



# Insights into APRA's Alternative Dispute Resolution scheme

Dear Member,

In 2014-15, APRA AMCOS established an independent alternative dispute resolution (ADR) scheme to provide a cost effective and timely way to resolve disputes involving copyright owners, licensees and/or APRA AMCOS.

## ABOUT THE ADR SCHEME – RESOLUTION PATHWAYS

There are three approaches that can be used to resolve disputes. The approach used will depend on the problem to be solved.

1. **Mediation** - an informal, flexible process with a mediator trained in assisting participants to resolve disputes, without the mediator providing a view.
2. **Expert view (non-binding)** - A non-binding evaluation given to the parties involved, by a person (or persons) who is an expert in the area(s) in dispute.
3. **Expert view (binding)** - A binding determination by a person (or persons) who is an expert in the area(s) in dispute.

The independent Resolution Pathways facilitator brings the parties together, and advises on the most appropriate option for resolving the dispute.

Information about APRA's ADR process can be found [here](#).

## ADR PROCESS USED WITHIN LIVE PERFORMANCE CONTEXT

Until recently, the ADR scheme had not been used by licensees within the live performance industry.

- In early April 2019, a LPA Member contacted the Resolution Pathways facilitator to dispute APRA's categorisation of a show as **Dramatic Context**.
- Following a discussion with the facilitator, it was determined that the most appropriate approach would be to gain a non-binding expert view on the matter. Two experts were enlisted to provide their views.
- A mediation hearing was scheduled for early May, involving the LPA Member, LPA, APRA, the experts, and the facilitator. The hearing occurred via videoconference.
- Prior to the mediation hearing, the LPA Member and APRA were provided an opportunity to put forward their case in writing. These were shared with the parties involved.
- During the mediation hearing, APRA and the LPA Member were both provided with an opportunity to outline their case. The experts also asked the parties questions so that they could better understand the matter and context. The hearing lasted about 1.5 hours.
- One day after the mediation hearing, a meeting was convened for the experts to provide their view on the matter. The experts arrived at their views independently of each other.

- Both experts determined that the show met the definition of Dramatic Context.

## INSIGHTS ABOUT THE ADR PROCESS

1. Feedback from the LPA Member was that the dispute resolution process was enormously beneficial, providing a supportive process to gain clarity of understanding, with external and impartial analysis of the situation and a swift resolution to a complicated challenge.
2. The LPA Member gained a better understanding of the rationale for dramatic context's definitional changes that came into effect on 1 January 2018 – for example, to become more consistent with definitions overseas (principally, the UK) and to give publishers (copyright owners) the ability to review shows that includes content about the life or work of an artist, composer or music figure.
3. APRA's Dramatic Context Information Guide includes three dot points on what does not constitute a storyline – that is:
  - ~ the expression of a theme, idea or topic;
  - ~ anecdotes or adlibs between the performance of songs;
  - ~ a planned sequence of song performances.It was clarified that any one of those factors taken in its own right **would not** automatically mean a show did not have storyline. Similarly, if all three dot points were present in a show, it **would not** automatically mean the show did not have a storyline.
4. The costs of the ADR process (namely, the time of the two experts) were divided evenly between APRA and the LPA member. In this case, each party paid \$1,500. *[Please note, costs will vary from case to case]*
5. In addition to facilitating the process to resolve the dispute with APRA, the independent Resolution Pathways facilitator provided assistance to resolve issues with the publishers.

## FOR MORE INFORMATION

Please contact **Kim Tran**, LPA's Director, Policy & Governance for further information about the ADR scheme via [email](#) or on 03 8614 2000.



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