

Review of Australia's .au Domain Management

Discussion paper

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Dear Minister,

Thank you for taking the time to be involved and concerned about the Administration of the .au Namespace.

Australians are embracing a truly digital future and auDA plays an important role as steward and viceroy of Australia's Internet's infrastructure, the Domain Name System (DNS). In only a few decades, the internet has grown to be a truly transformative experience, with the capacity to touch nearly every aspect of life. The Internet now connects over 90% of Australia's population and connectivity rates are constantly expanding at extraordinary pace. The Internet is unquestionably the most powerful information system the world has seen, and it's only in its initial stages. As the digital world evolves, the Internet will ultimately become a superstructure fundamental to all other infrastructures and therefore, Governance of the Internet across all its dimensions must be an obvious priority.

During this time of unprecedented growth, the .au Domain Administration (auDA) has successfully served the needs of Australian Internet users. In recent times, it has experienced its fair share of issues, including concerns, and disagreements over how it should be governed. These issues, as well as others will certainly impact the continued use of the DNS and associated networks into the future. As with all organizations, there will always be those who have disagreed with an organisations decision, and auDA is no exception. In fact, auDA membership is by design intended to be an accountability mechanism, to assist management in the development of a robust and refinable decision-making process, it was for this very purpose the company was formed, as an industry self-regulatory body within a Multi-stakeholder framework.

Ultimately, there will always be problems with the DNS, we can't fix them all at once, it is, a never-ending cycle. Only through openness, global connectedness, trustworthiness, transparency, collaboration and inclusion can we continue to strengthen the system as a whole, and these values should remain at the forefront of the Internet, and the policies that shape it.

Regards,

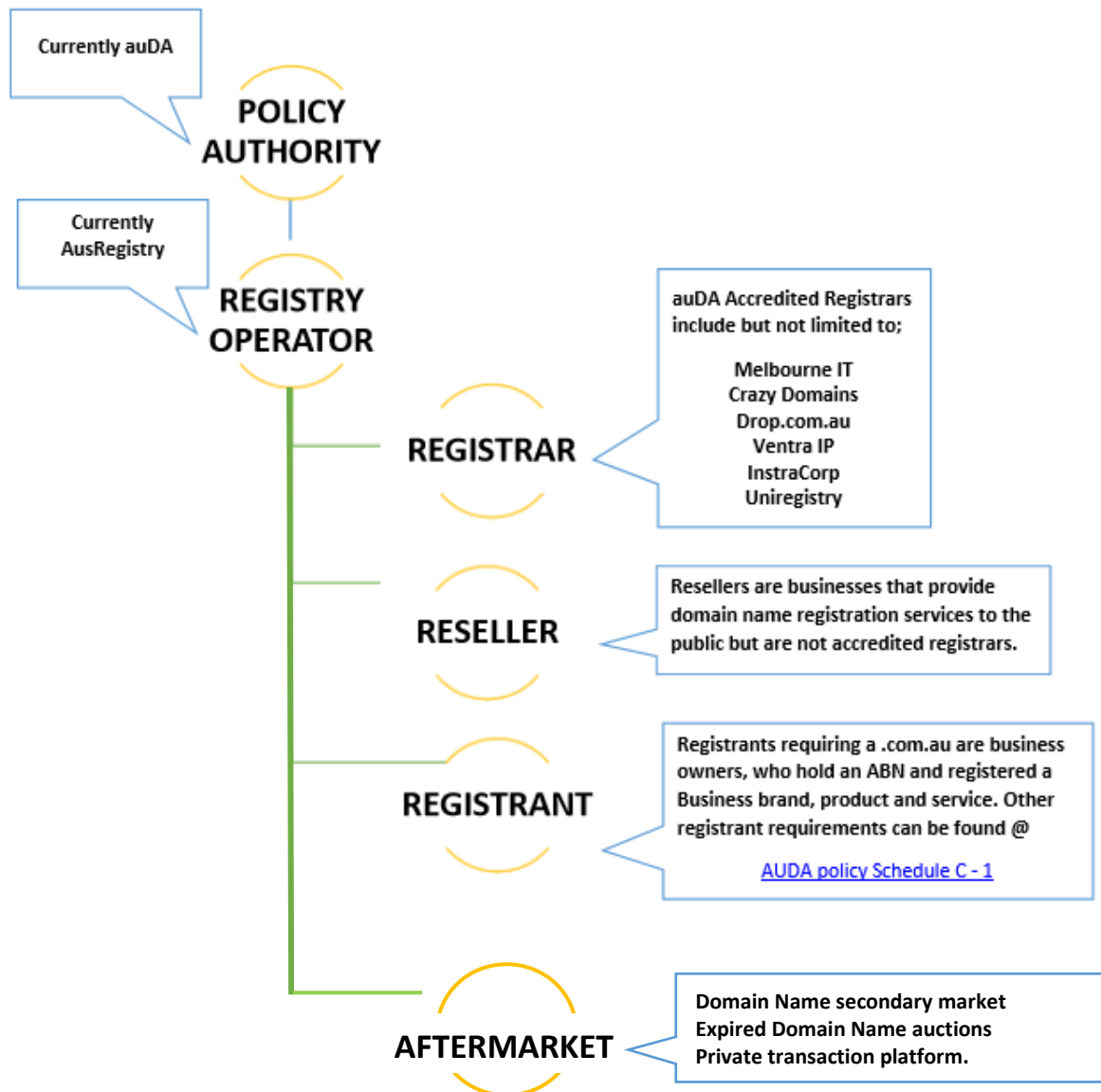
Scot Long.
auDA Member 2017

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The Domain Name Registration Market Structure

The diagram below illustrates the structure of Domain Name Registration market and the activities of the parties involved in the domain registry process:



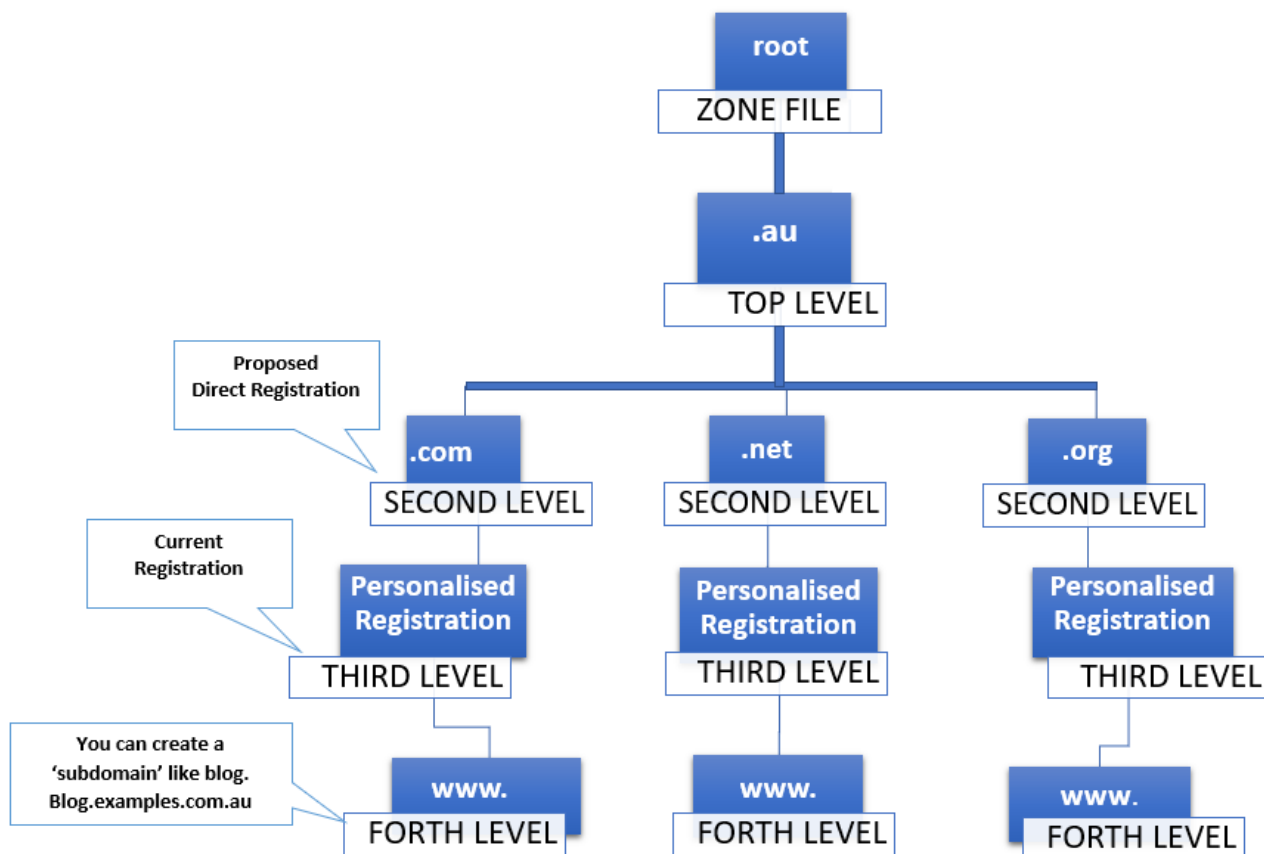
Domain Name Hierarchy

Many registries differentiate requirements according to the meaning of a second-level domain (SLD). In the case of Australia, Second Level Domains (SLD) are available at third level *registration*.

