AN INQUIRY INTO MICROECONOMIC REFORM IN WESTERN AUSTRALIA - SUBMISSION BY WA NIGHTCLUBS ASSOCIATION (WANA)

"...extended trading permits and special facility licenses are more likely to contribute to the alcohol related harm than the Applicant's nightclubs, which close at 6am, are smaller, charge door entry fees and control entry and are proactive in reducing the risk of alcohol related harm."

Liquor Commission 2010

WA Nightclubs Association
c/- Upper Level
139 James Street
NORTHBRIDGE WA 6003
simon@airclub.com.au

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Executive Summary

WA Nightclubs Association (WANA) is not affiliated with the AHA or Big N. It represents around 55 holders of a nightclub licence across the state. WANA's fundamental concern is the integrity of the WA licensing system, based upon its unique staggered closing arrangement and its very clear distinction between the services and role offered by hotels and nightclubs.

These 55 nightclubs are a key pillar the in broader mix of the hospitality and tourism economy in Western Australia. Indeed, this unique (in an Australian sense) distinction between services and roles as per the Liquor Act ensures consumers have an option for entertainment focussed licenced hospitality.

WANA possesses a strong faith in the business model adopted by most nightclub licensees of focusing on entertainment with substantial door charges rather than relying solely on liquor revenue. Like other categories of license, it cites evidence that more than 30% of revenue is derived from non-liquor sales; it also highlights evidence that entertainment and socialisation are the prime reasons for attending a nightclub in WA, and the consumption of alcohol is very much a secondary component of the night out. Therefore, nightclubs form a key platform in minimising "beer- barn drinking culture" and social harm minimisation. I
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This submission details WANA's proposed industry reform of stopping the use of rolling ETPs and SFLs, which all evidence shows as being damaging from a social harm perspective. The submission cites support for this from other industry stakeholders such as the Liquor Commission, Police Commissioner and the Drug and Alcohol Office (DAO); all of which highlight the *high social cost* of these instruments and damage they cause to the hospitality industry.

WANA also offers commentary on the importance of avoiding deregulation of the Small Bar licence category. Small bars, though a very welcome addition to the WA licensing system, have a business model that primarily focuses on liquor sales and are not suited to extended trade.

The submission also incorporates a précis of WANA's recommendations being:

- The curtailment of the blanket ongoing use of Extended Trading Permits (ETPs) by hotels.
- The granting of ETPs for special purposes only (e.g. New Year's Eve, significant sporting events etc.), as they were originally intended.
- Caution in relation to the excessive liberalisation of the Small Bar sector, particularly in relation to the dilution of the public interest test.
- That small bars do not have their trading hours increased, or be granted rolling ETPs.
- The protection of the unique staggered closing regulation in WA.
    - That any form of proposal involving any further deregulation of the Liquor Act incorporate a strong cost benefit analysis inclusive of the *social cost* of such a reform.

- Industrial Relations: though acknowledging the federal jurisdiction applicable to the relevant awards, WANA believes these awards penalise the weekend focussed trading patterns of their licence category, leading to consumers paying more as nightclub patrons and wishes to take this chance to raise this with the ERA.
- Copyright: again, WANA acknowledges the federal jurisdiction applicable to copyright reform. However, we believe the monopolistic enforcement and collection structure is inefficient, including to the final consumer and we wish to highlight this to the ERA.

WANA

WA Nightclubs Association (WANA) is not affiliated with the AHA or Big N. It represents around 55 holders of a nightclub licence across the state. WANA's fundamental concern is the integrity of the WA licensing system, based upon its unique staggered closing arrangement and its very clear distinction between the services and role offered by hotels and nightclubs.

WANA's Fundamental Principles

WANA would like to put forward its key principles and positions as submission background on industry policy settings and regulation. These principles are most pertinent in relation to the assessment of the trading hours of hotels and the role of extended trading permits, as well as drawing a distinction between the services offered by hotels and nightclubs.

1. **WA's staggered closing time system is superior to that employed in other jurisdictions and its integrity must be maintained**
    - Its central feature is staggered closing (hotels/taverns and then nightclubs).
    - This prevents a greater mass exodus of patrons onto the street that would occur under a uniform closing time model.
    - Staggered closing acts as a circuit breaker to discourage patrons from early closing venues from continuing to consume alcohol.
    - Staggered closing minimises pressures on public transport and the taxi industry.
    - It is a model that has the support of stakeholders including the Police and Taxi Council.

- Broad deregulation has been deployed in other jurisdictions (eastern states and overseas) in recent years and has essentially been a disaster as a regulatory experiment. Interestingly, there have been strong recent calls for a greater emphasis on staggered closing in Ireland and much of continental Europe uses such a model.
- In a submission to the Commonwealth, "Step Back" outlines how on a national basis, deregulation of the liquor industry has resulted in a high level of social cost. It puts the estimated social cost of harmful consumption of alcohol to be more than $15b annually on an overarching basis. "Step Back" also states that;

    "…More attention needs to be given towards amenities and alternatives to alcohol such as live entertainment. This strategy is supported by Assistant Commissioner Jamieson who stated "the reducing of vertical drinking and beer bars would greatly assist in improving public safety".

    - The Irish Nightclub Industry Association (INIA) cites various public order prosecution figures that demonstrate that between 2006 and 2008, when sequential trading was in place in the Garda B District in the South Central Division of Dublin (which has the highest density of licensed premises and nightclubs in the country), staggered closing had a positive impact on public order (Gurdgiev, 2009).

2. **Nightclubs operate a unique business model – fundamentally different to that of hotels**
   - The main point of difference between hotels and nightclubs is that a nightclub's primary purpose is the provision of entertainment; service of alcohol is ancillary to entertainment.
     - WANA believes the *Liquor Control Act 1988* is explicit and self-explanatory as to this point under section 42:

> *"…licensee of a nightclub licence is, during permitted hours, authorised to sell liquor on the licensed premises, for consumption on the licensed premises only, ancillary to continuous entertainment" and "Every nightclub licence is subject to the condition that liquor shall not be permitted to be consumed on the licensed premises except at a time when live*

And:

> *Subject to this Act, the licensee of a nightclub licence is, during permitted hours, authorised to sell liquor on the licensed premises, for consumption on the licensed premises only, ancillary to continuous entertainment provided live by one or more artists present in person performing there or by way of recorded music presented personally by a person employed or engaged by the licensee to do so.*

   - Significant revenues are derived from non-alcohol sources, particularly door charges (up to $25).
   - Alcohol is often more expensive in nightclubs.
   - Average alcohol consumption at nightclubs is typically less than at hotels and taverns.
     - Research published by the Irish Nightclub Industry Association in 2009 revealed that in Ireland 90% of revenue for traditional pubs arose from direct sales of alcohol, whilst for nightclubs this figure was 66% (Gurdgiev, 2009).
     - Local experience is that these figures are very similar.
   - Nightclubs are typically themed toward a style or genre of music for dancing.
   - A door charge and the provision of entertainment is less likely to attract patrons whose primary purpose is the consumption of alcohol.
   - There are less than 50 nightclubs operating in WA and over 1500 hotels and taverns.
     - The Liquor Commission has clearly supported the effectiveness of nightclub business models in recent years from a harm minimisation perspective.
     - Consumers and the broader WA Public benefit from this harm minimisation, including on a public cost basis.

