



Australian Government

**Department of Infrastructure, Transport,
Regional Development and Communications**

CONSUMER SAFEGUARDS BRANCH

Review of the Terms of Endorsement for the .au Domain Administration

Final Report

October 2021



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Director – Creative Services
Communication Branch
Department of Infrastructure, Transport, Regional Development and Communications
GPO Box 594
Canberra ACT 2601

Email: publishing@infrastructure.gov.au

Website: www.infrastructure.gov.au

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Executive Summary

The Government's Terms of Endorsement (ToE) for the .au Domain Administration (auDA) have been reviewed and updated to be more fit-for-purpose.

auDA manages an important piece of internet infrastructure (.au), which is increasingly vital to Australia's social and economic success.

The review conducted desktop research into how a number of comparable countries manage their equivalent body, and determined that there is considerable alignment between Australia and other jurisdictions.

Extensive consultations with auDA and interested Government agencies were undertaken to arrive at a proposed new draft of the ToE. A six-week public consultation was held based on the draft, and the feedback received (six submissions) was evaluated and, where appropriate, accepted.

The review found that the current ToE, while suitable to the time it was drafted, should be updated to be more high-level and principles-based, in acknowledgement of auDA's success in reforming its governance framework. The principles auDA needs to follow to maintain Government endorsement include:

- Engagement with the Australian Government
- Support trust and confidence in .au
- Promote principles of competition, fair trading and consumer protection
- Support fair and transparent multi-stakeholder engagement
- Support a membership structure that reflects the diversity of the Australian community
- Maintain effective governance processes that are transparent, accountable, support effective decision-making, and promote the interests of the Australian community

The new ToE clarifies some operational and regulatory points, such as the process for re-delegating management of .au, deletes references to documents which are now business-as-usual for auDA, and implements some minor text changes.

The revised ToE have been approved by the Minister for Communications, Urban Infrastructure, Cities and the Arts.

Introduction

The .au Domain Administration (auDA) is responsible for the operation and management framework of the .au domain space. auDA is an independent, not-for-profit company, endorsed by the Australian Government as the appropriate entity to administer Australia's country code top-level domain (ccTLD)—the .au domain—on behalf of Australian internet users.

The Government has a strong interest in ensuring that .au is managed in a stable and secure manner; however, as it supports the multi-stakeholder approach to internet governance, it deliberately maintains an arms-length separation from auDA to better allow it to formulate policy in the interests of the broader Australian internet community. The Terms of Endorsement (ToE) provide the Government's formal endorsement of auDA, conditional on auDA's compliance with Government's expectations.

In 2018, the former Department of Communications and the Arts undertook a review of auDA's governance arrangements. The 29 recommendations of the review were accepted by the Government and revised ToE were issued to auDA. The review indicated that the ToE should be reviewed after two years of operation.

The Department of Infrastructure, Transport, Regional Development and Communications (the Department), facilitates the Government's relationship with auDA, and monitored auDA's compliance with the 2018 reforms. The Government stated in May 2020 that auDA had successfully addressed all 29 recommendations of the review, which included significant organisational and cultural changes. Over the review implementation period, auDA achieved a number of significant milestones including the appointment of a new Board and Chief Executive Officer. auDA has also expanded and diversified its membership base and now has appropriate governance and reporting frameworks in place to support improved transparency and accountability.

The current ToE have a strong focus on the detail of auDA's functions and governance arrangements, which assisted in implementing the recommended reforms. With these complete, the Department undertook a review during 2021 to consider revising and refining the ToE. The Government and auDA recognise they have a mutual interest in facilitating the effective management of .au as a critical piece of national infrastructure that enables a range of social and economic activities.

Review process

This report outlines the history of the ToE, the conduct of the review and the production of an updated ToE. The process included several phases:

- an initial research phase which examined other comparable countries for insights
- consultation with auDA and relevant government agencies
- a 6-week public consultation period, based on a draft revised ToE
- the final revised ToE were approved by the Minister for Communications, Urban Infrastructure, Cities and the Arts.

History of auDA's Terms of Endorsement

The original ToE were established in 2000 between the Australian Government and the recently-formed auDA. These ToE required that the .au domain administrator should:

- operate within the provisions of its company constitution
- recognise that the internet naming system is a public resource
- operate as a fully self-funding and not-for-profit organisation
- be inclusive of, and accountable to, all members of the Australian internet community
- adopt open, transparent and consultative processes
- promote competition, fair trading and provisions for consumer protection and support
- establish appropriate dispute resolution mechanisms; and
- represent Australian internet industry interests in the internet domain name system at national and international fora.

Agreement to these ToE facilitated auDA's recognition by the Internet Corporation for Assigned Names and Numbers (ICANN) as the manager of the .au ccTLD. auDA signed a sponsorship agreement with ICANN in 2001 which remains in effect today, and requires auDA to observe a range of international technical and governance standards.

In addition to endorsing auDA, the Government legislated to create reserve powers under the *Telecommunications Act 1997* and the *Australian Communications and Media Authority Act 2005* to allow Government to intervene in the event that a self-regulatory body (i.e. auDA) is unable to manage electronic addressing in an effective manner. This ensures the continuation of effective management of .au, its security and its availability to Australian society.

A review of auDA's governance arrangements was conducted by the Department of Communications and the Arts in 2018. Along with 29 recommendations for reform, more proscriptive ToE were introduced (see Appendix A).

Timing and scope of the 2021 ToE review

The 2018 review recommended that the new ToE's fitness for purpose should be considered after two years. While some preparatory work was done in 2020, the review was postponed until 2021 to allow more time for auDA to thoroughly implement its governance reforms, and to give stakeholders more opportunity to respond throughout the COVID-19 pandemic.

