



## Condition C3- Alternative Dispute Resolution Annual Reporting

Report Pursuant to Condition C3.16.  
1 January 2017- 31 December 2017.

01

### Overall

There have been 10 new referrals in the period. A short summary of the matters is set out on pages 7-8 without identifying the participants.

### Achievements

Most of the matters referred continue to involve the relative splits between writer members. We have made progress in building a peer review process designed to resolve the relative splits between writer members and other allied issues. We have also built a beta version of an on-line platform which provides tools for managing the matters in a way that protects confidentiality. As it is developed we can determine whether there are patterns in the dispute and whether it can be done directly with peers, making it scalable.

We note that the extension of the dispute resolution facilities to address writer member issues is outside the scope of the authorisation. The suggestion of this extension arises out of an analysis of the type of issues that members would like to see resolved and a proactive approach to servicing that need.

APRA AMCOS has also interviewed and appointed a person to review Resolution Pathways.

### Governance

The system's governance has continued to evolve and grow as its processes have functioned effectively and efficiently. We have begun to renew the committee membership and bolster the governance sub-committee in preparation for a review of the service. This has been done by a successions and nominations sub-committee.

We now have had 3 sub committees:

- Peer sub-committee comprising of John Prior and Shirli Kirschner
- Governance sub-committee comprising of David Cosgrave (chair), Guy Gross (writer member 1), Joel Perricone – Fitness Australia (licensee 1) with 2 more positions still being considered.
- A succession and nominations sub-committee comprising of Delwyn Everard, Guy Gross and Bill Cullen.

### Scope

The system works well and has user satisfaction. There are low numbers given the size of the industry and the number of referrals to the system decreased from the first year.



**Total Referrals:** 14 -10 new, 2 associated\* and 2 carried over

QUARTER	TOTAL MATTERS	LICENCES	WRITER MEMBERS
January- March	3: [027M, 028M, 029L] [029M*]	1	2
April- June	2: [030M, 031M]	x	2
July- September	1: [032M]	x	1
October -Dec	3: [033L, 034L, 035M (1), 035M (2)] [036M*]	2	2
<b>Total for 2017</b>	<b>10</b>	<b>3</b>	<b>7</b>
<b>Total for 2016</b>	<b>19</b>	<b>3</b>	<b>16</b>

M=Writer Member L=Licence  
Matter number [035M] was inadvertently allocated to 2 separate matters. For this report, the 2 relevant matters have been identified as [035M (1)] and [035M (2)]

**\*Associated matters: 2 [029M, 036M]**

New matters are numbered as they arrive. While there are a number of alternative pathways that may be explored and used throughout the course of a matter (mediation, mapping, evaluation, peer process), the matter will retain the number originally allocated. A new matter number is only allocated in association with an existing matter, where the parties change (e.g.: a matter that pertains to a member to member issue is referred to both mapping (between the parties) and peer assist (for an individual writer member) will have two associated matter numbers).

004M from 2015 is associated with 029M to allow mapping of one individual question. 016M from 2016 is associated with 036M, a peer review of a specific question for one party.

**Carried over to 2017 from the past:** - 2 [006, 010,]

**006** was finalised (resolved)

**010** no action by the applicants after referral to expert

**Summary by Intervention** (numbers refer to individual matters and a full description of matters appears is included below)

**Query or resource request**

**027M** - request by a previous user for a resource (musicologist) to assist

**030M** - query re behaviour and options

**Not referred** – (no consent from both parties):

**028M** - no consent from the international publisher at the closing date

**032M** - using legal avenue preferred



**Summary by Intervention** (numbers refer to individual matters and a full description of matters appears at pages 7-8 below) Continued...

**Referred to Peer Pilot:**

**031M** - peer mentoring (peer mentoring- one of the parties for 2018)

**035M (I)** – peer process for one party to take place in 2018

**036M** - peer process one side from matter 016M getting a view

**Licensee (referrals): total 3.**

PROCESS	NUMBER	TIME TAKEN	RESOLVED
<b>Option 1:</b> Informal resolution of disputes. Resolution facilitator working with APRA and party.	029L	4 months for complete review and repayment.	<b>Resolved</b> The speed is dictated by the time taken by the applicant to respond as they often need to provide information.
	034L	3 weeks for APRA to provide a solution for recalculation.	<b>Pending</b> Awaiting the information from the applicant to process the change.
	033L	Not applicable	<b>No action</b> Included in a wider consultation process.
<b>Option 2</b> Independent mediator	Nil		
No binding decisions	Nil		

**Members referred in 2017:** total 7 new (only 1 was referred in the period the rest are carried to 2018)

**Resolved:** nil

PROCESS	NUMBER	TIME TAKEN	RESOLVED
<b>Option 1:</b> Informal resolution of disputes. Resolution facilitator working with APRA and party.			
<b>Option 2</b> Independent mediator/ mapper.	031M	Michael McMartin On-going	<b>On-going</b> Referred for mapping one side didn't consent so sent back for peer assist (mentoring) for one member only.
No binding decisions.			