To clarify this structure, the .com is a unique identifier within the Australian Namespace, '.com.au' is part of the registration name string and all registrations (your name) are actioned at the Third Level; Identity descends "left of the dot" from 'dot-au' to 'dot-com' and when combined '.com.au' is identified as Second Level within the hierarchy, the name string descends to third (your name) and to fourth (sub-domains) within the registrable fields thereafter;

- You can't register a Top-Level Domain (TLD) unless you apply to ICANN for a gTLD such as; . web, .shop, .store, .club, .world, .life - along with, 1,200 various TLD extensions delegated.

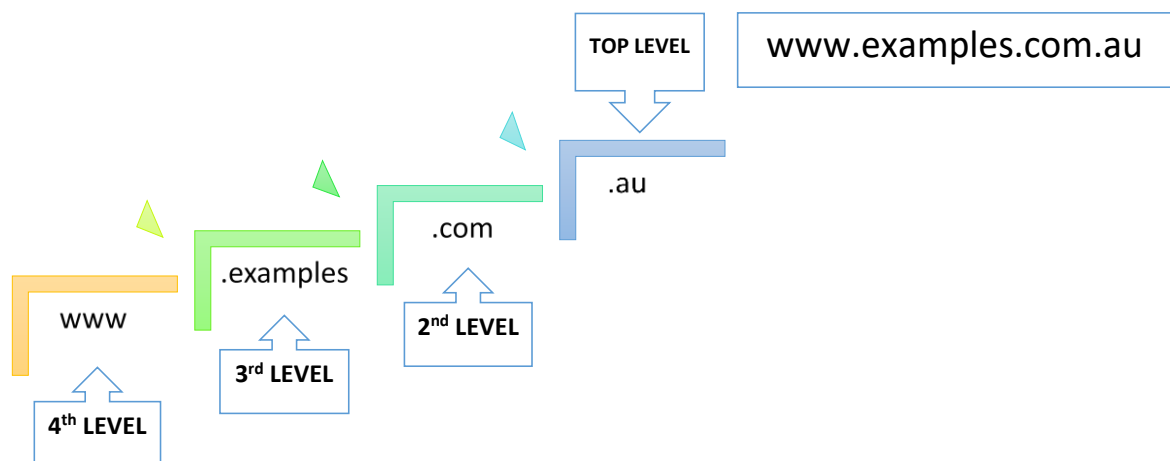
Therefore, in the Australian .au namespace the registration of a Domain Name is currently at the third level '.com.au' and identified as a Second Level Domain (SLD) in the hierarchy, and if, "Direct Registration of the .au Top Level Domain (TLD)" is implemented, it will be a Top-Level Domain at the Second Level registration – just as it is with the popular Global extension .com



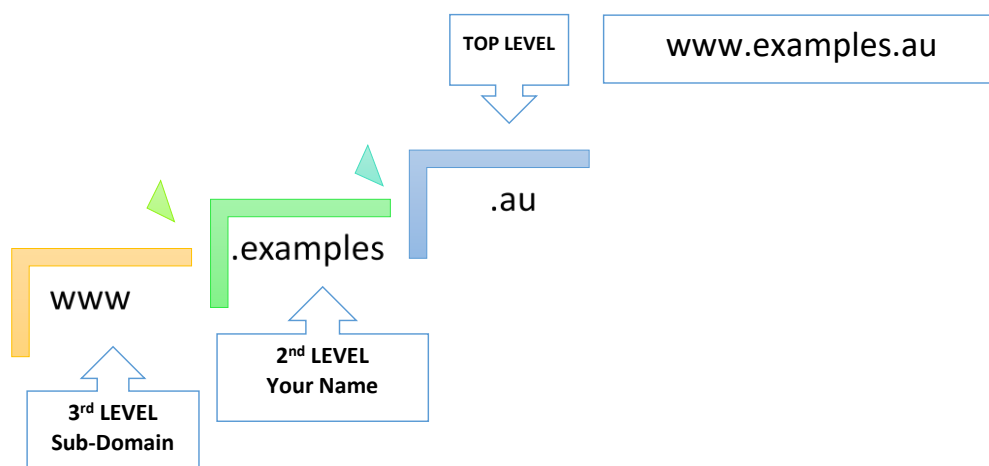
The Domain Name Structure



Currently, registration is @ 3rd level



'Direct registration' will be @ 2nd level registration.



1. *What are auDA's primary roles and responsibilities?*

RFC 1591 states;

- 1) The key requirement is that for each domain there be a designated manager for supervising that domain's name space. In the case of top-level domains that are country codes this means that there is a manager that supervises the domain names and operates the domain name system in that country.
- 2) These designated authorities are trustees for the delegated domain, and have a duty to serve the community.
- 3) The designated manager must be equitable to all groups in the domain that request domain names.
- 4) Significantly interested parties in the domain should agree that the designated manager is the appropriate party.
- 5) The designated manager must do a satisfactory job of operating the DNS service for the domain.

auDA 2017 Annual report,

The core elements of auDA's role are:

- Developing and reviewing .au policies
- Enabling and enforcing regulatory compliance
- Maximising the security and technical stability of the .au space
- Facilitating competition and consumer choice through the accreditation of .au registrars
- Engaging and educating .au stakeholders and the broader community
- Protecting consumer safeguards and providing effective dispute resolution mechanisms.

And, additional roles and responsibilities include;

- facilitate .au Dispute Resolution Policy
- represent .au at ICANN and other international fora.
- technical management of the .au zone file

2. *Do the current terms of endorsement set out appropriate guiding principles for a fit for purpose .au ccTLD manager?*

operate within the provisions of its company constitution

- The current constitution doesn't recognise auDA as a *registry* and neither has auDA been a registry.
- According to 6.11 of the ICANN sponsorship agreement, the current constitution doesn't include the provision to subcontract the registry.

recognise that the internet naming system is a public resource

- Difficult to do when the majority of people using the .au DNS as a public resource cannot register a domain name because it's a commercial instrument requiring an ABN and, monetised for the benefit of business commerce and trade.
- In other words, the .au DNS is a public resource owned by private investors and public institutions who monopolise the system for their profit and privilege.
- Accordingly, the statement '*recognise that the internet naming system is a public resource*' lacks identity as to what constitutes the internet naming system, as a public resource, and for who; it could simply mean; the Global Internet Naming System is a Public Resource, of which, an individual user cannot create a TLD or a gTLD without compliance to ICANN registry agreements and policies.

Possibly change to:

- ***recognise that the .au ccTLD is a public resource inclusive of all Australians and for the benefit of the internet community.***

operate as a fully self-funding and not-for-profit organisation

- Difficult to do when auDA has subcontracted its registry asset to a For-Profit company that provides dividends to offshore investors; and
- the *small* multi-million-dollar commission auDA receives contributes to maximising auDA's income via monopoly products without measurable consumer demand (direct registration) and building a registry for the purpose of someday awarding its tender contract to itself.
- *not one cent* is spent on providing any community benefit program to help support the registrant investment industry (the Aftermarket - its primary investor & creditor)
- The auDA Foundation, along with auDA's wider community engagement program is currently under review. (no announcement when that review will end)
- 16 months ago - the eighth annual ANZIs were presented on 30 August 2016 at a gala dinner in Melbourne. (no announcement when it will be held again)
- 14 months ago - the fifth auIGF was held in Melbourne on 11 and 12 October 2016 (no announcement when that review will end)

be inclusive of and accountable to all members of the Australian internet community

The members held an SGM this year because auDA management were refusing to take ownership of membership concerns which included;

- **adopt open, transparent and consultative processes**

The management of auDA decided to change the nature of the company by building an in-house registry for the purpose of awarding the tender to themselves. A decision of this magnitude would require proper due process which informs and engages member participation by convening an Advisory panel under 24.8 of the constitution;

24.8 Advisory Panels

- a. Advisory Panels will be used by the Board as the principle mechanism for developing policy recommendations to the Board for the purpose of clause 3.1(d) of this constitution
- 3.1 d. to develop and establish a policy framework for the development and administration of the .au ccTLD including:
- I. rules governing the operations of second level domain registries;
 - II. the creation of second level domains;
 - III. rules governing the accreditation of registrars and registry operators;
 - IV. rules governing the registration of names within second level domains and access to second level domain registries;
 - V. ensuring that registrars have equal access to second level registry services.