- As outlined above, nightclubs offer a fundamentally different product offering (and industry role) to consumers, being entertainment. With alcohol being provided as an ancillary; adding choice and value to the WA market.
- Ultimately, WANA's core principle is that the integrity of WA's unique staggered closing times should always be protected; and that this approach will ensure the sector's future, minimising social harm, and maximising consumer choice.

Key Reform Recommendation: The rolling use of Extended Trading Permits (ETPs) and Special Facility Licenses (SFLs) is damaging and must be curtailed

WANA's central industry reform recommendation is the abolition of the rolling use of ETPs and SFLs. It should be noted that WANA has previously made this recommendation in submissions to Government and the Director of Liquor Licencing and it is a fundamental and long-standing position of WANA.

- The legislated closing time for hotels and taverns in WA is 12am.
- The clear intent of ETPs under the Act is for use in special circumstances.
- Currently ETPs allow hotels and taverns in Northbridge to trade until 2am every Friday and Saturday night of the year.
- In parts of the suburban city, those ETPs allow hotels and taverns to trade until 1am.
- The consequent mass exodus of patrons onto the street at 2am is problematic for Police, the transport system and nightclub operators.
- Lockouts imposed in 2011 to reduce patron numbers exiting at the hotel and tavern closing time in Northbridge have been subsequently rolled back from 12.30am to 1.30am, rendering them ineffective. This is a threat to the integrity of a genuinely staggered closing system.
- In submissions to DRGL, the Police Commissioner (O'Callaghan, 2010) and the Drug and Alcohol Office (2010) identified that the majority of alcohol related incidents occurred in "Trouble Time" between 11pm and 3am, which the Liquor Commission had also previously identified. These submissions highlighted that the rolling use of ETPs by taverns and hotels and SFLs during 11pm to 3am "Trouble Time" as the leading causes of problems, and called for the restriction of availability of alcohol at these premises during this time.
- The Police Commissioner cited the 2010 Coakes ARIF Report in his submission, which clearly identified that 64% of incidents occurred in "Trouble Time".
- In addition to their own statistics, the WA Police report referred to studies undertaken by the National Drug Research Institute (Chikritzhs, et al., 2007) which found that extended trading hours at hotels and pubs were associated with a 70% increase in assaults.
- The Police Commissioner and the Alcohol and Drug Office have both called for the curtailing of ETPs and winding back SFL trading times to pull them into line with hotels and taverns.

WANA's Position on the Small Bar Licence

WANA would also like to take this opportunity to comment to ERA upon the Small Bar Licence, and provide its position on small bars and their regulation.

Firstly, WANA believes that small bars are a superior licence model to large hotels and taverns. We acknowledge that they are typically themed niche providers of alcohol and in some cases food, and that small bars focus on provision of quality rather than volume in alcohol service. In general terms, WANA welcomes them as an addition to the licensing landscape and believes hospitality/tourism and related consumers benefit from them.

However, WANA believes the Small Bar business model is not suited to extended trading. Whilst they are far superior to large hotels from a harm minimisation perspective, the provision of alcohol as a primary revenue stream, lack of door charge and lack of entertainment mean trading beyond midnight would counter many of their "good traits". Indeed, extending their trading hours risks actually fundamentally changing their business model to suit post-midnight trade. Further, small bars are unlikely to be equipped for this sort of trading in terms of security or management expertise. WANA also believes that late trading by small bars would be the 'thin end of the wedge' toward potentially socially damaging and socially *expensive* deregulation. That is, offering one "category" of hotel licence to trade late would likely induce an industry push for broader liberalisation by the hotel sector that may exacerbate social costs.

Finally, WANA acknowledges that the present licensing system can be "red-tape heavy", however WANA's extensive bank of licensee industry experience proffers caution against excessive liberalisation. It is too easy for "low-brow" operators within any licence category to quickly lower the tone of a precinct by naive and simplistic management and thereby damage the intrinsic value of each licence category and inflict high levels of social cost upon the community. .

Harm Minimisation: Commentary on Contemporary Levels of Alcohol Consumption

In late 2009, surveys were conducted in both Rise (now Air) and Connections. These surveys revealed that for Rise (Coakes 2010 b), 61% said entertainment (music and dancing) was the reason for visiting the venue, and only 3% said that consuming alcohol was the prime reason. Only 1% of Connections' patrons nominated the consumption of alcohol (2010 a). Across the surveys, it was apparent that patrons were consuming around one drink per hour for a three to four hour stay.

Further (as per our principles above), *WANA has always maintained that the purpose and format of a venue have a direct role to play in whether patrons abuse alcohol*, or consume it as an *ancillary* to the purchase of entertainment.

WANA possesses a strong faith in the business model adopted by most nightclub licensees of focusing on entertainment with substantial door charges rather than relying solely on liquor revenue. Indeed, whilst in general terms we believe that alcohol abuse has actually been decreasing in recent years across the board, we believe that venues/licence categories specifically designed to sell alcohol ancillary to entertainment

should be encouraged to flourish and that this provides the consumer and the broader community the premium outcome.

WANA again believes that any form of sector reform or deregulation would, whatever its claim to economic benefits, need to incorporate the social cost, of such a policy.

INDUSTRIAL RELATIONS

WANA acknowledges that issues pertaining to industrial relations, most particularly the pertinent awards of *Hospitality Industry (General) Award 2010, Live Performance Award and the Miscellaneous Award 2010* are of Commonwealth jurisdiction. However, it would like to raise with the ERA as a matter of record the onerous and inflexible nature of the present award system. With a few exceptions, nightclubs trade almost exclusively on weekends (whereas other licensed venue types often have a broader spread of trading hours); meaning core trade is conducted against weekend penalty rates which are as high as 275%. The outcome is the hospitality consumer bearing these higher costs and an uneven competitive framework for nightclubs against hotels and other license categories.