The ToE is the primary means by which the Government frames its expectations of auDA, and given the dynamic nature of the internet and its importance to the country it is appropriate to review these expectations every few years. The review focussed on the ToE rather than on auDA's performance, which has been closely monitored by the Department during the implementation of the governance reforms.

Domain Administrators: International Comparisons

As an initial step prior to amending the ToE, the Department undertook desktop research to examine the characteristics of the domain administrators of seven countries which share a number of characteristics with Australia, such as GDP, internet governance policies and internet market maturity. This included:

- Canada (CIRA)
- Denmark (DIFO)
- France (AFNIC)
- Finland (Traficom)
- New Zealand (InternetNZ)
- Norway (Norid)
- The United Kingdom (Nominet)

Each of the bodies studied is responsible for managing the internet country code top level domain (ccTLD) applicable to each nation, including policy development.

For each body, documents analogous to auDA's ToE were sought. In most cases no equivalent document could be found, so instead constitutions, annual reports and policy statements were consulted to compare a range of characteristics covered by the ToE.

This brief research indicated that Australia's ToE covers very similar issues to those evident in comparable overseas bodies, even where there is no published government endorsement. Licensing policy, not-for-profit status, participation in international fora, transparent corporate governance; the degree of explicit direction from the state may vary, but these bodies generally adhere to familiar operating principles when compared to auDA.

The Department's analysis was that while there are a variety of administrative arrangements in place, there is also a great deal of commonality evident:

- all of the domain administrators are not-for-profit enterprises constituted separate to government, with members instead of shareholders
- they all charge commercial rates for domain names
- they all have policies regulating what domain names can be used, and by whom
- participation in international fora is common
- they all support their country's Internet Governance Forum
- most have corporate governance rules laid out in an official public document, usually a constitution or strategic plan.

Only some of these entities publicly acknowledge their links to government, and it is often difficult to discern what role (if any) state agencies have played in forming their rules of governance. However some countries are deliberately clear about the link: Denmark's DIFO operates under an Executive Order from government which is quite explicit about what the agency can and cannot do; and New Zealand's InternetNZ has a Memorandum of Understanding with government clearly defining each party's roles.

The review concludes from this brief survey that auDA's operations and policies are broadly in line with those of comparable countries, and that the ToE mirrors the expectations evident in other jurisdictions' governing

documents. This insight provided a foundation upon which to review the ToE, informing a range of high level principles to guide the remainder of the project.

Review Principles

Incorporating insights from the initial international comparisons analysis, and core policy priorities outlined in the previous versions of the ToE, a number of guiding principles were developed to help inform the review's scope and direction:

- The .au namespace is an important public resource, which must be managed to the benefit of all Australians.
- Trust and confidence in the .au domain is vital. Commercial interests must not compromise this objective. auDA should take care that commercial activities do not, or do not appear to, benefit any one set of stakeholders over others.
- The multi-stakeholder model of internet governance promotes social inclusion and economic development both locally and internationally, and must be supported.
- auDA should conform as much as possible with ICANN-developed policies, to ensure it is acting in accordance with internationally-agreed standards.
- auDA has a monopoly position in a market of national significance and would normally be subject to close government regulation. Instead, auDA's structure as a not-for-profit entity ameliorates some of the profit maximising concerns usually connected with monopolies, and the ToE encourages compliance with regulatory principles of good governance like transparency, accountability and strategic planning.

These principles were used to inform the subsequent review stages, including helping to provide guidance in analysing feedback received through the consultation process.

Consultation

The consultation phase of the review included:

- Informal consultation with auDA and relevant government agencies
- Circulation of a draft ToE for comment and a virtual roundtable with government agencies and auDA
- A six-week public consultation, which included messaging on the Department's website and a broad multi-channel social media campaign.

Informal consultation

Informal consultation was a critical step in gathering initial feedback on the ToE.

The Department held discussions with auDA's senior management to obtain their feedback on the current ToE. auDA made a number of suggestions for improving the ToE, such as making it more principles-based and updating the list of core functions. A majority of the proposed amendments aligned with the review principles, and as such were incorporated into the draft revised ToE.

The Department held a series of one-on-one meetings with various government agencies with an interest in auDA. Around a dozen agencies were consulted, including the Australian Federal Police, IP Australia and the Department of Foreign Affairs and Trade. These meetings provided agencies with background and context for the ToE review, sought feedback on the current ToE and canvassed proposals for broadening auDA's responsibilities. Each conversation also generated useful feedback about how the agencies interacted with auDA.

Virtually all of the agencies expressed appreciation for auDA's positive approach to interacting with them and working to solve problems. Similarly, a majority of agencies expressed positive sentiments toward the current ToE, and security-related agencies were pleased with auDA's responsiveness to requests for assistance. Several agencies raised the potential for auDA to be more involved in whole-of-government discussions on domain name issues, as it has considerable expertise it could share. A sample of the comments made include:

'auDA could do more in terms of public education. We've found the information auDA provides to their registrars was quite useful and worth sharing more broadly.'

'In a practical sense it makes a lot of sense that the responsibility for Australian internet governance issues doesn't sit in one place. It makes it easier for all parties so that we look after our own patches and keep each other informed.'

'There should be something in the Terms on whole-of-government cooperation and coordination on government policy and where that intersects with auDA's role.'

'auDA has backed off international engagement a bit in the last few years. We see them as a useful ally and source of advice.'