The concept of auDA as a Registry Operator is not an Object or Activity of auDA's constitution. Also, previous Panel recommendations made by 2012 INDUSTRY ADVISORY PANEL and 2008 auDA INDUSTRY COMPETITION ADVISORY PANEL were accepted by the Board;

Recommendation 1: (2008 & 2012)

The Panel recommends that the existing competitive registry model should be retained

It should be noted, the Board did not provide members with any cost analysis, and they did not provide any business case for their decision to build a registry; also, the current RTP Registry Transformation Project provides no visible cost analysis or business case study. Members cannot determine if the decision of the Board *is* in the best interest of the company.

According to *Competitive Tendering and Contracting by Public Sector Agencies*, which found:

Competitive neutrality between in-house and external suppliers depends on the accuracy of costing mechanisms employed by in-house teams. It is essential that the costing systems used for in-house bids include all relevant costs. Otherwise, a contract may be awarded on the basis of an inaccurate assessment of the real cost of the in-house bid to the parent agency. A major concern in this regard is the allocation of overheads and other indirect costs attributable to the in-house bid. (p. 307)

The agency is required to confirm that reasonable efforts have been made to ensure that the cost model ... is a fair and reasonable representation of the actual current cost to the agency of performing the in-scope services at the specified service levels. (Humphrey Report, appendix 10, p. 93)

In spite of member concerns, Management decided to build a registry without member involvement or consultation, defying the recommendations of previous panels, and ignored member request for more information about their purpose. In the eyes of members, management were not taking ownership of the problem whilst Management continued to defend themselves against increasing criticism they created against themselves, ultimately escalating into a 249D.

During this exposure to criticism and contention Management decided not to publish minutes, they introduced a Code of Conduct to mute criticism against themselves through its proposed by-laws, and of concern to members was the legitimacy of its enforcement, via membership renewal and new membership applications. A member must accept the Code of Conduct before making payment.

Members should not be forced to hold management accountable for their failing to hold themselves accountable; especially to, common sense expectations held by the majority of the membership. The Chairman resigned.

promote competition, fair trading and provisions for consumer protection and support

In excess of 20,000 UBU's registered in 2017.

What is a UBU?

The acronym UBU stands for "Unauthorised Business Use". Generally, scammers use a local agency or a legitimate business owner identity and ABN to buy expired .au domain names at auction. The domain names are similar to BitSquat techniques whereby, the stolen local identity resembles a domain name to avoid detection. Once transacted, the scammer immediately launches a fake ecommerce website that advertises well-known brand products for the purpose of obtaining consumers credit card information and identity.

UBU Detection was raised by a small group of domain observers, and it took months for auDA to act on the information provided, it boggles the mind to imagine just how many UBU's were registered undetected throughout the years. One thing is certain, ABN requirements only tempt scammers to explore ways to hack through it, in doing so, these scammers can cause reputational damage to legitimate local business owners and Government agencies if unaddressed.

Consumers (Registrants) should not work to safeguard themselves against the very product[s] they are buying from a regulated market which implemented such policy, it is the responsibility of the .au Administration to prevent, detect, and protect consumers against these types of attacks, by ensuring their own policy creations are fit for purpose to Administer.

Promote competition, fair trading.

75% of the domain registration market is controlled by 3 major Registrars. The majority of their domain administration is outsourced to international centres, and their profits pay dividends to international investors. Very little local economic activity enters the local market via these registrars because there is no restriction or incentive for registrars to be local or, to promote .au above all other extensions.

- Uncertainty about Direct registration has caused decline in values and aftermarket activity.
- auDA provides no supportive mechanism to promote or engage in the markets primary creditor – the secondary market investor.
- The current registration market contains over 4,000 resellers and only 5 are listed as holding reseller ID's on auDA website.
- Very little market data or analysis about consumer demand for .au

3 Do the terms of endorsement reflect community expectations for the management of the .au ccTLD?

To satisfy legitimacy at the time of auDA's creation the endorsement of auDA was predicated on;

- be inclusive of and accountable **to all members of the Australian internet community**

Currently 303 members are categorised by Supply and Demand Class Representation;

Supply Class	=	49	=	16%
Demand Class	=	254	=	83%

16% of members control and influence the company regardless of the number of Demand Class Members. A special resolution cannot be passed unless 75% of the Supply Class Members agree. This means, 37 Supply Class Members or 12% of the Membership can control and influence the outcome of the company for the benefit of Supply Class Members.

Approx. 32% of the Supply Class members hold Demand class representation. Supply Class members only require 63 members, or 25% of the Demand class membership to control and influence both sides of the membership. This means, Supply Class can stack Demand with direct personal relationships such as, husband and wife, siblings, friendship (personal and profession) or company entities under agreement or under their control and influence. If just 1 Supply Class member obtained just 2 Demand Class Members each then, Supply Class Members will have significant influence over the decision-making process of auDA and the DNS.

s9.4 of the auDA Constitution provides a rule against multiple memberships within Supply Class. But, it doesn't stop cross over into Demand class by a Supply related individual (Natural Person) controlling a Legal Person (Corporation) - 'Legal Person' as defined in the Corporations Act & see auDA Constitution; 1.2 Definitions & clause 1.3(c)

auDA Board Review Report for Governance Committee October 2016

- *auDA staff should continue work to expand and broaden the membership base.*
 - **Not agreed** (Decision by the Board)

Note: *It is unknown by the author the true number of supply class representation within the demand class membership, this analysis is only based on public information derived from online searches and may contain error.*

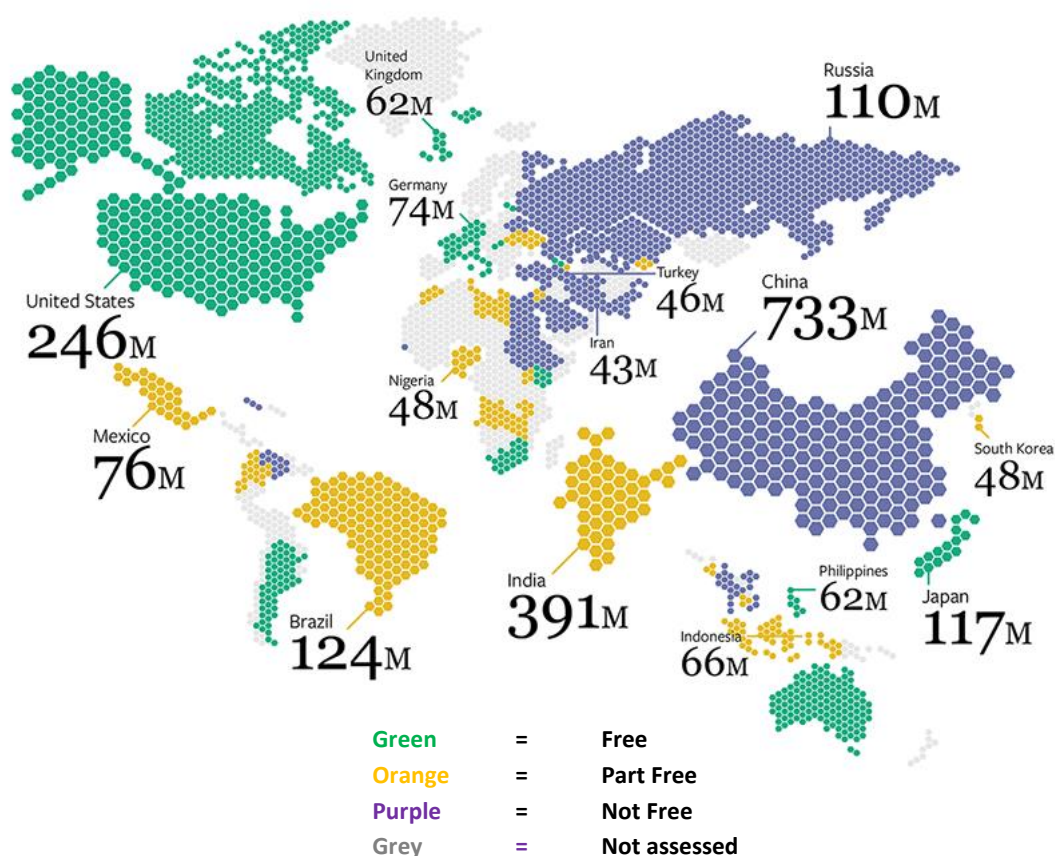
4. What external trends and developments may affect auDA's roles and responsibilities?