	Hotels	**Hotels with ETP**	**Special Facility Licence**
Effective trading hours per week	118	120-122	151

	Effective trading hours per week	**Actual average trading hours per week***
Perth nightclubs	59	15-25

***Most nightclubs open only at weekends**

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WANA acknowledges that issues of copyright are also of Commonwealth jurisdiction. However, it would like to raise as a matter of record with the ERA the flaws in the present system, and the effects this has on licences and therefore consumers. This system presently involves the Australian Performing Right Association's (APRA) collection agency capacity as a monopoly. WANA asserts, as it has done via previous submissions to the ACCC, that this monopoly results in distorted control of pricing for the use of recorded music in entertainment focussed venues (such as nightclubs). These prices are dramatically more expensive than can be found in other comparable international jurisdictions and the end loser is the consumer as licences are forced to pass this cost on. In WA, this effect is compounded given the prominent role that nightclubs play in the availability and provision of such entertainment to consumers.

Provided in Appendices (C) and (D) are submissions from both WANA and one of its members, Dr Jon Sainken, that highlight in more detail the various issues with this present monopolistic and inefficient arrangement. These submissions also highlight the ineffective nature of the Copyright Tribunal's (CT) governance of APRA and its effect on public interest.

COST BENEFIT ANALYSIS

This paper recommends as a reform something typically contrary to that expressed in micro-economic reform, being that of the prevention of further deregulation in the industry. Indeed, its central recommendation is to reinstate the original legislative intent of the Liquor Act through the removal of the blanket use of extended trading permits and Special Facility Licences.

This is essential on the basis of social cost to the community of such practises, and the submission includes many references in support of these arguments. The paper also touches on enhanced hospitality consumer experience and choice with an emphasis on entertainment rather than simple alcohol consumption.

As a very small peak body (for example when compared to the AHA), economic and cost benefit analysis is beyond our present capacities, however WANA would be delighted to work with the ERA in relation to such analysis. The Police and Health sectors all have extensive information on the cost of alcohol abuse, and WANA has previously inquired as to the cost of policing during the ETP/SFL trouble time, although we have not received any figures on that.

In Conclusion

It is important to note that WANA is not affiliated with the AHA or Big N. We represent around 55 holders of a nightclub licence across the state and our fundamental concern is the integrity of the WA licensing system, based upon its unique staggered closing arrangement and its distinction between the services offered by hotels and nightclubs.

In line with this reasoning, WANA remains opposed to the use of rolling ETPs and SFLs, which we believe all evidence shows as being damaging from a social harm perspective. Other industry stakeholders such as the Liquor Commission, Police and DAO have all supported this position. This reform to the sector is the central platform of this submission.

WANA possesses a strong faith in the business model adopted by most nightclub licensees of focusing on entertainment with substantial door charges rather than relying solely on liquor revenue, and believes that this business model should be encouraged to flourish, rather than be economically penalised or handicapped.

WANA also believes that these core principles extend to arguments in relation to avoiding deregulation of the Small Bar licence category. small bars, though a very welcome addition to the WA licensing system, have a business model that primarily focuses on liquor sales and are not suited to extended trade.

Other issues raised in this submission include the burden of the award system, particularly in the context of business models that focus on weekend trade and the negative impact that the current system of music licensing has upon the industry and, ultimately, the consumer.

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Appendix A: Précis of WANA Recommendations

To summarise, WANA's recommendations are:

- The curtailment of the blanket ongoing use of Extended Trading Permits (ETPs) by hotels.
- The granting of ETPs for special purposes only (e.g. New Year's Eve, significant sporting events etc.), as they were originally intended.
- Caution in relation to the liberalisation of the Small Bar sector, particularly in relation to the dilution of the public interest test.
- That small bars do not have their trading hours increased, or be granted rolling ETPs.
- The protection of the unique staggered closing regulation in WA.
    - That any form of proposal involving any further deregulation of the Liquor Act incorporate a strong cost benefit analysis inclusive of the *social cost* of such reform.
- Industrial Relations: though acknowledging the federal jurisdiction applicable to the relevant awards, WANA wishes to highlight to the ERA that it believes these awards penalise the weekend focussed trading patterns of their licence category, leading to consumers paying more as nightclub patrons.
- Copyright: again, WANA acknowledges the federal jurisdiction applicable to copyright reform. However, we believe the monopolistic enforcement and collection structure is inefficient, including to the final consumer and wish to highlight this to the ERA.

Appendix B

www.irishtimes.com

The Irish Times - Tuesday, December 16, 2008

Calling time on the nightclub?

KITTY HOLLAND

It was meant to reduce alcohol abuse, but nightclub owners say the Intoxicating Liquor Act 2008 is threatening the future of the industry and has led to an increase in trouble on the streets

IT'S A SATURDAY night in Dublin in the lead-up to Christmas. At 1.30am the Kings of Leon can be heard blaring from the Gaiety Nightclub on South King Street. A steady stream of stylish, well-groomed young things make their way from the adjoining box office to the club front door, having paid €15 for their tickets.

The night should only be starting. For their €15, however, the revellers will get just one hour in the venue, with its two bands, several bars and a number of DJs, until they are asked to leave at 2.30am. The night is, in reality, almost over.

Until July 31st these clubbers would have been able to stay dancing until 3.30am. However, the enactment of the Intoxicating Liquor Act 2008 changed all that.

Under the terms of the Act, which aims to restricts the "availability and visibility" of alcohol and to provide "for more effective enforcement to deal with the consequences of alcohol abuse", nightclubs and late bars must close their doors at 2.30am from Monday to Saturday and at 1am on Sunday.

Before the change in the law, venues with live music or a DJ (whether clubs or bars) could apply for an annual theatre licence for €270 per year, and serve alcohol until 3.30am seven nights a week. With drinking-up time, it could be 4am or later when people poured on to the streets. Now the clubs, like late bars, have to apply for each individual extension to 2.30am to serve drink, something which a costs in the region of an annual €150,000, (€410 a night) in legal fees.

The new legislation followed various reports over the years showing that Ireland has a spiralling alcohol-abuse problem. A Government-appointed Alcohol Advisory Group study found an increase of 76 per cent in the hospitalisation of intoxicated people between 1997 and 2002 (when alcohol consumption peaked) and an increase of almost 70 per cent in the number of off-licences and mixed-trading premises authorised to sell alcohol between 2001 and 2007.