Circulating draft ToE and holding a virtual roundtable

The next step was to circulate a draft revised ToE to a wider group of government agencies for comment. This was followed up with a virtual roundtable event on 20 July 2021 hosted by the Department and attended by representatives of auDA and a number of agencies, to gather feedback on the draft.

Roundtable participants were supportive of the move to a more principles-based approach for the ToE, agreeing that it would be more flexible and better allow auDA to respond to environmental changes, and to adopt international standards in line with ICANN and other domain administrators.

Minor changes to the draft ToE were made in light of these comments, including strengthened references to the multi-stakeholder approach.

Public consultation & social media

A public consultation was launched asking for submissions from interested persons on the revised ToE. A factsheet outlining the proposed changes and asking questions of submitters was also released (see Appendix D for details). This consultation ran for six weeks from 2 August to 10 September 2021, and was publicised via social media posts and mentions on the Department's website.

- A 'Have your say' page was created on the Department's website to take submissions
- A news story on the consultation was published on the Department's news page

Posts promoting the consultation and linking to it appeared on the Department's Facebook and LinkedIn pages and its Twitter feed, at the beginning, middle and end of the submission period.

Summary of Public Submissions

A total of six written submissions were received as part of the public consultation.

The small number of submissions, and the broadly supportive tone of most of them, indicate that there is little concern among stakeholders with regard to the overall proposed direction of the ToE. However, comments made in a couple of submissions show there are a few individuals opposed to auDA's stance on policy matters, for instance the introduction of direct registration.

The submissions will be published on the Department's website.

Three submissions made only general comments in support of the revised ToE, with no suggestions for change (Afilias, Education Services Australia and auDA). Some more detailed submissions were also received, and are summarised below.

Submission One

Feedback: An anonymous submission made a number of statements which were highly critical of auDA's handling of complaints, its alleged favouring of certain clients over others, and of auDA members not having a real say in the governance of the company. The submitter was supportive of the new ToE in theory but doubted it would be reflected in practice. They also suggested that an Ombudsman should be created to oversee auDA.

Outcome: Since no specific changes to the ToE were suggested, and the comments made were outside the scope of the review to address, no changes were made to the ToE.

Submission Two

Feedback: The Australian Small Business & Family Enterprise Ombudsman (ASBFEO) made a general submission recommending that auDA should pay more attention to the needs of small and family businesses, particularly in relation to disputes over domain names. It also suggested strengthening the competition principle in the ToE to be more small business friendly, and to do more research on the needs of the sector.

Outcome: The Department considers that the proposed competition principle is broad enough to accommodate ASBFEO's concerns.

Submission Three

Feedback: The .au Domain Name Association (auDNA) made a submission which was critical of the proposed ToE for not addressing multiple perceived shortcomings with auDA's policy and operations. auDNA argued against the introduction of direct registration, in favour of increased competition in the secondary market for domain names, petitioned for a more transparent auDA Board, and raised several other incidental issues.

Outcome: Policy responsibility for these matters sits with auDA, not the Government. The Department considered that the criticisms levelled by auDNA were only peripherally relevant to the ToE and Government oversight of auDA, and the changes proposed in the submission to the ToE were either inappropriate or would not have the effect intended by auDNA.

Having considered both formal and informal feedback on the ToE, and the broader international domain name administration landscape, the Department proceeded to finalise draft amendments to the ToE, which are outlined in the following section.

Proposed amendments to the ToE

This review was tasked to assess how fit-for-purpose the current ToE is and to consult stakeholders on possible amendments, using a range of principles to help guide the overall review process.

The current ToE document was deliberately drafted to support the process of governance reform recommended by the 2018 Review, with a range of prescriptive governance and reporting requirements, and specific directions to address the 2018 review recommendations. A set of auDA's core functions are listed, followed by a range of conditional requirements which detail what is expected of auDA and how it will report on its progress in achieving outcomes.

The Department monitored auDA's implementation of the 2018 Review recommendations closely. The review notes that in May 2020, the Minister for Communications and the Arts wrote to auDA to congratulate it on successfully completing its program of reform (see Appendix C). There has been regular contact between the Department and auDA throughout this period on operational, governance and oversight matters.

Given auDA has improved its operational and governance practices, and is fulfilling its core obligations outlined in the current ToE, the Department considers it is appropriate to broaden the scope of the document. International scans, as well as discussions with government agencies and auDA, suggest that there is an opportunity for the ToE to move beyond a focus on core tasks in the administration of the ccTLD, and explore auDA's role in supporting the broader internet community. For example through undertaking more strategic research, education and public awareness activities.

The internet is a dynamic system comprised of many disparate elements, and governance frameworks need to reflect this dynamism. For the last three years it has been appropriate for the Government to apply more oversight to auDA than has been typical in the past. However, the evidence suggests it is now reasonable to adapt this oversight by updating the ToE to be less prescriptive, and to place greater emphasis on overarching principles or guidelines of the bounds in which auDA should operate.

Stakeholders consulted during this review were supportive of the ToE adopting a more high-level approach, to enable the Government to better communicate the set of principles it regards as most important for auDA to focus on. This would be in line with the Government's support of the multi-stakeholder model of internet governance, which promotes auDA's independence and status as an industry self-regulatory body. This is particularly important in relation to its obligation to consult widely in the community when deciding domain policies.

Based on the review principles, international comparisons and feedback from stakeholders, the review determined that the ToE should be amended in the following ways to:

- better clarify auDA's set of core tasks
- adopt a more principles-based approach
- emphasise support for the multi-stakeholder model of governance
- encourage auDA to engage in more research and public awareness activities; and
- make the process of re-designating the domain name manager clearer.

auDA's Core Functions, as listed in the ToE, have been edited to separate general operational items, such as maintaining the stability of the DNS, from items that were more abstract, such as upholding competition and consumer protection – these have been moved to the Core Principles section.