- As the world grows more aware about the impacts of radicalised intrusions that seek to disrupt sovereign namespaces, the inadvertent effects of government regulation to curb it may become restrictive and intrusive for users; Government may enforce sovereign-driven restrictions that further fragment the Internet by imposed restriction upon its people, excluding them from freedom on the internet.
- Governments may seek to declare sovereign control over policy and governance outcomes related to the DNS through the auspice of declaring its infrastructure important critical infrastructure, requiring critical security measures and restriction of the namespace to curtail the success of cybercrimes.

Obviously, these types of "External Trends" appear like a Hollywood movie script, but as we have already seen by Governments around the world, freedom on the internet is diminishing.

Australia is very fortunate to have a free and inclusive internet, unlike other countries around the world we enjoy a diverse range of tools to enable freedom of expression for our people to flourish.

Distribution of Global Internet Users by Country and Internet Freedom Status



Information provided by Freedom House @ <https://freedomhouse.org/report/freedom-net/2017/australia>

Other key trends;

- State censors target mobile connectivity.
- More governments restrict live video.
- Technical attacks against news outlets, opposition, and rights defenders on the rise.
- New restrictions on virtual private networks (VPNs).
- Physical attacks against netizens and online journalists expand dramatically.
- Service disruptions coincide with elections, special events.
- App restrictions and price increases curb mobile access
- Encryption legislation opens a back door to abuse

UBU – Unauthorised Business Usage

The namespace currently consists of the total of valid .au domain names possible according to auDA registration policy [AUDA policy Schedule C - 1](#), and must have appropriate detection and prevention mechanism against bad faith registrations. Security problems are an extreme concern for the DNS, because it is the first (and often the only) line of defence ensuring unsuspecting Internet users are not fraudulently redirected to websites masquerading as other popular websites, or otherwise stealing traffic that is not rightfully theirs.

UBU is a problem that may appear not quite as severe compared to other technical compliance issues, but a serious problem nonetheless, it directly affects multiple stakeholders and the integrity of registrars, registry operator and regulator. Bad faith access to the .au namespace can impact business owner reputation and brand recognition trust.

UBU's are tested to see how much traffic it received. If the name attracted the desired amount of traffic, the domain was retained.

- Domain tasting
- Domain kiting
- Bit Squatting

Similar UBU's practices. An individual or company registers a domain name, fills it with pay-per-click ads, and then monitors the website for about four days.

If it appears that the website will produce more than \$6 of advertising revenue over the course of a year, then the domain name will be profitable, and the registrant will maintain the pay-per-click website. If, however, it turns out that the website will not generate enough pay-per-click revenue (i.e. it will generate less than \$6 per year), the registration is abandoned.

5. *What best practice approaches and processes should be considered with regard to auDA corporate governance?*

auDA Governance Board Committee has not published on its website any developed 'best practices' for corporate governance. A simple reading of the minutes for the past 18 months contains *no* information regarding the company's corporate governance principles and or Governance policy adoption and interpretation.

Recommend;

- Develop and Publish auDA's perspective on industry governance policy – Board Practice and Best industry practices.
- Self-assign the task of developing its own policy framework for Corporate Governance rather than relying on 3rd party advisors.
- auDA as a Not-for-Profit Organisation should have a Visible purpose to benefit the community, environment, and the market it regulates.
- Develop and publish a Vision, Mission and Value statement and;
- Set a clear vision for the change which is aligned with the organisation's vision and mission.
 - Publish the case for change and;
 - Develop and implement the change plan.
 - Develop and publish the objective to be achieved and the means to achieve it.
- **Ensure a proper compliance balance is established;**
 - Strong on compliance could lose stakeholder support,
 - Ignore compliance or follow the path of least resistance and the organisation will crack in new ways.
 - Stakeholder Communication is Key in getting the balance right.

auDA Board is like any other Board, it must deliver results through their delegation of authority to the CEO and staff. s 198D of the Corporations Act establishes that the overall performance of auDA is the responsibility of the Board of Directors;

- the Board may forecast outcomes and apply restrictions through delegations but it must not delegate responsibility for success or failure.

6 *What does good corporate governance for auDA look like? Are the ASX corporate governance principles sufficient? Should other principles also be considered?*

The ASX Corporate Governance Council's Principles and Recommendations contain Principle 3:

Act ethically and responsibly.

Principle 3 is built around notions of a 'good corporate citizen' and includes, amongst other matters, significant reference to:

"dealing honestly and fairly with suppliers and customers," and

"creating a safe and non-discriminatory workplace," and

"acting responsibly towards the environment,"

Additionally; Recommendation 3.1 A listed entity should:

- (a) have a code of conduct for its directors, senior executives and employees; and
- (b) disclose that code or a summary of it

As a monopoly that regulates its own market; good corporate governance should be developed with a view to its impact upon the overall economic performance of the industry it regulates; ensuring market integrity is maintained via stakeholder engagement, providing incentives for market participation, and promote transparent activity of a well-functioning market.

- auDA to Publish its own Corporate Governance policy and principles' and;
- Be responsive, release information of material interest to the market in a timely manner.
- Develop analysis of your own data and;
- Develop a Social sustainability plan; whereby, auDA can operate in a manner that meets accepted social norms and needs over the long term.

Other principle consideration;

- auDA should take the lead in Not-For-Profit governance of internet citizenship.
- auDA should Work with stakeholders including; the ACNC and the Commonwealth to develop a NFP self-Regulatory framework for the NFP sector.

7 *Should reform of existing auDA corporate governance arrangements be considered? If so, what are the reform priorities?*

Recommend;

- 1 Engage and collaborate with key stakeholders – customers, suppliers, distributors, retailers, governments – to create greater financial and social value.
- 2 Focus on the real problem being solved
- 3 Develop and promote the social innovation agenda into the strategic vision for the Board.
- 4 Enhance self-regulatory independence
- 5 Establish robust industry identity and trust.
- 6 Develop an ethical and values-based culture
- 7 Maintain a non-government voice
- 8 Maintain political independence

8 *Do the current board arrangements support auDA in effectively delivering its roles and responsibilities?*

Generally, directors' duties are owed to the company and not to individual classes of members. It is important to remember that even though a director's appointment is associated with particular group representatives of certain "class types", directors must in practice act in the interests of the whole organisation and apply an independent mind to the board's work and decision-making.

The auDA constitution states that the Board shall comprise:

- four (4) persons elected by the Supply Class Members;
- four (4) persons elected by the Demand Class Members;
- the CEO of auDA as a non-voting member of the board;
- not more than three (3) Independent Directors appointed by the elected Directors, for terms not exceeding two (2) years each

Supply Class:

- for domain name industry participants (registry operators, registrars and resellers)

Demand Class:

- any legal person that does not qualify for supply class, including domain name holders (registrants), internet users and the general public

Independent Director:

- a. holds no posts in, or is otherwise associated with, auDA, the Registry Operator or any Registrar; and
- b. does not have any relationship with auDA or any other person that could, in the opinion of the elected Directors, materially interfere with:
 - i. the exercise of objective, unfettered and independent judgement by the person; or
 - ii. the person's ability to act in the best interests of auDA;

Directors in Australia are required to act in good faith and for a proper purpose in the interests of the company as a whole. CORPORATIONS ACT 2001 - SECT 181 (a) and (b)

Directors' obligations include:

- duties of due diligence and care
- a duty to avoid conflicts of interest
- a duty not to act for an improper purpose
- a duty not to make improper use of position
- a duty not to make improper use of information
- a duty not to trade while insolvent.

Currently, Members are required to select 4 supply candidates + 4 Demand candidates from a very limited industry pool of knowledge and experience at a board level, this can cause;

- Transiency.
- Social problems.
- Inability to compose constructive policy or resolutions.
- Same usual suspects (re-elected Directors)

At the current rate of Director induction to the board, Supply Class pools are going to dry up, possibly promoting inexperienced people to the board or, appoint previously socialised Directors as a result. Consequently, an inexperienced Board could be captured by a CEO who can exert influence over the Board, leading to market disruption, misdirection and alternative ambition for the company. In this regard, a board is captured and the members cannot remove a CEO.

2011 Independent Review of the Governance of .au recommend that:

- *For the avoidance of doubt, no member of the board may ever serve as a director in more than one class.*

It is interesting to note; a couple of current Directors are multi-class Directors. As recent as the AGM on the 27/11/2017 a Demand Class Director was Elected as a Supply Class Director, of which the Director maintains a continuous term of Directorship. Also, the previous Chairman was a Demand Class Director before becoming an independent Chair by resolution of the Board.