Those opposed to restrictive club hours argue that the changes have done nothing to reduce alcohol abuse and that the new law is killing nightclubs. They also claim that earlier closing has led to an increase in public order issues, with everyone leaving clubs and late venues at the same time.

Before the new legislation, those in the late bars left at 2.30am and those in the clubs left at 3.30am, staggering the impact on the streets. It is argued that the new law won't stop people who want to abuse alcohol. The will do so at home or in a pub rather than pay a door fee into a club.

According to figures from the Irish Nightclub Industry Association (INIA), the average per-capita consumption in nightclubs is two and a half drinks. Barry O'Sullivan, chief executive of the INIA, predicts hefty job losses and nightclub closures across the State in the New Year.

David Morrissey, owner of one of Dublin city centre's most popular nightclubs, Lillie's Bordello, says that all a club now offers, over and above a late bar, is a dancefloor and a better lighting system. And punters are being asked to pay up to €20 for that.

David Carroll, junior manager of the Sugar Club on Leeson Street, also laments the earlier closing times. "Town isn't what is was a year ago," he says. "It has lost something".

ON SATURDAY NIGHT, Dublin lacks the buzz one might expect in a European capital in the run-up to Christmas, though matters are not helped by the sub-zero temperatures and the recession.

Penelope Martin (23), from Co Laois, on her way into the Gaiety club, is "disgusted" by the earlier closing.

"It messes up my whole regime," she says. "We're used to staying at home until 11.30pm and then going out. We expect to get a night out of it. You used to be able to stay out dancing until 4am, a proper night out. Now you're kicked out just as you're getting going. You wouldn't come into town to go to a club as often now."

Erica Southern, from Dublin, is in her 30s and is smoking a cigarette outside Renards at about 2am. She feels that the new laws are the wrong way to try and curb drinking.

"We are responsible adults who have good jobs, who work hard and want to just go out and have some fun at the weekend," she says. "We're in our 30s and we respect these clubs."

The clubs visited by The Irish Times are busy but not jammed, though a number of people who spoke to this reporter were obviously intoxicated, swaying and slurring their speech.

Out on the streets, dancing Santas, young women telling a group of tourists they "love, love, love the Brits", and a giggly row between two girls outside Burger King over who ended up with the most beer in their hair, sets the tone for some of the post-club life.

There are a few ugly scenes, including a punch-up involving about six men on Middle Abbey Street at about 2.45am, which ends only when a Garda van arrives on the scene. There is also the sight of a young man lying on his side on Westmoreland Street at 3am, making one worry that if he isn't moved soon he will die of hypothermia.

A group of three men shove a fourth up against the shutters of a shop on Westmoreland Street.

Fast-food outlets are very busy, with long queues at branches of McDonalds, Rick's and Supermacs. There are a lot of gardaí on duty and fleets of Nightlink buses lined up around College Green and Westmoreland Street.

At the taxi rank at College Green, a group of about 60 people queue in sub-zero temperatures shortly after 3am.

By 4am the streets are almost clear, the busiest being Leeson Street, where a large crowd seem to be involved in one big conversation as they drift off gradually in twos and threes towards the taxis that are on their way back into town for the last few fares of the night.

Robbie Fox, owner and manager of Renards, says the new Act has "destroyed" Sunday-night trading to such an extent that he no longer opens on Sunday night, while business overall is down about 50 per cent.

The manager of the Gaiety nightclub, Seán O'Connor, says business is down about 40 per cent since July. While he acknowledges the impact of the economic downturn, he insists that the Act had an "immediate" effect.

Like Fox, he says the hour between 2.30am and 3.30am used to be the "most profitable" in terms of drink sales and that it is not matched by sales between 1.30am to 2.30am.

"In any industry, to reduce trading hours by 25 per cent is going to be a serious matter. In practice, customers will be in a bar until it stops serving and will drink up until about 1am. They don't get to us until about 1.30am."

Falling takings at the door and the bar have already led to job losses in the industry, and O'Connor predicts more in the new year.

"We can't pay people for doing nothing," he says.

Fox says tourists are "absolutely flabbergasted" and cannot believe that the entire country is restricted to going home at 2.30am. This, he adds, will inevitably hurt the weekend tourism industry.

Sunil Sharpe, spokesman for the Give Us the Night lobby group, representing workers in the music industry, says DJs, visual artists, dancers and promoters have all "felt the pinch" with many staff losing shifts, and DJs on reduced fees.

As a rationale for pulling back licensing hours, the Alcohol Advisory Group cited a fourfold increase in criminal proceedings for abusive and threatening behaviour in the decade between 1996 and 2006. It argued that if the streets were cleared sooner, there would be less scope for trouble.

However, Supt Joe Gannon, of Pearse Street Garda Station in Dublin, who oversees weekend-night policing in the busiest night-life district in the State, says he has seen no reduction in levels of disorder since the new Act came into force.

"The difference is the streets are cleared earlier," he says. "When we had the theatre licences one lot were coming out of bars at 2.30am and another lot coming out of the late clubs at 3.30am, so there were people on the streets until about 5am.

"Now they are all coming out together at 2.30am. The fast-food places don't have the capacity for them all, so a lot head straight home.

"If it is staggered, there is less volume at once, which is easier to deal with. There is less potential for volatility on the streets."

Tommy Gorman, president of the National Taxi Drivers' Union, says the change has also led to the old problem of people not being able to get taxis. His members are getting maybe two fares in the rush at 2.30am before it all dies down. Previously, they could have been busy until about 5 am.

BARRY O'SULLIVAN, of INIA, is hoping the forthcoming Sale of Alcohol Bill, due before the Oireachtas early in the new year, according to the Department of Justice, will include a specific nightclub licence to differentiate his members' establishments from pubs.

"If it leaves club closing hours at 2.30am though, it will do nothing to address our concerns about jobs and the industry as a whole," he says. "I think a closing time of 3.30am or 4am is realistic."

Intoxicating Liquor Act: main provisions

Pubs can open until 11.30pm from Sunday to Thursday and until 12.30am on Friday and Saturday nights.

Special exemption orders allow a bar to stay open until 2.30am. Theatre licences, which previously allowed a club where there was a live performance to remain open until 3.30am, have been abolished.

Alcohol can be sold in off-licences between 10.30am and 10pm from Monday to Saturday and between 12.30pm and 10pm on Sundays. On St Patrick's Day, Sunday hours are applicable.

The Act empowers gardaí to seize alcohol from minors and to take drink from people if they feel there is a risk of public disorder.

There are increased fines for those who break the law on alcohol sales. Publicans or off-licences found selling alcohol to minors face orders for closure.