The core principles are outlined below. While many were carried over from previous versions of the ToE, all are deliberately broad and overarching, allowing auDA to exercise their technical knowledge, and utilise the multi-stakeholder model of internet governance policy development, to determine appropriate implementation of these principles.

Core principle	Justification
Engagement with the Australian Government	auDA must maintain close working relationships with relevant government agencies so that the .au domain is managed consistent with community expectations.
Support trust and confidence in .au	As a critical piece of Australia's digital infrastructure, the .au domain must be managed competently and securely in a manner which will produce outcomes in the long-term interest of all users. auDA should foster .au's reputation through education and public awareness activities.
Promote principles of competition, fair trading and consumer protection	The promotion of competition, fair trading and consumer protection principles is also key. Although not a consumer affairs body, auDA must be mindful that adherence to these principles results in net benefits for internet users. For example, having a competitive market for domain names encourages more efficient use of a significant resource.
Support fair and transparent multi-stakeholder engagement	The Government supports this approach and expects that auDA will do so as well, particularly in formulating policy. auDA should also strive to represent the views and interests of Australian internet users when it attends international gatherings.
Support a membership structure that reflects the diversity of the Australian community	Maintaining a membership structure representative of auDA's diverse range of stakeholders will enhance auDA's understanding of user needs.
Maintain effective governance processes that are transparent, accountable, support effective decision-making and promote the interests of the Australian community	A focus on governance processes to ensure continued transparency, accountability and effective decision-making is required of auDA in accordance with the <i>Corporations Act</i> , its own Constitution and its sponsorship arrangement with ICANN. Commercial activities must not conflict with these Terms. A Strategic Plan is required, and a process for appointing a majority of independent Directors to its Board. The Minister for Communications can query any matter of concern and request corrective action be taken.

The remainder of the revised ToE states the Government's reserve legislative powers to regulate the domain name address system if necessary, and auDA's obligation to cooperate with any re-delegation of authority for .au to another entity. There is also detail concerning the steps to be undertaken in the event of such a re-delegation. The current ToE is deliberately prescriptive regarding governance and accountability frameworks.

As the revised ToE moves to a principles based approach, it is necessary to improve clarity regarding the reserve powers Government maintains, including when these legislative fall-backs should be utilised.

This section also specifies that while a review of the ToE can occur at any time, normally it would happen every three years.

Deletions

As part of the move to a broader, more flexible approach for the ToE, a number of references in the current ToE to governance documents have been deleted or folded into the core principles. For instance:

- the need for a stakeholder engagement plan
- a transparency and accountability framework
- key performance indicators
- vetting of new auDA members
- an enterprise security strategy

Almost none of these documents existed when the current ToE was drafted; today they are all being actively maintained by auDA, with progress toward key outcomes reported in its Annual Report. In many cases the existence of wider principles covering the overall governance framework mean that these items no longer need to be called out specifically in the ToE, and can be deleted without affecting their continued existence.

Minor amendments

A number of minor updates to the language used in the current ToE have also been implemented to assist with clarity or provide additional detail:

- replaced references to the Department's previous title with its current title
- replaced phrases that implied that something is yet to be done (e.g. 'develop') with an ongoing phrase (e.g. 'maintain'), where the reference is to an activity which has been implemented by auDA since 2018
- added explanatory footnotes to terms that needed clarification
- spelled out acronyms that were previously undefined
- inserted language to further emphasise how important the .au namespace is to Australians' economic and social lives.

The revised ToE can be found at Appendix B.

Approval, Publication and Acceptance

The Minister for Communications, Urban Infrastructure, Cities and the Arts has approved publication of the new ToE.

As per the revised ToE, the auDA Board Chair will need to write to the Minister accepting the new ToE within 30 days of publication.

Conclusion and timing of next review

Having consulted a range of stakeholders, both within auDA and the Government and via a public consultation process, this review has determined that the current ToE can be improved to be more fit-for-purpose. auDA administers an important piece of Australia's internet infrastructure, and the expectations of Government should be regularly reviewed and communicated to auDA in the ToE. A revised ToE has been produced which reflects improvements suggested by the Department and stakeholders.

It is recommended that the next review of the ToE should occur in three years' time.

Appendix A – Current Terms of Endorsement

Terms of endorsement (2018)

Preamble

Australia's country-code Top Level Domain (ccTLD) is an important resource, given the growing reliance of Australians on the .au namespace for economic and social activities. Noting there is a diversity of stakeholders in this namespace, the management of the .au domain must support multi-stakeholder engagement and be administered in the public interest.

Responsibility for the administration of .au is ultimately derived from, and is subject to, the authority of the Commonwealth. The Australian Government can delegate the responsibility for managing the .au namespace to an appropriate entity or organisation. However, endorsement from Government is contingent on the entity satisfying a number of conditions.

The Government provides the following terms of endorsement to auDA, as the .au domain administrator.

Core functions

The .au domain administrator will undertake the following core functions:

- ensure stable, secure and reliable operation of the .au domain space
- respond quickly to matters that compromise DNS security
- promote principles of competition, fair trading and consumer protection
- operate as a fully self-funding and not-for-profit organisation
- actively participate in national and international technical and policy namespace fora to ensure that Australia's interests are represented and to identify trends and developments relevant to the administration of the .au namespace
- establish appropriate dispute resolution mechanisms.

Emerging domain issues such as commercial opportunities should not detract from the domain administrator performing its core functions.