Also Noted;

- *if a director had been elected by supply class members, that director would never, regardless of their circumstances, be eligible to return to the board as either a demand class or independent director.*

I believe, it is fair and reasonable to have inexperienced Directors on the board. But, I personally disagree the Board can be allowed to compose itself of 50% or more inexperienced Directors. Albeit, via casual Director appointment or via election, I fear the board will lose its ability to make informed and prudent decisions, and that could bring about failure to administer the industry effectively.

Observations;

- The Board lacks independent views, gender diversity, and multi-state representation and if addressed would provide the company with a more inclusive Board.
- The Supply Side can control and influence the company, by maintaining low level Supply Side numbers they can stifle Special Resolutions. Supply Class can pollinate and migrate to Demand Class and stack numbers at election[s].
 - If supply and demand class representation are to exist, then a yearly audit should be conducted to ensure the membership contains equitable balance and fairness on the Board

Why Board transparency and accountability matter;

auDA Constitution -

4 CAPACITY Subject to clauses 5, 6, 7 and 8, auDA has the legal capacity and all the powers provided by the Corporations Act

s21.1 Management of auDA

The powers of the Directors are subject to the Corporations Act, this Constitution and to any regulations (not being inconsistent with this Constitution)

In consideration of 21.1 Management of auDA Constitution; it is not difficult to identify why transparency and openness are key attributes in defining good governance; otherwise, the CORPORATIONS ACT 2001 - SECT 198A (2) can be exploited by Management and Directors. They might agree to a decision in order to achieve an outcome favoured by them *with* or *without* membership contestability and contention.

Management can capture, control, and influence the Board and run the company in their own interests and, ignore the interests of members and redirect business opportunities from the company to themselves or to another entity without fair and proper engagement with members;

Management can bring extreme criticism against the company for the purpose of winding it up or transfer its asset to another entity, it could act badly to cause intervention, especially if it's the only way to remove its chains (Membership) whilst blaming its failure on past administrations as a scapegoat. This type of strategy effectively oppresses the members purpose for which the organisation was originally formed, it abuses the right of members to contest management decisions; by using members as a mechanism of decline until the company is dissolved.

ccTLD Sponsorship Agreement (.au)

- 6.2.4 After ICANN is notified by the Governmental Authority that the Sponsoring Organization has contravened the terms of the Governmental Communication, or the term of the Governmental Authority's designation of the Sponsoring Organization as manager of the Delegated ccTLD has expired, ICANN gives notice of its intent to terminate to the Sponsoring Organization.

A small membership can instigate mischief; Contra to 11.2 Prohibition on Voting Agreements (auDA Constitution); Demand Class Members can be persuaded by Supply Side agreements or promises; either by contract of employment or provision of services. Members with these agreements are usually socialised and influenced by the point of view of their income source to vote a certain way. In this regard, Supply Class Members can influence the composition of the board at election or, they can groom and place public actors masquerading as Demand Class nominees who privately support Supply Class on the Board.

- ***The current board arrangements DO NOT support auDA in effectively delivering its roles and responsibilities effectively and efficiently.***

It should be clarified that the previous scenario is not indicative of the current circumstances, only that it is taken into consideration as a possible 'bad faith' circumstance.

9 Should reform of existing board arrangements be considered? If so, what are the reform priorities?

Recommend;

1. Ensure the Chair performance process is so robust that it, rather than directors, forces the chairman to resign. A good process ensures the chair "sees the issue coming"
2. If supply and demand class members are to exist, then a yearly audit should be conducted to ensure the membership contains equitable balance and fairness. Otherwise, remove the classes all together and open up the membership via Opt-Out registration.
3. Succession planning – a Nomination Committee elected by members to a type of membership Board as Future Executive Directors appointed should a casual position occur.

The board should;

- Appropriately Educate inexperienced directors appointed to the board, and develop a potential pool of new directors to accommodate succession planning.
- Identify favourable skills, experience, and backgrounds of the board as a whole under relevant headings, and in the form of a matrix, map these against the skills and experience of each individual board member. And, Tie desired board composition to the organisation's strategy and the key issues facing the organisation.

Director Terms:

If it were decided that Director numbers on the Board were to be reduced, and Director terms in their current class types were extended from 2 years to 3 years of continuous service then, casual vacancies over this longer-term (3 years) is likely to create problems; especially when the constitution provides that;

24.1 Procedure Generally

The Directors may meet together for the dispatch of business adjourn and otherwise regulate their meetings and proceedings as they think fit. Until otherwise determined six (6) Directors constitute a quorum provided at least **one Director elected by each of the Membership Classes is present**. The quorum must be present at all times during the meeting

AND;

18.3 Director's Membership Requirements

A Casual Director Elected by the board to fill a Demand class Director role is not required to fulfil the following criteria;

- 18** The **Director elected** by the Demand Class Members must not, at all relevant times, be a Supply Related Person.

This type of scenario could lead to mischief & problems; Directors could elect a supply related person to fill a Demand class Director Role via Casual Vacancy. And, if ONE class were constructed of Casual Vacancy elected Directors then the Board would not be capable of passing a resolution under s24.1

- *Early this year the Board was reduced to 4 supply (supply class director was appointed to the independent Chair role) 2 Demand and only 1 Independent*

10 Who are auDA's stakeholders?

Any individual or organisation that affects, or can be affected by auDA activities.

The following stakeholders significantly affect the organization's actions and exert considerable influence on those actions.

Internal stakeholders include;

- auDA staff
- volunteers
- executive leadership
- Board members

Key stakeholders include;

- Australian Government (ACCC, ACMA, DBCDE)
- Members
- Registrars
- Resellers
- Registrants
- Investors

External stakeholders include;

a) Registry Operator

- A single registry operator responsible for the registry of registration services, as per ICANN sponsorship agreement with auDA s6.11 subcontracting – meeting the technical function of the registry naming file.

b) Registrars

- Registrars formerly contracted and accredited by auDA in the provision of retail customer registration services, and
- Registrar Reseller affiliates who provision registration services to customers.
- Expired domain name auction platforms and aftermarket platforms – enabling portability of domain names.

c) Registrants

- Licensees within the .au ccTLD.
- Domain Name traders & Investors.

d) ICANN

- IANA
- ccNCO
- CENTR
- gNCO

11 *How should auDA engage with its stakeholders? Are there guiding principles which should be considered?*

Yes. A good engagement strategy should focus on how the *engagement* influenced the decisions of members, stakeholders, and consumers.

Ideally, background information about proposed changes to the namespace should be distributed to members and consumers before they participate in any policy engagement process; ensuring interested parties have an opportunity to read the information provided, talk about it with other people, and do any extra research, before contributing in policy discussions, development and refinement.

Information gathered via consumer input can help to ensure that consumers' views are considered during policy formulation, and should help to develop policy that is responsive to consumers' needs. auDA should develop an information sharing platform to inform the public of decisions that have been made, and to ask for views on decisions that are to be made. This involves the public in discussion about the issues that need to be considered in the decision-making process. Registrars and Resellers can deploy customer centric surveys approved by auDA via online, email or IVR based technologies during policy construction and refinement, to gather ideas and allow those ideas to inform policy panels.

Advancements in technology, innovation, increasing regulation, and customer choice for domain names means auDA must connect effectively with stakeholders and members. Only through effective engagement will auDA better understand stakeholders, customers and members, by providing the market with social insights and access to consumer data to drive change in both auDA's Administration and the Domain name industry.

Successful engagement will be determined by auDA's ability to:

- CONSUMER RESEARCH & MEASURED CUSTOMER DEMAND
- Assist members in the promotion of the namespace locally for investors
- Drive awareness and education about the namespace
- Demonstrate value in the supply chain
- Provide greater policy involvement via email outreach, IVR based Registrar Surveys
- Incorporate data and insights into the planning and implementation processes

Purposes for Engaging Stakeholders;

- Informing decision making by those who will be impacted
- Encouraging a wider circle of collaboration and partnership
- Increasing networking and sharing of strategies, best practices, etc.
- Encouraging buy-in and shared ownership of policies/ projects
- Affirming that relevant issues are being addressed
- Provide members with a central point of presence for membership issues, complaint, redress – a formalised process for handling disputes, resolving disputes before public intervention by the party is obtained.

12 Are auDA's stakeholder engagement processes effective?

- Stakeholder engagement and relationships are not visible to the public.
- Communication between multiple stakeholders is not reported (disclosed publicly).

As an auDA member; stakeholder engagement processes are not effective at delivering advocacy for the company. The only engagement is a one-way Newsletter and recently (approx. 3 weeks ago) auDA activated an online forum for members. These engagement processes can be easily selective by auDA and non-responsive, because it provides inadequate contestability concerning relevant issues, and low visibility into the Directors and Management decision-making process.