There is now a special court application process for those seeking a licence to sell wine.

Appendix C: WANA Submission Copyright Submission to ACCC

SUBMISSION BY THE WESTERN AUSTRALIAN NIGHTCLUBS ASSOCIATION

RE: AUSTRALIAN PERFORMING RIGHT ASSOCIATION'S (APRA) APPLICATION FOR NEW AUTHORISATION FROM THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION (ACCC)

We, the Western Australian Nightclubs Association representing ……. nightclub licensees in Western Australia oppose the application for new authorisation by APRA for the reasons outlined below.

Due to only becoming aware of APRA's application late last week, our submission has been prepared with time constraints and as such we would appreciate the opportunity to provide further support documentation either written or through interviews with your office at a later date if requested.

1. APRA'S MONOPOLY POSITION

   APRA holds a monopoly position as the sole body which represents music composers and the public performance rights in musical works and lyrics of songs in Australia.

   As such every business requiring a license for public performance of musical works and lyrics of songs can only deal with APRA. This is despite APRA not having the copyright for all musical works available.

   It has been our experience that APRA has used this monopoly position unfairly to the detriment of businesses requiring the license.

This is illustrated through the introduction by APRA of its new license scheme GFN “Recorded Music for Dancing” on 1 November 2008.

APRA introduced this new scheme:

- without any prior consultation with our Association or individual members,
- made clear that as the existing scheme terminated on 1 November 2008 any licensee who did not accept the new license scheme apart for opportunity to use one of the disputed resolution alternatives would from the renewal date of their existing license be in breach of copyright and subject to the full penalties for breach of copyright,
- APRA relied and justified the introduction of the new scheme on to the PPCA Decision (CT2 of 2004) to which:

    - APRA was not a party,
    - produced no evidence at the Hearing,
    - introduced a new licensing scheme which was materially different to that achieved by PPCA,
    - failed to acknowledge that the value to a licensee of the copyright held by APRA for the public performance of musical works and lyrics of song is markedly different to the value of the copyright held by PPCA for the production and performance of a musical recording,
    - that APRA’s copyright in musical works and lyrics of recorded songs is of little value to a licensee for the public performance of that recording when that musical work and lyrics are produced and performed by an artist which has no appeal to the public,

- PPCA's copyright license covers the production and performance of a particular recorded song and this is where the material value to a recording is added,
- APRA did not seek approval from the Copyright Tribunal for the introduction of its new scheme.

2. DISPUTE RESOLUTION ALTERNATIVES

The provision for dispute resolutions provided for licensees are in practice not equitable for licensees.

a) Copyright Tribunal

The option of a licensee or even a small number of licensees referring a dispute with a Copyright Collection Society to the Copyright Tribunal is not feasible for the following reasons:

i) The Copyright Tribunal of Australia is an independent body administered by the Federal Court of Australia and as such as experienced in the PPCA Hearing (CT2 of 2004) is conducted in a formal manner similar to a hearing in the Federal Court.

This includes requiring a licensee which operates its business through a corporation or with a corporate trustee to obtain leave from the Tribunal to appear without legal representation.

ii) The costs associated with licensees referring a dispute with a Copyright Collection Society to the Copyright Tribunal are so high that it eliminates this option for individual licensees.

These extraordinary high costs include:

- Necessity to appoint a firm of solicitors and essentially have that firm instruct a Senior Counsel to attempt to counter the high powered legal team (both internal and external) that is engaged by the Copyright Collection Societies.

- Due to their virtually limitless financial resources the Copyright Collection Societies are able to engage experts from both Australia and overseas to support their case and as found in the Decision of the PPCA Hearing No. CT2 of 2004, the inability of the objecting licensees to similarly fund such expert reports in repudiation of the Society's expert witnesses left the Tribunal with no choice but to accept the evidence of the Society's expert witnesses. (A summary prepared by our Association's lawyers outlining shortfalls in the PPCA matter which would have to be overcome if an application to the Copyright Tribunal against APRA's new scheme was to be initiated can be provided in confidence if requested).

- The Copyright Tribunal hearings are mostly heard in Sydney which requires objecting interstate licensees and their legal representatives and consultants to incur the additional costs of travel to and staying in Sydney for pre hearing conferences and the hearing itself.

- The legal formalities surrounding the preparation and the hearing itself are complex and expensive and beyond the reach of individual licensees.

- Section 174 of the Copyright Act 1968 states:

Cost of Proceedings

i) "The Tribunal may order that the costs of any proceedings before it incurred by any party, or a part of those costs, shall be paid by any other party and may tax or settle the amount of the costs to be so paid, or specify the manner in which they are to be taxed".

Members of our Association contemplated making an Application in respect of the new "Recorded Music for Dancing" License Scheme introduced by APRA on 1 November 2008. However due to the knowledge gained from participating in the PPCA Hearing No. CT2 of 2004, whereby PPCA expended in excess of $1,000,000 in running their application, legal advice sought advised that an underfunded application exposed our Association to a highly probably loss at the Copyright Tribunal and therefore potential liability for costs to be awarded against our Association.

For the above reasons the Copyright Tribunal of Australia is not a viable option available to licensees due to its legal complexity, high costs, exposure to damages and inability to fund a meaningful case against the extensive financial

resources of the Copyright Collection Societies such as APRA and PPCA.

b) Expert Determination

This option is not seen as being reasonable by licensees as the choice of an expert is from a panel of three barristers with expertise in intellectual property matters. As such it is more than high probably that the expert barrister chosen would have extremely limited knowledge of the actual businesses of licensees and therefore more likely to be bound to by legal precedents and legal arguments rather than industry knowledge. Again the extensive financial resources of Copyright Collection Societies such as APRA puts the individual licensee at a distinct disadvantage in putting forward their case.

To succeed before the expert barrister and in order to counter the legal precedent set by the decision in the PPCA matter No. CT2 of 2004 it would require the licensees to effectively run a whole new hearing similar to an application in the Copyright Tribunal.

As mentioned above and for the reasons outlined an application to the Copyright Tribunal has been eliminated as a viable option for individual aggrieved licensees.

c) Mediation

This is the last resort for licensees in dispute with a Copyright Collection Society. It is still very expensive, but provides the only alternative to a highly legalistic and expensive process through the Copyright Tribunal or Expert Determination.

The Copyright Collection Society has the unfair advantage in that unless licensees reach an agreement at the mediation APRA with its monopoly control over copyright will hold them in breach of copyright and may take legal action to enforce their rights. This advantage pressures aggrieved licensees to reach a mediated settlement as the only fall back is to refer the matter to the Copyright Tribunal or Expert Determination which as outlined above is financially out of the reach for individual licensees.