Conditional requirements

In undertaking these functions, the .au domain administrator will uphold the following requirements and conditions:

Effective governance arrangements for the .au namespace

Good governance practices provide the foundation for the effective management of the .au ccTLD. The .au domain administrator must implement a governance structure that supports effective decision-making and represents the interests of stakeholders in a transparent and accountable manner.

Conditions:

That the .au domain administrator has:

- a governance structure which includes the following characteristics:
 - an independent process that can provide assurances of the suitability of candidates considered for board appointments, such as a Nomination Committee
 - a board that has the collective mix of technical and corporate skills, and industry experience, to effectively administer the .au namespace
 - a board that appoints a majority of directors who are independent of the organisation, including the Chair
 - appointment terms that support ongoing board renewal
 - a Board Charter that outlines the roles and responsibilities of the board, Chair and CEO and the basis for appointment of the Chair.

Facilitate effective stakeholder engagement

Noting that the .au namespace has a diversity of stakeholders, the .au domain administrator must engage and consult widely to ensure it can effectively represent the views of its stakeholders.

Conditions:

That the .au domain administrator:

- consults with stakeholders on deliberations and decisions that will impact on the Australian internet community
- develop a comprehensive stakeholder engagement plan, including how it will engage with key stakeholders such as industry, members of the community, Government and relevant international bodies and organisations
- consistent with this stakeholder engagement plan, participate in international fora and relevant community activities
- has a clearly defined membership structure that can represent the views of the Australian internet community
- initiate activities that engage the internet community and support the diversification of its member base
- establish an effective process for assessing and processing new members.

Support accountability and transparency

In managing a public asset, the .au domain administrator will be accountable to its stakeholders, including the Australian Government. Improved transparency and accountability is necessary to provide the assurance that the .au namespace is being managed consistent with Government and community expectations.

Conditions:

That the .au domain administrator has:

- an annual strategic plan that reflects these Terms of Endorsement and the company's purpose with reference to how it will discharge its functions as a not-for-profit entity
- a transparency and accountability framework
- an effective reporting framework which would include reporting through its Annual Report and at its Annual General Meeting on performance against:

- these terms of endorsement, supported by a key performance indicator framework
- board performance against its charter
- its strategic plan
- the transparency and accountability framework
- stakeholder engagement activities including international and community activities and initiatives that aim to expand the member base.

Engagement with the Australian Government

In providing its endorsement for an entity to administer what is a public asset, the Government has a strong interest in the management of Australia's ccTLD.

Conditions:

That the .au domain administrator:

- provide quarterly updates on performance and work priorities to the Department
- acknowledge that the Government reserves the right to independently review auDA's reporting and reporting processes at any time
- ensure that a senior officer from the Department is included in all relevant auDA governance processes, including, but not limited to, non-voting observer status at board meetings for all decisions
- develop a strategy to enable an orderly transition to an alternative domain administrator in the event that endorsement is withdrawn by the Government.

Support trust and confidence in .au

Confidence in the .au namespace will be critical to the growth of Australia's economy. In addition to the Department of Communications and the Arts, there are a number of other Australian Government agencies that have a role in supporting the security and stability of .au.

Conditions:

That the .au domain administrator:

- engage with key international security fora to ensure it is aware of international security developments and best practice
- develop, maintain and, to the greatest extent possible, publish an enterprise security strategy which is informed by domestic and international best practice
- work with the Department of Communications and the Arts to facilitate partnerships between auDA and relevant cyber security agencies

Commencement of these terms of endorsement

In agreeing to the terms of endorsement, the .au domain administrator is required to respond in writing within three months, providing an implementation plan on how it will meet these terms. The Australian Government will conduct a review within two years to assess the performance of the .au domain administrator and consider whether these terms of endorsement remain fit-for-purpose.

Appendix B – Revised Terms of Endorsement

Terms of Endorsement for auDA

October 2021

Preamble

Australia is a strong supporter of a multi-stakeholder approach to internet governance that is inclusive, consensus-based, transparent and accountable. The multi-stakeholder approach balances the needs and views of the community, civil society, industry, the technical community, academia and governments. This approach underpins the open, free and secure nature of the internet, and the consequent economic, social and cultural benefits to Australia.

The internet naming system is a public resource and, in keeping with the multi-stakeholder approach, its functions should be administered to create and deliver value in the public or common interest and in accordance with Australian laws.

On this basis, the Australian Government continues to endorse the .au Domain Administration (auDA) to administer Australia's (.au) country code Top Level Domain (ccTLD) for the benefit of all Australians in accordance with the following terms.

Core Functions

auDA will continue to undertake the following Core Functions:

Ensure stable, secure and reliable operation of the .au domain, as part of Australia's suite of critical infrastructure.

- Respond quickly to matters that compromise the security and integrity of the Domain Name System (DNS).
- Maintain appropriate security protocols in line with Australian and international best practice, and contemporary security practices.

Administer a licensing regime for .au domain names based in multi-stakeholder processes that is transparent, responsive, accountable, accessible and efficient.

- Develop policies for the .au domain with a multi-stakeholder approach to provide the greatest benefit for the Australian community.
- Maintain and ensure compliance with these policies.
- Maintain appropriate dispute resolution policies that are consistent with Australian and international best practice.
- Maintain a complaints process that is clear and consistent, and provides procedural fairness.

Advocate for, and actively participate in, multi-stakeholder Internet governance processes both domestically and internationally.