13 Is a transparency and accountability framework effective?

The accountability and Transparency Framework is not available – *it's in review*.

<https://www.auda.org.au/about-auda/our-org/reviews-of-auda/>

2011 Independent Review of the Governance of .au stated;

It would be in the interests of both the Commonwealth Government and auDA for their relationship to be more clearly defined, and that auDA and DBCDE proactively engage to develop a document that:

- Affirms auDA's existing delegation as the .au ccTLD administrator; and
- Endorses auDA's Principles of Best Practice Domain Administration

Minutes:

CORPORATIONS ACT 2001 - SECT 251A (6)

A minute that is so recorded and signed is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved

Minutes are used to prove or disprove that directors have fulfilled their fiduciary duties. Members must identify and determine whether director obligations under **section 248G** of the Corporations Act 2001 support, oppose or abstain from a particular resolution, which requires accurate minutes.

auDA Constitution:

- 15.7 Minutes as Evidence of Result
- 19.8 Observer appointed by the Commonwealth
- 22.2 Declaration of Interest
- 22.3 Votes by Interested Directors

If in the opinion of the board, the purpose of prohibiting member access to company minutes is to achieve the aims for which members established the company, then it is acceptable use of power.

However, in deciding whether a particular decision would be in the interest of members as proposed here, Directors should take into account its Social Governance perspectives, develop and implement effective dispute resolution mechanisms, build trust, engage with and support members and communities that can add value to the company in Social and economic ways, prior to, limiting information.

As per clause

- 3.1 (g.) to establish appropriate complaints handling and dispute resolution processes to provide for conciliation or redress of grievances on matters associated with the administration of the .au ccTLD and,
- 3.2 (b.) establishing mechanisms to ensure it is responsive and accountable to the supply and demand sides of the Australian Internet Community.

14 *Is auDA's membership structure reflective of the range of stakeholders that rely on, or interact with, the .au domain?*

No. Membership is losing its depth of diversity;

- Very little ICT related members
- Very little retail representation
- No government members
- No start-up organisations
- Very little NFP members who rely on .au brand
- No ICANN members
- Very little resellers
- No schools or universities
- No major media companies

As noted in the Cameron Ralph report 2016.

➤ ***the Board does not agree with membership expansion.***

The fact is, auDA is not a faith-based company, it doesn't survive on the fundraising efforts of its members, rather privileged by the Australian Government to extract monopoly rent (levy) from the market it regulates. In this regard, auDA provides *no* real Social value cause for the community, provides *no* incentive to join, *no* innovation grants for the internet Naming industry, *no* start up grants, *no* scholarships, *no* mentor advisory, *no* support for the attraction of investment. Membership with auDA is only about keeping the bastards Honest and that requires voluntary effort for a company that will not support, reward or recognise unpaid effort.

- *As noted in question 3 of this paper, the number of members is very small with only 303 members in total for 2017 a net increase of 63 members since 2013*

15 *Does auDA's membership structure support it in delivering its roles and responsibilities?*

The capacity for members to compel directors to call a general meeting is provided for in CORPORATIONS ACT 2001 - SECT 249D which contains a potential threshold: The directors of a company must call and arrange to hold a general meeting on the request of members with at least 5% of the votes that may be cast at the general meeting.

auDA Constitution;

16.2 Resolutions

- a. in the case of an ordinary resolution of Members, there is an affirmative vote in each and every class of Members of more than 50% of Members present and entitled to vote (in person or by authorised representative or proxy);
- b. in the case of a special resolution of Members, there is an affirmative vote in each and every class of Members of more than 75% of Members present and entitled to vote (in person or by authorised representative or proxy); members with at least 5% of the votes that may be cast at the general meeting can raise a special resolution requiring 75% of voting members from both classes for the resolution to pass.

16.3 Special Resolutions

The following matters will require a special resolution of the Members in Meeting:

- a. any business which the Corporations Act states requires a special resolution;
- b. any alteration to auDA's legal status;
- c. voluntary winding up of auDA;
- d. changing the purposes, objects or scope of auDA;
- e. any variation or amendment to, or repeal of, this Constitution; and
- f. making, varying, or repealing auDA's by-laws.

Additional recommendations;

- Proposed New membership model inclusive of all Australian registrants (no class structure)
- Membership relationship Manager – responsible for membership, complaint management
- Escalation flash points to formally address membership grievance, concerns.

16. What emerging risks does auDA face in relation to the security and stability of the .au domain?

More than One Internet

The ICANN domain name system is the most prevalent one, but its dominance is not absolute; Three alternative registrars for Internet domain names and Several smaller systems are available using the same protocols. OpenNIC, UnifiedRoot, and Public-Root Very small compared to ICANN's mainstream offerings, but it does not take much imagination to see the possibility of a number of larger organizations, including international Governments to cooperate to create their own registry for the purpose of tighter control on the Internet use of their citizens, both in terms of communication and commercial interests.

IPV6

Multiple technical issues are to be addressed for the DNS to continue as the standard in the future. One such change is the Internet Protocol IPv4 to IPv6. IPv4, its ubiquitous on networking equipment throughout the world, and that is part of the problem. Due to the 32-bit length of IPv4 addresses, there are nearly 232, or approximately 4 billion, addresses possible.

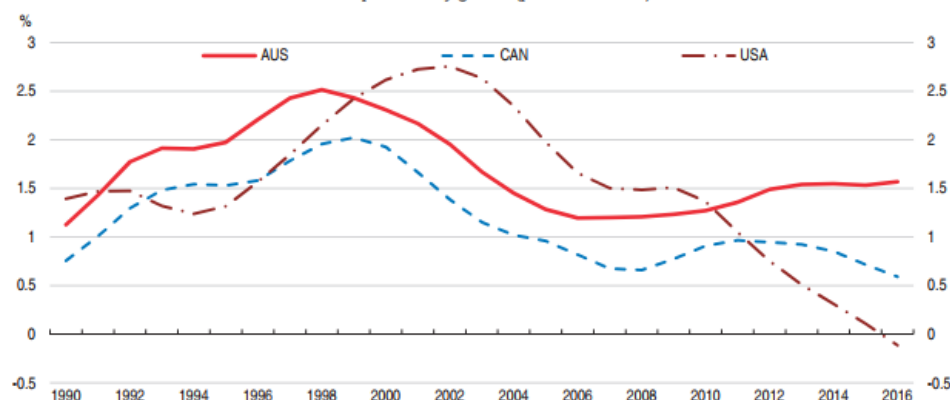
IP Spoofing

IP spoofing is the practice of forging various portions of the Internet Protocol (IP) header. Because a vast majority of Internet traffic, applications, and servers use IP. IP spoofing has important security implications.

Cyber Crime and Government intervention;

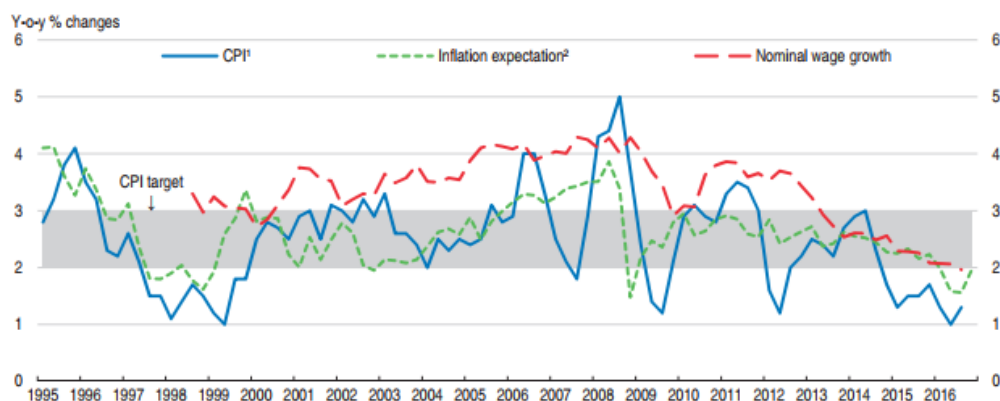
- The increasing costs imposed through the malicious actions of cybercrime.
- The slow response to protect and inform new internet connected users about cybercrime prevention, these people are mostly under 15 or over 55 and are targets for commercial exploitation, fraud and cybercrime. New users require valid and trustworthy information and reliable instruction.
- The decay of user privacy provides new opportunities for internet criminality. Proprietary data and personal information are illegally copied and reused;
- Increasingly concern about the secretive ways that algorithms are used to collect data about user preferences, and by whom. And, unprecedented private data collection and government surveillance can cause the internet to go underground to get away from constant surveillance.
- Radicalised hacker groups against westernised freedoms can cause critical services to become disrupted electronically; or system infiltration can allow for critical information to become corrupted beyond repair, erased or destroyed.
- Government hostilities against other Governments can motivate the possibility of cyberwarfare, including digitalised attacks on civilian infrastructure such as the DNS system, power grid or water systems.

