



# Authorisation of APRA

## Summary report of submissions to the ACCC

### Submission

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## 1.1 Overview: The boundaries of the resolution facilitator submissions

- As the Resolution facilitator team, it not our role to opine on whether it is necessary to constrain the effects of the monopoly status of APRA.
- We are happy to:
  - confirm what works well;
  - identify gaps; and
  - suggest refinements to the Scheme to improve user experience and give effect to any purpose.



## 1.2 Overview: General comment

- The current Resolution Pathways scheme has the benefit of refinement through operations, input from paid staff and volunteers and feedback from an independent review. Over the 9 years it has also been refined by the ACCC authorisation process taking into account industry submissions.
- A scheme (compared to an individual resolver) offers diverse skills, availability and reflective practice resulting in change.
- There has been an investment in resources to get to operational maturity.
- The Independent Review of 2023 has confirmed this operational maturity.
- The availability of a scheme has provided advantages for people within the APRA eco system whose matters are not directly covered by the terms of the authorisation.



## 2.1 What mechanisms are working well under the current authorisation?

### Management (from the 2020 authorisation)

- **Governance Framework** and **Independent Chair** ensure key performance indicators, transparency, accountability, oversight and independence.
- **Goals and performance indicators** set and measured by the Governance Committee.

### Separation of roles (from the 2018 Independent Review)

- **Resolution facilitator team** to allow a separation of roles to include resolution, stakeholder management and administration.



## 2.2 What mechanisms are working well under the current authorisation?

### Stakeholder input

- Consultation and input from **industry players** through the stakeholder group and the group providing services as peers.
- An operational **working group with APRA** to discuss trends and fix issues that are systemic.



## 2.3 What mechanisms are working well under the current authorisation?

### A move to ensure independence

- **The budget and funding framework** has been refined to ensure that the funding model is transparent. It has a fixed cost component that ensures certainty for APRA and also covers costs such as technology and cyber security, as well a more flexible component.
- There is a **pathway for complaints** about the Scheme or the Resolution Facilitator through an Independent Chair providing a practical check on the operations of the scheme.
- **Resolution of disputes** that fall within the scope of the authorisation supported by a pool of independent experts who provide an extra layer of independence.



## 3. Incidental value

### Disputes between music creators

- The scope is for disputes with APRA AMCOS. Where 2 music creators are in dispute over the splits of a song, royalties are suspended. Without a deadlock breaking mechanism this results in a stale-mate, the resolution of which is not covered by the authorisation.
- Resolution Pathways has been able to provide music creators with triage and in some case to act to break the impasse and/or to arrange affordable processes for resolution.

### Interface with APRA

- Similarly, there are a number of matters where licensees have been caught without knowing where to go within APRA or OneMusic Australia, and Resolution Pathways has been able to facilitate a resolution through connecting them.
- While small in scope, this provides a practical mechanism for people which avoids escalating frustration on both sides.



## 4. Opportunity for clarity

- In the event that the ACCC is mindful to keep the current process largely intact in terms of its operation, it would be useful to further **refine the boundaries** of the Scheme.
- The ACCC has already confirmed that disputes between music creators are not included.
- It is not clear whether the Scheme covers a matter where someone participating in negotiations with APRA alleges that they have not acted in good faith. The authorisation is ambiguous as to whether this is a matter for the Code Reviewer, Resolution Pathways or both.





## 5.1 Key changes/additions

In the event that the ACCC is mindful to keep the current process largely intact in terms of its operation, it will be important to get a picture of the total disputes with APRA.

It is evident from the Independent Review and discussion with APRA, that there are a number of matters where people report directly to APRA for resolution (which is a good thing).

- **Internal metrics aligned:** It might be useful to refine this so that APRA reports on those disputes using similar metrics to those used by Resolution Pathways.
- **External evaluation:** There is a process for including those participants in the evaluation of satisfaction on resolution processes by adding them to the Resolution Pathways batch evaluation. This could be done easily by providing APRA with a link to send out.



## 5.2 Key changes/additions: Streamline the format of reporting

In the event that the ACCC is mindful to keep the current process largely intact in terms of its operation the following refinements could be useful:

### **Refining the annual reporting process.**

- The authorisation currently has reporting requirements split over a couple of sections. This makes writing cumbersome for the writers and comparing each year's annual report disjunctive for readers.
- This can be simplified by consolidating the parts of the authorisation that relate to reporting into one section with easy numbering.



## 5.3 Key changes/additions: Refine the requirements for Governance Committee

In the event that the ACCC is mindful to keep the current process largely intact in terms of its operation:

### **Refining the threshold requirements for the Governance Committee.**

- Governance Committee members are specified as earning over or under an amount of annual royalties (writer members) or working for an organisation that is representative of above or below an annual licence fee (licensee representatives).
- Tenure is critical to ensure that we maximise the value of learning over time.
- There is currently no mechanism to enable a Governance committee member to continue on the committee if the thresholds change after recruitment. We suggest enabling a tenure based on licence fee/royalty thresholds at the time of recruitment, allowing for these to fluctuate during tenure.

# Thank you

Resolution Facilitator Team



Resolution Pathways

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