Through its lawyers, Banki Haddock Fiora APRA made this very clear when they stated "APRA will have no hesitation in enforcing its rights. In any proceedings for infringement of copyright APRA will be claiming injunctive relief, damages and payment of its legal costs".

The Code of Conduct for Copyright Collecting Societies in its Objectives at 1.3(d) states a prime objective is:

"(d) to ensure that Members and Licensees have access to efficient, fair and low cost procedures for the handling of complaints and the resolution of disputes involving Collecting Societies".

The procedures adopted by PPCA in the Copyright Tribunal Hearing CT2 of 2004 (the decision subsequently embraced by its sister society APRA) and more recently in the PPCA matter regarding the Fitness Club Industry have by the expending of millions of dollars in engaging multiple consultants from within Australia and abroad together with a team of high powered lawyers and Senior Counsel taken the Copyright Tribunal option out of reach of licensees.

Legal precedents set at the Copyright Tribunal can only be challenged or reversed through a hearing in the Copyright Tribunal.

This results in a substantial disadvantage to licensees as the other forms of Dispute resolution are not able to overcome the legal precedent even where the legal precedent is wrong or unfair to licensees.

3. CODE REVIEWER

The position of Code Reviewer should be reviewed and replaced by a Government person or body funded by a levy on the Copyright Collection Societies. This would provide to aggrieved licensees access to a totally independent Government body to have complaints dealt with and at the same time achieve the object of direct oversight of the Copyright Collection Societies by Government as was outlined in the 1997 Attorney General's report of the inquiry into Copyright Music and Small Businesses.

Currently the Code Reviewer is appointed by the Copyright Collection Societies, and has his salary paid by the Copyright Collection Society

A detailed complaint regarding the introduction on 1 November 2008 by APRA of its new "Recorded Music for Dancing" License scheme was lodged by a number of our aggrieved licensees with the Code Reviewer in July 2010 but no direct response either verbally or in writing to the issues raised has ever been received from the Code Reviewer. The complaint was mentioned in his Annual Report but the aggrieved licensees do not believe it addressed their fundamental complaints.

The net income of the Copyright Collection Societies are accumulatively around $200 million per annum and a levy to fund an independent

Government body would not be a material financial impost to those societies.

In this respect the appointment of a Government person or body as the Code Reviewer would also ensure that as was foreshadowed in the "Report of the Inquiry into Copyright, Music and Small Businesses" prepared by the Attorney-General's Department in 1997, that:

> "More fundamentally, the Government considers that the activities of Copyright Collection Societies warrant continued oversight to ensure the societies operate efficiently, effectively and equitably" (Page 3 of 12).

At the moment the Government is removed from direct involvement in the activities of the Copyright Collection Societies but with the Code Reviewer being a Government appointed body this would change to the fairness of all parties.

4. CODE OF CONDUCT

It is contended that APRA does not always act in a manner which treats licensees fairly, honestly, impartially, courteously and in accordance with its constitution and license agreement and as expected under the Voluntary Code of Conduct for Copyright Collection Societies.

i) This is illustrated in the implementation application, and administration of its license scheme GFN which it is considered was not fair and reasonable to licensees and which used its monopoly power to obtain unfair financial advantage.

ii) The existing scheme was cancelled and the new scheme introduced on 1 November 2008 without prior consultation with our Association or members or the scheme having prior approval from the Copyright Tribunal.

This resulted in licensees being automatically placed in a position of breach of copyright from the renewal date of their license if they did not accept the new scheme with APRA making it clear it would vigorously seek legal redress for those licensees in breach.

iii) APRA has failed with the introduction of its new GFN license for Recorded Music for Dancing to provide a license that is understandable as is expected under its Code of Conduct at 2.3 (c)(ii).

In an attempt to be able to advise its members of the impact of the new GFN scheme commencing on 1 November 2009, our Association provided APRA with the plan, layout and function of a Typical Nightclub with the request that APRA provide licensing details of their new scheme for that Typical Nightclub.

The response from APRA was:

> "We do not consider that responding to your document regarding a "typical" nightclub would be productive in these discussions. In our view it is far more appropriate to examine actual premises and discuss reasonable licensing arrangements with the venue operators and industry representatives ……

and later:

> However, seeking to muddy the waters with discussions of hypothetical multi use premises and references to PPCA decisions in which we have no part, does not advantage any of our respective members". Brett Cottle, Chief Executive APRA, 23 December 2008.

The above reflects the experience of our industry whereby APRA does not operate in a manner which is transparent and why the Licensing Scheme introduced by them is not clear and understandable to licensees.

For the purpose of a fair, equitable and competitive market, APRA should be compelled to be open about all its dealings with individual licensees to ensure that no licensee is at a market disadvantage through APRA doing a secret and more financially beneficial deal with an individual licensee.

As mentioned above a small number of our members had a mediation with APRA on the new GFN license and reluctantly reached agreement with APRA in respect of each objecting licensee.

The agreements were subject to a confidential clause demanded by APRA and so details can not and will not be disclosed.

The principle however of confidentially required by APRA is fundamentally wrong for a supposedly not for profit Copyright Collection Society which by its Code of Conduct is required to treat all licensees fairly, equitably and transparently.

iv) APRA uses methods and procedures in dealing with individual licensees which are covert, intimidating and contrary to the Code of Conduct for collecting societies to be fair, open, honest and courteous to licensees requiring collecting.

5. BRIEFLY OUTLINE OF OTHER MATTERS FOR FURTHER SUBMISSION OR DISCUSSION IF REQUESTED:

i) Non-Disclosure of Specific Recipients of Distributions by the Copyright Collection Societies

Although it is widely perceived through the industry that the greater bulk of distributions of net income from both APRA and PPCA (as high as around 90%) goes to just a small number of non-Australian record companies, there is no public disclosure of the specific amounts distributed to those companies. For the purpose of transparency and fairness to the Australian licensees who pay from their Australian businesses, the licensee fees that are distributed, the specific distribution details should be made available.

This is particularly so as the net income is distributed by the Copyright Collection Societies without being subject to Australian taxation on distribution.

ii) Board Composition

A “not for profit” organisation should have representation from all parties to the licensing agreement to ensure fairness, openness and transparency. There is to our knowledge no representatives from licensees on either of the boards of APRA or PPCA.

To the contrary both boards have substantial representation from the non-Australian record companies in receipt of the major part of the society's distribution through directors of their Australian affiliated companies.