If such a reality were to creep into our lives and occur, people will simply stop using the internet and its potential is lost. Albeit, pubs and taverns would enjoy a new era of prosperity. (wink)

Figure 2. **Productivity growth has slowed**Labour productivity growth (per hour worked)¹

1. Data smoothed by the Hodrick-Prescott filter.

Source: The Conference Board (2016), The Conference Board Total Economy Database, May 2016.

StatLink <http://dx.doi.org/10.1787/888933456634>Figure 7. **Consumer-price inflation and wage growth are slowing**

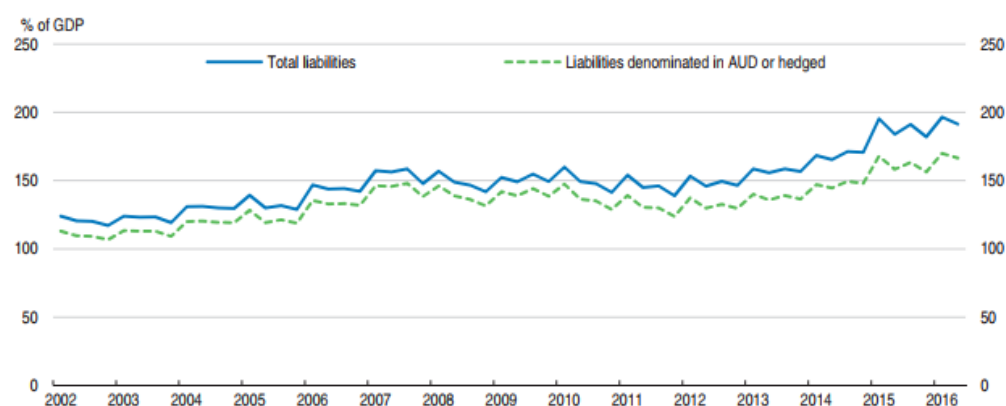
1. Excludes interest and tax changes.

2. Average annual inflation rate implied by the difference between 10-year nominal bond yield and 10-year inflation indexed bond yield.

Source: Reserve Bank of Australia (2016); ABS (2016), 6345.0 – Wage Price Index, Australia, Sep 2016.

StatLink <http://dx.doi.org/10.1787/888933456686>Figure 8. **Australia's gross foreign liabilities continue to grow but remain largely denominated in AUD or are hedged**

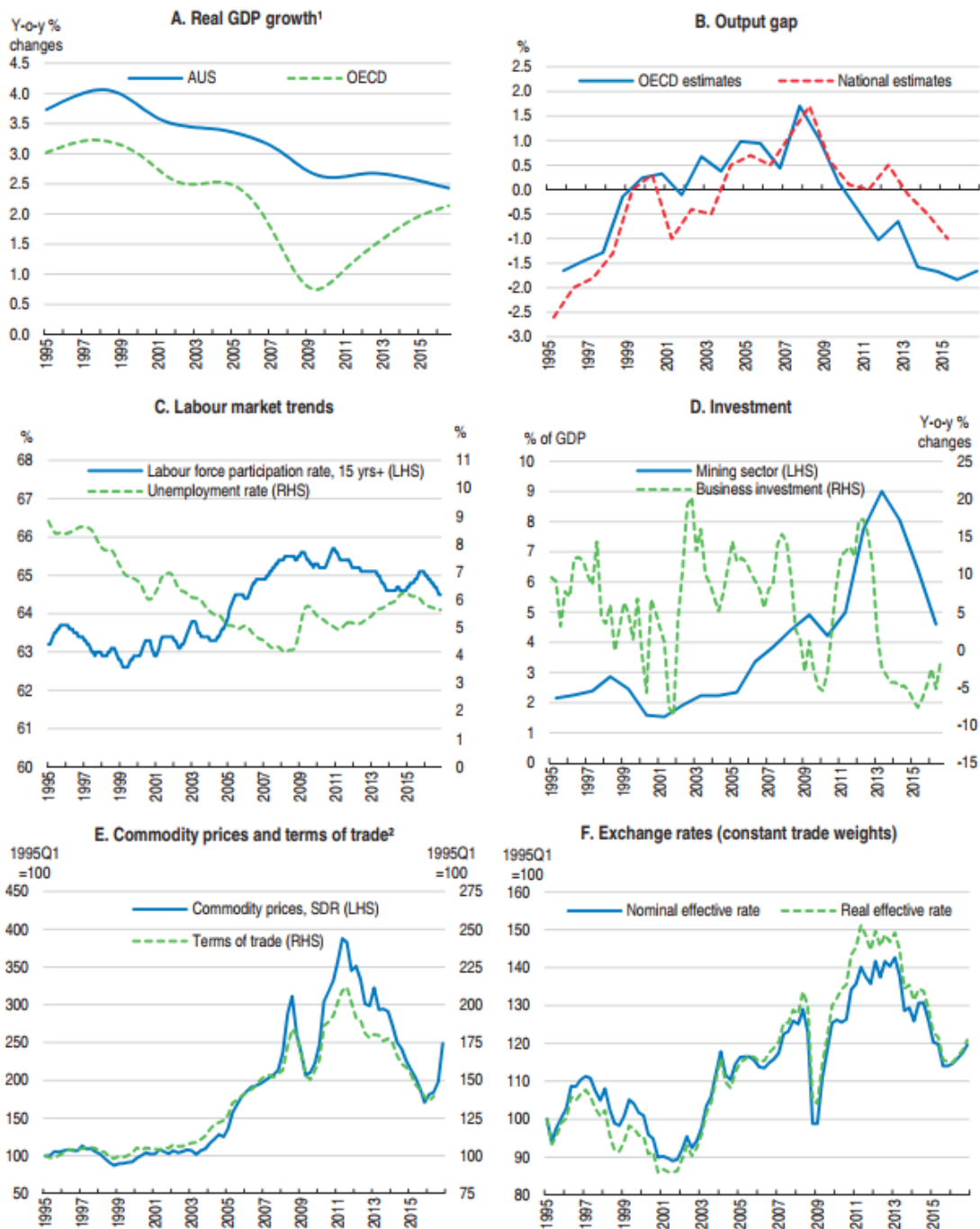
Gross foreign liability stocks



Source: Reserve Bank of Australia.

StatLink <http://dx.doi.org/10.1787/888933456696>

Figure 5. **Output growth has weakened, unemployment is up, investment is down**



As noted by the above statistics, the biggest threat to the .au Namespace is economic management of the larger economy. Recent data suggest there is some risk of a downturn, house prices and household debt have reached unprecedented highs, and a continued rise of the market, fuelled by both investor and owner-occupier demand, may end in a significant downward correction that spreads to the rest of the economy, placing the namespace at ever increasing risk via stakeholder investment support.

In my view, The Australian Government and business at large is proactive and responsive to these growing economic concerns and have undertaken measured and preventative policy solutions to curtail financial impact. Unfortunately, during this time many are faced with increased financial reconstruction, and company insolvency is currently occurring at increased rates.



Main business related cause of personal insolvency	Number of debt agreement debtors: 2007-08	Number of debt agreement debtors: 2016-17
Economic conditions affecting industry, including competition & price cutting, credit restrictions, fall in prices, increases in costs	39	449
Excessive drawings, including failure to provide for taxation	38	49
Excessive interest payments on loan monies and capital losses on repayments	20	121
Failure to keep proper books of account and costing records	1	5
Gambling or speculation	1	3
Inability to collect debts due to disputes, faulty work or bad debts	2	11
Lack of business ability including underquoting or failure to assess potential of business	19	85
Lack of sufficient initial working capital	27	25
Personal reasons, including ill health of self or dependents, domestic discord & other personal reasons	40	174
Seasonal conditions including floods & droughts	4	2
Other business reason	27	28
Total	218	952

<https://www.afsa.gov.au/statistics/causes-personal-insolvency>

17. What is best practice for DNS administration?

Self-regulatory Multi-stakeholder model is perfect, when people are engaged in the process of making it work, it is a very versatile and successful model for the administration of a namespace. The wheels fall of the cart when increasing problems persist without remedy due to, commercial in-confidence agreements and contracts which become centralised to the interest of management. It could be argued, 'You would get a better deal via public disclosure than you would behind closed doors.'

Multi-stakeholder model;

In the immense world of Internet governance, the term “multi-stakeholder” is overused. However, in proper context and used accurately, it can tell us a great deal about ourselves.