Core Principles

Engagement with the Australian Government

The Australian Government has a strong interest in the management of the .au domain. The Government expects that auDA will continue to work closely with it so that the .au domain is managed consistent with

community expectations. The Department of Infrastructure, Transport, Regional Development and Communications (the Department) will help facilitate the relationship with auDA on behalf of the Government. This would include a Departmental representative being a member of the Nominations Committee and having a standing invitation to observe auDA's Board meetings, as well as regular dialogue between a representative of auDA and the Department. auDA is also encouraged to maintain relationships and work co-operatively with other Government agencies. The Department will help foster partnerships across Government as required.

Support trust and confidence in .au

As the .au namespace is a public resource that supports the Australian economy and society, maintaining confidence in its integrity, security, and resilience is of great importance. In addition to best practice security, auDA will also have regard to maintaining and enhancing the reputation of the .au domain as a safe, trusted online space.

auDA will work to promote the utility of the internet for all Australians for example through undertaking strategic research, education and public awareness raising.

Promote principles of competition, fair trading and consumer protection

auDA's policies will improve the utility of the .au domain for all Australians and continue to promote competition, fair trading and consumer protection to facilitate equitable access to the market.

Support fair and transparent multi-stakeholder engagement

auDA is a key player in the Australian internet ecosystem, and has a role in upholding and advocating for the multi-stakeholder model of internet governance and promoting its benefits. auDA will continue to support fair and transparent multi-stakeholder engagement processes and take into consideration the full range of stakeholder views, when reviewing or developing policies related to auDA's core functions. auDA will continue to engage locally and internationally to exchange information and share expertise on Internet governance and domain administration.

Support a membership structure that reflects the diversity of the Australian community

auDA will work to make sure its membership is diverse and representative of the range of stakeholders who rely on the .au domain namespace.

Maintain effective governance processes that are transparent, accountable, support effective decision-making, and promote the interests of the Australian community

auDA will continue to operate within the provisions of its Constitution and as a fully self-funding not-for-profit and for-purpose organisation¹ and in accordance with its sponsorship arrangements with the Internet Corporation for Assigned Names and Numbers (ICANN). auDA's commercial activities will be considered and undertaken in accordance with these Terms of Endorsement.

¹ According to Pro Bono Australia, for-purpose organisations are a collection of people who have come together because they share a common goal for society. <https://probonoaustralia.com.au/news/2017/02/purpose-brand-identity/#:~:text=For%2Dpurpose%20organisations%20are%20a,choice%20to%20partner%20with%20you>

auDA's governance processes will continue to include, but not be limited to:

- An independent process for appointing directors.²
- A board on which the majority of directors and the Chair are independent.³
- A board charter that sets out the roles and responsibilities of the CEO, Board, Chair and the basis for the appointment of the Chair.
- A strategic plan that reflects these Terms of Endorsement and the company's purpose, with reference to how it will discharge its functions as a not-for-profit entity.
- An annual report outlining how auDA has discharged its responsibilities under these terms. If the Government has concerns, the Minister will write to auDA asking for a commitment to improve its performance.

Ongoing endorsement

The Government's ongoing endorsement is contingent on auDA continuing to meet the conditions of endorsement. The Government is able to endorse an alternative manager or exercise its legislative powers under the *Telecommunications Act 1997* and the *Australian Communications and Media Authority Act 2005* with respect to the .au ccTLD in the event that auDA proves unable to manage electronic addressing in an effective manner.

Recognising that .au is Australia's ccTLD and an important public resource, if there is a reassignment of the delegation of authority for administration of .au from auDA to another party, auDA agrees to cooperate and comply with the requirements of the Commonwealth and/or ICANN in order to effect the orderly transfer and re-delegation of authority for the .au ccTLD. In preparation for the unlikely event of this occurring, auDA must ensure that all business-critical operations are properly documented, to facilitate this orderly transfer. This could be outlined as part of its regular business continuity plan.

These terms commence with immediate effect. The Australian Government may review these terms at any time, but normally every three years, to determine whether they remain fit for purpose and best serve the Australian community.

auDA's acceptance of these Terms of Endorsement must be indicated by auDA's Chair writing formally to the Minister for Communications within 30 days of the Terms being published. Failure to accept these Terms of Endorsement may result in the Government endorsing an alternative manager.

If at some future date auDA decides not to accept the Terms, it must provide six months' written notice to the Government, in which case the Government will seek an alternative manager for the .au domain. If transitioning to an alternative manager will take longer than six months, the Government will work with auDA to establish an appropriate timeframe. Any transitional arrangements should preserve the stability and security of .au.

² To be consistent with [Recommendation 1.2 of Principle 1 of the ASX Corporate Governance Principles & Recommendations, 4th edition](#), applying to director appointments – and if not, to explain the reasons why.

³ Independent means no material or pecuniary relationship with the company, or in the decisions of the company, excluding directors' fees (i.e. not an employee of a registry, registrar, reseller, domain investor, or a close relative of an employee of one of these; close relative means a spouse, parent, child, or sibling).

Appendix C – Minister’s May 2020 letter to auDA

MS20-000326

Mr Alan Cameron AO
Chair, auDA Board
Level 17, 1 Collins Street
MELBOURNE VIC 3004

Dear Mr Cameron

I am writing to congratulate auDA on its successful completion of reforms arising from the *Review of the .au Domain Administration* (the Review). When the Review was released by my predecessor, Senator the Hon Mitch Fifield, in April 2018, auDA quickly committed itself to implementing all of its recommendations within two years. My Department informs me that, as of the final quarterly review of auDA’s progress which occurred on 1 May 2020, all of the actions arising from the Review have been finalised. A scorecard summarising auDA’s achievement is enclosed.

