, and less than one per cent for total locations (see table below).

Type of venue	Sum of total OneMusic Licensees	Sum of total locations
Dance and Performance Instructors and Schools	2,978	3,612
Dining	5,786	8,149
Retail and Service Providers	15,876	50,304
Fitness, Exercise and Wellbeing Providers and Instructors	3,680	4,764
Total	28,320	66,829
% total that have Audoo devices	1.59	0.67

This is a concern as smaller members and emerging artists whose airplay takes place on a medium that is not picked up by licensee reporting, third party data or MRT may be missing out on the royalties that they are entitled to.

To support small business musicians, the SBDC believes there needs to be a more robust means of collecting music data, such as having more MRT devices installed in more locations. This should be monitored to ensure that the new system is working efficiently and that the smaller members are receiving the royalties they are entitled to.

Concluding summary

The SBDC welcomes several initiatives of APRA following the 2019 ACCC determination. However, there are still concerns regarding the need for better promotion of the ADR scheme that is available to licensees and members, APRA being

more flexible in the use of different multipliers for costing licence fees, as well as improving its data collection mechanisms so that royalty payments better reflect the music played.

The SBDC appreciates being kept informed of developments relating to the application. If you would like to discuss this submission in more detail, please contact Oonagh Quigley, Policy and Advocacy Officer, on 08 6552 3314 or by email at oonagh.quigley@smallbusiness.wa.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Eaton', with a small flourish at the end.

DAVID EATON
SMALL BUSINESS COMMISSIONER

12 March 2024