To avoid conflicts of interest, fairness, balance and transparency there should be equitable representation for licensees on these boards.

iii) Mandatory Code of Conduct

The Government should consider the implementation of a mandatory Code of Conduct as distinct to the current voluntary Code of Conduct.

As is expressed in the Attorney-General's "Report of the Inquiry into Copyright, Music and Small Businesses" under Recommendation 6 the response from Government stated:

> "The Government has also considered whether the immediate development of a mandatory Code of Conduct enforceable under legislation is preferable. Although such action would be inconsistent with a "light touch" regulatory approach, it may prove necessary if the collection societies are unable to agree amongst themselves on the content and terms of a voluntary code. A mandatory code might also provide stronger enforcement mechanisms and, therefore, result in better compliance than might be the case with a voluntary Code of Conduct".

and further:

> "As indicated above, the Government will consider the development of a mandatory code if a voluntary Code of Conduct is not effectively implemented or if there is significant dissatisfaction amongst copyright users and members of collection societies with the Code and its operation".

Through:

- the use of their much superior financial strength and resources
- the monopoly control that the Copyright Collection Societies have over the use of copyright material in Australia with no alternative copyright provider available to Australian businesses
- the secrecy and confidentiality surrounding agreements made by the collection societies with individual licensees which in turn creates uncertainty and almost certain inequality and market advantage amongst licensees
- the covert operations used by some of the Copyright Collection Societies which are therefore not open, transparent or respectful to licensees, and
- widespread dissatisfaction amongst licensees as to the conduct of certain Copyright Collection Societies

a mandatory Code of Conduct with specific protection provided to individual licenses should be considered as part of this review.

iv) Period of Renewal

In view of the matters raised in this submission the period of six years instead of three years is in any event too long.

It is our submission that the Copyright Collection Societies should be subject to more frequent review rather than less.

v) Non-Disclosure of Copyright Material by Copyright Collection Societies

APRA does not have the copyright for all music recordings available to licensees.

Therefore it is our opinion that their monopoly position is contrary to the public interest and against allowing competition to be introduced into the market. By refusal to declare what specific recordings they have copyright for the Copyright Collection Societies are not providing the opportunity for licensees to have the choice of not being subject to a license from these respective Copyright Collection Societies.

In the case of both APRA and PPCA (and in particular PPCA) the material that they do not have the copyright of is very substantial.

However licensees can not exercise the option or take the risk of not having a license from these monopoly Copyright Collection Societies as a lack of specific information could easily cause them to be inadvertently in breach of copyright and therefore subject to consequential legal action and damages.

We thank you for the extension of time you have provided to enable our submission to be lodged and as indicated at the commencement of our

submission, we are available if requested to provide additional information and meet if you require.

Appendix D: Dr Sainken Copyright Submission to ACCC

SUBMISSION OPPOSING APRA RE-AUTHORISATION BY ACCC.

A] INTRODUCTION:

This submission is prepared by a Consumer without the benefit of legal training. It's brief, straightforward, informal and factual. The asterisks mark statements that will be familiar to a reader with experience in the field. If needed references could be supplied for these remarks. The writer would welcome a chance to address the ACCC in person on this matter.

B] EXECUTIVE SUMMARY:

1. APRA is a monopoly.
2. The Copyright Tribunal is responsible for oversight of this APRA monopoly.*
3. The Copyright Tribunal (CT) is under equipped to govern it sufficiently.
4. Thus APRA is able to exert its monopoly power cloaked in pseudo-legalities.
5. The CT can't utilise independent information to penetrate the consultative veil
6. The consumers are insufficiently funded to penetrate the legalistic veil
7. Particular groups are victimised
8. The Public Interest may be affected.
9. The APRA monopoly has been a problem for Consumers for over 50 years.
10. APRA's recent financial power and confidence have increased its intransigence.
11. The ACCC should act now to effect significant change.
12. Solutions involving changes both broad and minimal are suggested.

C] THE MONOPOLY:

1. The Collecting Society APRA is a self-admitted monopoly. *

2. The power of a wealthy monopoly under scrutiny must be legally conscious.

3. Superior financial resources for the employment of in-house executive, clerical and legal manpower together with outside Consultant and Law firms allows the monopoly to dominate its weaker Consumers by means apparently within the statutes.

4. Applicants and especially would-be Applicants know in advance that they cannot match the amounts APRA is prepared to spend in the defence of the monopoly.
5. The CR accepts submissions, weighs the evidence to the best of its ability and decides on the "evidence".

6. As a much greater volume of material can be presented by the resourced APRA than by the under-resourced and under-qualified Applicant there is a high probability that the CT will be persuaded in the direction of the APRA unless they have the resources and the will to double check APA's well crafted assertions.

7. A case produced by those in the pay of the proponent cannot be accepted as fact. e.g. In–house drug company research only gains medical community credence when independently validated. A controversial proposition put forward by a Collecting Society should be independently validated before acceptance.

8. However, the Copyright Tribunal is not obliged by statute to inform itself independently, is not resourced sufficiently to encourage it to pursue that approach. It does not do so either at all or if at all not in a detailed manner.

9. The Tribunal has thus taken the position, often stated in its reasons for decisions* that it depends on Applicants to present the necessary information to counter APRA's claims. Thus the imbalance of power cannot be properly understood, supervised or controlled by the CRT. The CRT cannot provide the balancing role for which it was created. This is thoroughly unacceptable.

10. The Copyright Tribunal was created in large part* to prevent the abuse of APRA's monopoly power. Although obliged to do so it lacks the resources to properly fulfil that obligation. [In the PPCA case of 2006/7 the CR comment several times* that the "Applicant" did not offer a counter to the PPCA evidence and therefore they would accept the PPCA submission.]

11. The Tribunal is probably unaware of the degree to which it fails Consumers.

D] AN EXAMPLE:

1. One particular group which is being persecuted by the monopolisation of music rights are those licensed premises offering Disc Jockeys and/or dancing to modern music.

2. Without any directly CT approved scheme APRA have imposed a levy in the order of 10-20 times the international rate on Australian Licensed Premises offering the above dancing facilities.

3. For this APRA rely on a case taken to the CRT by their sister Collecting Society the PPCA in 2006/7.

4. In this case the PPCA absolutely overwhelmed a hopeful but naïve opposition by parading an expensive string of social scientists whose opinions and researches were commissioned and designed to support APRA's position.