**Matters outstanding in 2017:** 7 moved to 2018

028M - open in mapping but no response from one party to date

029M – mapping of an individual question arising from matter 004M of 2015

031M - moved one member to peer assist (the peer assist has been allocated a new matter number 037M of 2018)

034L - awaiting information to allow recalculation

035M (I) – one party referred to peer review



035M (2) - contact from legal advisers expected in 2018  
036M - One party from matter 016M referred to peer assist for a view on a specific issue

**Costs:**

APRA paid for the Resolution Facilitator.

## C3.6 Consultative Committee Report

### Member's representatives:

Bill Cullen  
Delwyn Everard (independent lawyer)  
Guy Gross  
John Prior  
*Brendan Gallagher (retired)*  
*John Schumann (retired end of the year)*  
*Kevin Stanton (deceased)*

### Licensee's representatives:

Stephen Ferguson (National AHA)  
David Cosgrave (USQ)  
Harley Sedman  
Holly Crain/Evelyn Richardson (Live Performance)  
Joel Perricone (Fitness Australia)  
Stuart Watters (Nightlife)  
*Sarah Nicholson (retired from February 2018)*

### Meetings in the period:

Date: 21 March feedback re peer assist  
Date: 30 March 2017 -full steering committee- time: 3.30pm-5.00pm  
Date: October – Dec quarter: Nominations committee (2)  
Date: 19 December – full steering committee- time: 3.30pm-5.00pm

Governance sub-committee head: David Cosgrave (2016 meeting 3)  
Peer-assist sub-committee head: John Prior (2016, meetings 2)

Shirli Kirschner  
Dispute Resolution Facilitator  
29 March 2018



## 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:

**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.

<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>>



## Costs: Resolution Facilitator

ACTION	Maximum fee to Music User/Music Creator
Initial phone discussion with the Facilitator (up to 45 minutes)	<b>No charge</b>
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.	<b>\$50.00 incl. GST</b>
Subsequent involvement of the Resolution Facilitator where the amount in dispute is \$1,500-\$3,000.	<b>\$75.00 incl. GST</b>
Subsequent involvement of the Resolution Facilitator where the amount in dispute is over \$3,000.	<b>\$150.00 incl. GST</b>

06

## 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.



## Summary of Matters

Number L = licensee M = writer member	Type of Matter	Date Opened	Results
<b>027M</b>	Previous user with a new query.	February	<b>Completed</b> Request for a musicologist/ assistance in evaluation of a song that may have been plagiarised.
<b>028M</b>	Writer and publisher both called	27 March	<b>NO consent to referral</b> at end date Writers' splits/publishers questioning permission to use a sampler piece of music embedded in after 40 years. With Michael McMartin
<b>029L</b>	Small hall hirer not for profit organisation	14 March	<b>Finalised</b> Request for review and refund of 2 licenses. Both finalised and refunded. First was a question if the music was covered. Second was a question of whether the hall license covered the use (it did)
<b>029M (Associated with matter 004M from 2015)</b>	International writer		<b>ACCC referred</b> Not completed Commons dispute. Spent time with the writer and referred the matter to mapping. The writer member disappears for periods. It is with Michael McMartin
<b>030M</b>	Query from a stakeholder		<b>Finalised</b> Advice on relevant processes to assist with complaints of inappropriate conduct by a fellow member. No further action requested.
<b>031M</b>	Application to review writers splits		<b>Open</b> Successful band with album effected by a break-up. There was a referral to mapping but not all members consented. The applicant was considering peer pilot for assistance but required a break for personal reasons. Mapping not consented to. Referral to peer assist for the applicant.



## Summary of Matters *Continued*

Number L= licensee M = writer member	Type of Matter	Date Opened	Results
<b>032M</b>	Application to review writers splits	11 October	<b>No further action</b> Offered peer pilot to both sides. They prefer to refer to lawyers for legal action.
<b>033L</b>	Performance Competition	22 October	<b>No further action</b> Call re the licences for music used in performance competitions. It is difficult to establish a group to be representative. Currently being dealt with by APRA staff. Offered to assist if necessary and no further contact made.
<b>034L</b>	Yoga studio request review	9 November	<b>Pending</b> Had it reviewed and sent a response offering a review (on being provided with data to allow a recalculation of the royalties future and past)
<b>035M (1)</b>	Writer seeking recognition for song writing contribution	12 November	<b>Open</b> Initial attempt to engage other side unsuccessful as they don't want to participate. Matter has been sent to a peer pilot for the writer
<b>035M (2)</b>	Musical theatre works writer's splits.	28 November referral from APRA	<b>Open</b> Left until after the break (Jan 2018)
<b>036M</b>	One party from historical matter 016M which is unresolved	December 2017	<b>Open</b> Historical matter 016M – referred the applicant to peer assist for an evaluation of a particular question pertaining to the larger dispute.