I would like to express the Government’s appreciation for auDA’s efforts in so substantially overhauling its governance within the time allotted, which I know posed many challenges for the company. I look forward to auDA continuing to provide a stable and secure .au domainspace, which in light of current events is more important to Australia’s prosperity than ever.

The Review and resulting reform process is now complete, although I note that auDA will be continuing to report regularly on its key performance indicators and my Department will maintain its oversight of auDA’s activities. I also note that the follow-up review of auDA’s Terms of Endorsement planned for after the implementation of the reforms will commence later in 2020, to accommodate the newly-established Board and CEO, and in recognition of the impacts of the COVID-19 pandemic.

In keeping with principles of openness and transparency, I recommend that the Department and auDA jointly publish this letter on their respective websites.

Yours sincerely

[Signed]

Paul Fletcher
Minister for Communications and the Arts

25 / 5 / 2020

Enc.

.au Review recommendation scorecard

The Department has been monitoring auDA's progress towards compliance with the 29 recommendations of the 2018 Review (including sub-recommendations, there were a total of 43 action items, of which 38 were auDA's responsibility).

Based on information presented at the 24-month review meeting between auDA and the Department held on 1 May 2020, in the three months since the last meeting, auDA completed its remaining four outstanding actions (Recommendations 10, 11, 16 (a) and 24), bringing the total completed to 38. Several of the completed actions (11) have an ongoing reporting requirement.

The final status of the recommendations is as follows:

	auDA's implementation of recommendations	#
	Overdue	-
	Not yet started (not overdue)	-
	Started / Behind schedule / at risk	-
	On track / satisfactory progress	-
	Completed	27
	Completed with ongoing reporting requirements	11
	Total:	38

The Government is responsible for the remaining five actions (Recommendations 15, 16, 16 (b), 17 and 28), all of which concern ongoing oversight of auDA:

	Government's implementation of recommendations	#
	Overdue	-
	Not yet started (not overdue)	-
	Started / Behind schedule / at risk	-
	On track / satisfactory progress	5
	Completed	-

Appendix D – Factsheet for public consultation

Review of the Terms of Endorsement for auDA: Factsheet

August 2021

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August 2021 / INFRASTRUCTURE

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Director – Creative Services
Communication Branch
Department of Infrastructure, Transport, Regional Development and Communications
GPO Box 594
Canberra ACT 2601

Email: publishing@infrastructure.gov.au

Website: www.infrastructure.gov.au

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Introduction

The .au Domain Administration (auDA) is responsible for the operation and management framework of the .au domain space. auDA is an independent, not-for-profit company, endorsed by the Australian Government as the appropriate entity to administer Australia's country code top-level domain (ccTLD)—the .au domain—on behalf of Australian internet users.

The Government has a strong interest in ensuring that .au is managed in a stable and secure manner; however, as it supports the multi-stakeholder approach to internet governance, it deliberately maintains an arms-length separation from auDA to better allow it to formulate policy in the interests of the broader Australian internet community. The Terms of Endorsement (ToE) provide the Government's formal endorsement of auDA, with this endorsement subject to auDA's compliance with Government's expectations.

In 2018, the former Department of Communications and the Arts undertook a review of auDA's governance arrangements. The 29 recommendations of the review were endorsed by the Government and revised ToE were issued to auDA. The review indicated that the ToE should be reviewed after two years of operation.

The Department of Infrastructure, Transport, Regional Development and Communications (the Department), manages the Government's relationship with auDA, and monitors auDA's compliance with the 2018 reforms. The Government stated in May 2020 that auDA had successfully addressed all 29 recommendations of the review, which included significant organisational and cultural changes. Over the review implementation period, auDA has achieved a number of significant milestones including the appointment of a new Board and Chief Executive Officer. auDA has also expanded and diversified its membership base and now has appropriate governance and reporting frameworks in place to support improved transparency and accountability.

The current ToE have a strong focus on the detail of auDA's functions and governance arrangements. Now that auDA has completed the reforms, the 2021 review will consider whether the ToE could be further refined, recognising the Government's and auDA's mutual interest in the effective management of .au as a critical piece of national infrastructure that enables a range of social and economic activities.

The Department invites members of the public to make written submissions providing feedback on the 2021 proposed Terms of Endorsement and to address any specific questions raised in this Fact Sheet.

History of auDA's Terms of Endorsement

The original ToE were established in 2001 between the Australian Government and auDA. These ToE held that the domain administrator should:

- operate within the provisions of its company constitution
- recognise that the internet naming system is a public resource
- operate as a fully self-funding and not-for-profit organisation
- be inclusive of, and accountable to, all members of the Australian internet community
- adopt open, transparent and consultative processes
- promote competition, fair trading and provisions for consumer protection and support
- establish appropriate dispute resolution mechanisms, and

- represent Australian internet industry interests in the internet domain name system at national and international fora.

Agreement to these ToE facilitated auDA's recognition by the Internet Corporation for Assigned Names and Numbers (ICANN) as the manager of the .au ccTLD.

In addition to endorsing auDA, the Government legislated to create reserve powers under the *Telecommunications Act 1997* and the *Australian Communications and Media Authority Act 2005* to provide for intervention in the event that a self-regulatory body was unable to manage electronic addressing in an effective manner. This ensures the continuation of effective management of .au, its security and its availability to Australian society.

Internet governance

The Domain Name System (DNS) is integral to information being found on the internet. Without the DNS people would have to remember an Internet Protocol address—a string of numbers and dots—in order to access a website. The DNS is a hierarchical system with each 'dot' in a domain name representing a new level in the hierarchy. ICANN, a United States-based non-profit organisation established in 1998, provides technical coordination of the internet and is responsible for DNS coordination at a global level. ICANN delegates DNS administration at the ccTLD level to entities such as auDA.