5. The Consumers representatives were simply out of their league and unable to muster the necessary expertise, funds or energy to properly challenge the views and calculations of APRA's experts. However an examination of those experts clearly demonstrates the bias before and after their opinions were given to the CRT. The main architect of these submissions now chairs a Collecting Society

6. Opinion from one or more biased experts is of no consequence and the CT erred in not informing itself as to the probity of the surveys upon which the PPCA case was based in 2006/7.

7. However the CRT commented it had no other course than to consider what was presented and in the absence of the weaker parties presenting similarly expensive Consultants opinions decided to largely accept what the PPCA presented.

8. The rate set for the PPCA in that case was high and it was admittedly suggested (informally) that APRA might be entitled to benefit similarly. However the position of APRA has not been explored or tested by the Tribunal. The potential Applicants simply can't afford to properly engage the process.

9. However it's well known that a musical piece performed by untalented artists is not popular, not often played or likely to be utilised for dancing. APRA has no interest in the rights of the performance but only in the underlying composition. The reality is that this right may be worth far less that that of the performance.

10. The argument that you can't have a performance without the composition is not an argument for parity of rights payments. It's not possible to have a fire without fuel but an unlit bonfire achieves only a passing glance whereas once burning the raging fire will occasion all to stare at it with fascination. The composition is the fuel, the fire equates to the performance…. Their relative entertainment value is not at parity.

11. Similarly the role of the person presenting the music has not been properly weighted. APRA charge a large premium if a DJ presents music but whilst this premium acknowledges the talent input by that DJ they don't employ, pay for that or have rights to the creativity of that DJ. This premium is a non-sequiter.

12. Similarly a large premium is charged if music is used for dancing. If this premium was confined to those dancing it could be reasoned but as it's applied to anyone entering a venue where dancing occurs whether they dance or not it is again an illogical penalty.

13. These facts are mentioned to demonstrate the persecution by the monopoly. These irrationalities SIMPLY COULD NOT EXIST IN A COMPETITIVE MARKET.

14. They demonstrate the ineffectuality of the CT and the need for a totally different approach.

15. It is respectfully submitted that the fiasco of 2006/7 demonstrated the toothlessness of the CRT once and for all. Another solution is warranted.

16. The monopoly Collecting Society is a noxious commercial institution, which doesn't hesitate to abuse power, as may any other monopoly. They should be disbanded and outlawed.

E] AGAINST THE PUBLIC INTEREST:

1. The last Determination by the ACCC saw a multitude of complaints by users of all categories. Even Fairfax commented it has no alternative but to bow to APRA's demands whether reasonable or not.

2. The last Determination accepted that Composers are non-compeitive.* This goes against human nature and discriminates against talent.

3. Without the support of a compelling research this comment is self-evidently unlikely. The reason for a non-competitive composre market is APRA which is the only game in town.

4. Price discrimination across user groups is common and extreme.

5. The blanket license is a function of the monolith and used as a impost tool.

6. The Alternate Dispute Resolution option is ineffectual and little used.

7. The Copyright Tribunal is expensive and fettered in its range of remedies.

8. The APRA approach to rights is out of date, rigid, of unproven economic merit and non-progressive and therefore to the Public Detriment.

9. All the above are against the public interest

F] SENSIBLE ALTERNATIVES:

1. It is respectfully submitted that the Counterfactual did not go nearly far enough at the previous ACCC Determination. This appears to be due to the

ACCC accepting a few APRA assertions which were unlikely to be true e.g. Composers are non-competitive; APRA is uniquely economically efficient.

2. This submission specifically objects to the re-authorisation of APRA in its current incarnation and invites a Counterfactual that examines this (eventual) possibility and its ultimate benefits for providers and users.

3. A realistic scenario would be three or perhaps even four 'Collecting Clubs' which are allowed a maximum of 33% (if three) or 25% (if four) of the exclusive rights to music in any particular genre. Each genre to be for sale separately as well as a blanket license from that particular collecting club.

4. Composer's could sell their rights exclusively or non-exclusively in which case a 'Club' might represent more than its 33% of total rights but not all of those rights would be exclusive. Composers would commit their rights for a maximum of 3 years at a time.

5. The APRA claim that their mammoth organisation is a more efficient machine is untestable and unlikely. It's self evident that competing businesses are more motivated toward efficiency than large uncontested institutions e.g. State run transport, utilities etc.

6. It's respectfully submitted that "Economic efficiency" is likely to improve with multiple copyright representation.

7. In any event the benefits to Composer Groups, Consumer Groups and the Public would in all probability be greater than the detriment.

8. The existence of competing "clubs" would encourage them to vie for Composer's works and thus pay more as well as compete for Consumers business, which would create a "market" price, which would not need to be questioned.

G] LESSER ALTERNATIVE MECHANISMS:

1. The Copyright Tribunal should be obliged by statute to inform itself independently by any means necessary to be able to properly address the issues under consideration and be resourced to so do. The Tribunal should be funded appropriately.

2. The Blanket License is convenient but also used as a monopolistic tool to prevent consumers knowing what alternatives exist for them. Other option should be provided (e.g. genre-based) with proportionately reduced fees.

3. APRA should be obliged by law to provide a current detailed list of all music to which it lays claim and also those works to which it does not. This would allow users an alternative strategy to a license with APRA which would then be obliged to present a balanced attractive License

4. The date of all new additions/removals to inventory must be notified to consumers. This is a difficult but not impossible task. If APRA is to remain a monopoly it must spend enough to be a responsible one.

5. If the ACCC is not convinced of APRA's anachronisms and severe anticompetitive effect and the distribution mechanism of music rights remains unchanged, the function of a singular central organisation would be fairer and more tolerable with the additions presented above.

H] CLOSING REMARKS:

The comments above attempt to explain that the Government, after several enquiries dating back to the 1930's* including a Royal Commission decided to tolerate APRA on the basis that it be counterbalanced by the Copyright Tribunal.

That position was later re-enforced by insisting on an Alternate Dispute Resolution facility, regular reporting and other fair-minded adjustments potentially in favour of consumers.

The Government also surely rely on the role of the ACCC to monitor the situation.

Sadly ….

THE CURRENT EXTANT MECHANISMS TO NEGATE THE MONOPOLISTIC EXPLOITATION OF MUSIC CONSUMERS ARE QUITE SIMPLY… NOT EFFECTIVE.

The ACCC is respectfully requested to use its powers and resources to insist on significant, well-thought through and effective change.

Thankyou,

Jon Sainken

Dr Jon Sainken - MB.BS.,M.Phil.,MRCPsych.,FRANZCP. E&OE

The Leederville Hotel, Claremont Hotel, Mindarie Marina Hotel, Club Bay View.

Perth Western Australia, May 26, 2013.