While the private sector owns and operates much of the global internet's infrastructure, ICANN's governance is based on a multi-stakeholder model. Members of the public, the private sector, the internet technical community and governments contribute to discussions on the management of key internet resources.

The Australian Government has been a longstanding advocate of a multi-stakeholder approach to internet governance that is inclusive, consensus-based, transparent and accountable. We continue to consider this the best way of achieving an open, free and secure internet.

Amendments to the Terms of Endorsement – Core Principles

The 2018 review of auDA found that its management and governance framework was no longer fit-for-purpose. Reform was needed to ensure that the company could perform effectively and meet the needs of Australia's internet community, so a strong focus on governance and reporting was built into the 2018 version of the ToE.

However, putting in place strong processes and structures should not divert attention from the core principles upon which the Government is basing its endorsement, the principles which should ultimately guide auDA's conduct and decision-making. It is therefore opportune to revise the ToE to include a new section which establishes the core principles in addition to setting out auDA's routine functions.

The focus of the current review is to make sure the following objectives are sufficiently communicated through the ToE to enable auDA to continue to:

- ensure trust and confidence in .au

- promote principles of competition, fair trading and consumer protection and advocate for the multi-stakeholder approach to internet governance
- support effective governance arrangements and a membership structure that is representative of the Australia community, and
- be a trusted adviser to government on internet matters.

These are expressed through the Core Principles section, which can be read in full in the accompanying draft revision of the ToE. Broadly, this section covers:

Engagement with the Australian Government: auDA must maintain close working relationships with relevant government agencies so that the .au domain is managed consistent with community expectations.

Support trust and confidence in .au: As a critical piece of Australia’s digital infrastructure, the .au domain must be managed competently and securely in a manner which will produce outcomes in the long-term interest of all users. auDA should foster .au’s reputation through education and public awareness activities.

Promote principles of competition, fair trading and consumer protection: The promotion of competition, fair trading and consumer protection principles is also key. Although not a consumer affairs body, auDA must be mindful that adherence to these principles results in net benefits for internet users. For example, having a competitive market for domain names encourages more efficient use of a significant resource.

Support fair and transparent multi-stakeholder engagement: The Government supports this approach and expects that auDA will do so as well, particularly in formulating policy. auDA should also strive to represent the views and interests of Australian internet users when it attends international gatherings.

Support a membership structure that reflects the diversity of the Australian community: Maintaining a membership structure representative of auDA’s diverse range of stakeholders will enhance auDA’s understanding of user needs.

Maintain effective governance processes that are transparent, accountable, support effective decision-making and promote the interests of the Australian community: A focus on governance processes to ensure continued transparency, accountability and effective decision-making is required of auDA in accordance with the *Corporations Act*, its own Constitution and its sponsorship arrangement with ICANN. auDA should also have procedures in place to seamlessly transition its functions to an alternative administrator if required to do so.

Including these core principles in the revised ToE provides greater clarity on the Government’s expectations of auDA as the .au domain administrator.

Further Amendments

Other changes proposed for the ToE include:

- Defining the multi-stakeholder approach to internet governance in the preamble, which captures the integral relationship between auDA and its stakeholders, including the Department.
- Explicit reference to auDA’s policy-making function, and its necessary transparency.
- A definition of the term ‘independent director’.
- Reference to international best practice with regard to security developments.

These proposed amendments are outlined in a draft of the ToE, which will be made available alongside this Fact Sheet.

Questions

Acknowledging the ambitions of the review of the ToE, as well as the Core Principles, stakeholders and members of the public are invited to consider the following questions when they prepare their submissions to the review:

Question 1

Do the proposed ToE accurately reflect community expectations for the management of the .au ccTLD? If not, what amendments could be made to do so?

Question 2

Does the proposed 'core principles' section accurately reflect auDA's primary responsibilities? If not, what amendments could be made to do so?

Question 3

How should auDA's relationships and responsibilities in domestic and international multi-stakeholder engagement be accurately communicated in the ToE?

Question 4

Through managing the .au domain space, auDA plays an important role in enabling the internet within Australia. In support of the Australian internet community, what other responsibilities or functions could be considered for inclusion in the ToE?

Question 5

Do the ToE sufficiently define Government's oversight of auDA's activities?

Have your say

The Department welcomes submissions from individuals, businesses, peak bodies and other interested parties on the proposed amendments.

Submissions will be accepted until **1700 AEST Friday 10 September 2021** via any of the three options below:

Website: www.communications.gov.au/have-your-say or

Email: internetgovernance@communications.gov.au or

Post: auDA Terms of Endorsement Review
Department of Infrastructure, Transport, Regional Development and Communications
GPO Box 2154
CANBERRA ACT 2601

Att: Ian Sheldon, Internet Governance Team

Submissions should include the respondent's name, organisation (if applicable) and contact details.

Publication of submissions and confidentiality

Personal information such as your name and contact details will be collected by the Department through this consultation process when it is contained in submissions (including mailed submissions). Submissions will be used for the purpose of conducting the Review of ToE for auDA.

Submissions will be made publicly available on the Department's website unless the submission is confidential or is inappropriate for publication. All submissions will be treated as non-confidential unless the submitter specifically requests that a submission, or part of a submission, is kept confidential. Any personal information which is provided in a submission will be treated in accordance with the Department of Infrastructure, Transport, Regional Development and Communications' [privacy policy](#) and the Australian Privacy Principles.

If you wish to correct personal information in relation to your submission to this consultation process, please email internetgovernance@communications.gov.au.