The “Multi-Stakeholder” Model enables participation in decision making by affected stakeholders who want to have meaningful input and exert their influence, yet where no single interest can unilaterally capture control. In this regard, internet Governance is not exploited by any single person's point of view, instead it utilises the wisdom of the crowd for consensus, guidance and growth.

... the Holy Grail of effective collaboration—is in creating shared understanding about the problem, and shared commitment to the possible solutions.

Disclosure and Transparency

auDA should ensure that timely and accurate information is disclosed on all material matters regarding their activities, policy structure, financial situation, performance, and governance.

Say what you mean and do what you say

- Open up and trust your stakeholders, members, and the views of the people.
- Be inclusive of all people with an interest in the internet.
 - Develop incentive to support your goals such as, advocacy programs, industry champions...
 - Compromise, and adapt to the ever-changing landscape of internet sustainability;
 - Provide accurate verifiable and clear information that is sufficient to enable consumers to make informed decisions;
 - Take ownership of issues, and oppose the impulse to be highly resistant to resolutions.

Invest in Talent

- Be open and receptive to innovative and flexible approaches to solve complex problems,
- Provide supportive structures and processes to enable solutions,
- Develop and nurture a supportive culture and skills base,
- Develop facilitative information management and infrastructure.

In working with stakeholders successfully across multiple organisations relies on better information-sharing, and requires structured approaches to the collection and sharing of information and data.

A Time for change

auDA is a product of multiple commercialised policies (ABN requirements, legal personalities, and politic personality that bends and twists the organisation between its two objectives;

- a) to create a productive environment of competition for the For-Profit sector
- b) to provide a Not-For-Profit basis for its own existence.

Ironically, auDA is always at *all* times engineered by its own For-Profit policies and actors, members are business owners, domain names are products of commercial policies managed by private business owners, and directors are private company actors socialised by the private For-Profit corporate sectors, (ASX, Business owners, Corporate and Commercial Lawyers) auDA is inescapably trapped in a tyrannical paradox of never needing to 'earn' any of its income because it is not financially incentivised to survive like 99.9% of Not-For Profits out- there.

In order to bring accountability and transparency to this hybrid Profit/Not-For-Profit Organisation, a new structural framework for governance is required to ensure reliable, efficient and productive outcomes for the industry.

Milton Friedman stated;

Corporations must make their profit within the rules of the game. Arguably, in order to maximise profits, companies must properly consider all relevant stakeholder interests. They do not operate in a bubble. The corporation sells goods and/or services to consumers.

- ***To do so, they need a workforce. Furthermore, the community within which they operate influences the opinions of consumers, employees and the regulatory environment.***

Consequently, even corporations that hold the more restrictive interpretations of directors' duties must consider other stakeholder interests to survive in the long term. Indeed, many Australian companies go beyond the bare minimum as they consider that in order to be sustainable

- ***they must maintain a reputation for ethical conduct and accommodate legitimate external interests.***

Milton Friedman was an American economist who received the 1976 Nobel Memorial Prize in Economic Sciences for his research on consumption analysis, monetary history and theory, and the complexity of stabilization policy.

Thus, a corporation that pretends that it is operating in a social bubble is not managing its risk properly and its directors are arguably in breach of their duty to act with due care and diligence. The potential risks include:

- a. labour risks (such as strikes, reduced efficiency, staff turnover, recruitment, attracting and retaining employees);
- b. reputational risk (devaluing brand and corporate images); and
- c. risk of adverse litigation and increased chance of regulatory intervention.

Unlike shareholders in a listed company who can punish a company by simply selling their shares, a membership company has no equitable means to punish its directors except via public opinion, or 249D or boycotting .au (which is counterproductive to the goal of domain ownership) even to the detriment of punishing auDA the members can inadvertently weaken .au values and threaten to disrupt business perceptions about their own .au brand. Who is responsible? The CEO, the Chair, The directors?

“When you think of auDA you should think of Australia”

We must seek to understand the ‘the real purpose and personality of the organisation’ and why it was established. Individually and collectively we must focus on capturing the essence of the organisation and bring about its ultimate potential, and to that end, we must identify the perpetual value of the company.

To do this, the company requires the following;

- Vision
- Mission
- Values

The formula proposed should make the organisation more productive in the delivery of its service and products. Identifying the purpose and powers given to the organisation in achieving its own fulfilment should always seek to define its purpose and identity.

What are Australian Cultural Values;

- (1) Fair Dinkum
- (2) Fair Go
- (3) Freedom
- (4) Mateship

How can these values be translated into the auDA Constitution as a legal personality?

(1) to be *Fair-dinkum*;

“to be for real” or, **Integrity, trust, honesty, reliability.** In many circles, it’s the foundation of Australian culture.

(2) *Fair Go*;

“a chance to prove oneself” or **opportunity, equality.** It seems the Liberal Party has decided to publicly give this Australian value some steam. *The Fair Go* is intended as a lively, even edgy publication that “talks directly to voters”. Thefairgo.com.au

(3) **Freedom**;

Australians are independent in the way in which we act, we view **self-reliance** as a rewarding value above the value of collectivism. Accordingly, someone with too much self-reliance and independence may find themselves subject to another value ‘tall poppy syndrome’ Australians seemingly have a fixation on cutting down the top dog, it originates from a strong sense of humility as a socialised virtue, and to that end, from time to time, society feels the need to cut down perceived arrogance, when in reality that person is more likely conforming to the value of freedom, independence, and self-reliance.

(4) **Mateship**;

Mateship is well defined in Australia, (thanks to our diggers) even though this value may often appear more like masculine independence. The spirit of mateship is more about working together (**team work**) Australians are sports mad, we pride ourselves on sporting achievements, along with business achievement. and social success. Mateship ties together the previous 3 values, integrity, equality and individual self-reliance, each mingle together with a collective goal, bond or competitive influence within the value of mateship.

Note: The views expressed here about Australian values are my own views and not originating from published studies, surveys or professing commentators.

Organisations don't truly have values, only human beings do, and the company's values will only be effective if everyone involved can align their values with the company's values.

The company is led by the board. If the board is self-assessing in light of company values that best reflect their own and society then, it is taking a huge step in reaching for the company's highest potential to create engaged communities.

Question:

- a) What future do you want to create for your community? What positive conditions do you want to see in your community?
- b) What future would you like to create for the individuals you serve? What positive conditions would you like to create in their lives?
- c) What would success look like if you had a crystal ball and could look deep into the future - for the individuals you serve, and for the community as a whole?

Values

- Reliable – (Technical competence, building business trust and security)
- Responsive – (Members, Stakeholders and community concerns)
- Sustainable – (Growing community)

Be POSITIVE

P	Personal commitment	(Taking ownership, resolution, innovation, discipline)
O	Organisational commitment	(solidarity, stewardship, productive, reliable)
S	Social commitment	(Community Spirit, Mateship)
I	Integrity	(Trust, leadership, honesty, stability)
T	Talent	(creativity, articulation, intelligence)
I	Inclusive	(unrestricted access to opinions, judgments, viewpoints)
V	Value based	(economic, social, personal ethics, and price)
E	Effective	(result driven, success, achievement, recognition)

While all companies share certain fundamental features, each company's individual "personality" is defined by its constitution

Hofstede (1980, p.25) who states: "the essence of culture is the collective programming of the mind which distinguishes the members of one group, society, category or nation from another". Members of a social system "share particular symbols, meanings, images, rule structure, habits, values and information procession and transformational patterns"

(Ruben 1983, p.139). As such, social transformation can take place when collective members, through experiences, become 'mentally programmed' to interpret new experiences in a certain way (Hofstede 1983; 2001).

Why is it important?

A Vision, Mission, and Value system is the intrinsic attributes of success. Values are beliefs that are linked inextricably to affect.

- Values refer to desirable goals that motivate action.
- Values transcend specific actions and situations (e.g., obedience and honesty are values that are relevant at work or in school, in sports, business, and politics, with family, friends, or strangers).
- Values serve as standards or criteria that guide the selection or evaluation of actions, policies, people, and events.

Values are ordered by importance relative to one another to form a system of priorities. This hierarchical feature also distinguishes values from norms and attitudes. The relative importance of values guides action. The trade-off among relevant, competing values is what guides attitudes and behaviours (Schwartz, 1992, 1996; Tetlock, 1986).

Values drive behaviour, and company constitutions are the foundational framework for reference to those values. The current auDA constitution lacks Vision, Mission and Core Values, resulting in a problematic and passive organisation that lacks ‘personality’ and ‘character’.

Proposed Change to the auDA Constitution

The following proposed changes to the company constitution are my own, intended to be a framework for discussion and therefore considered indicative and subject to change.

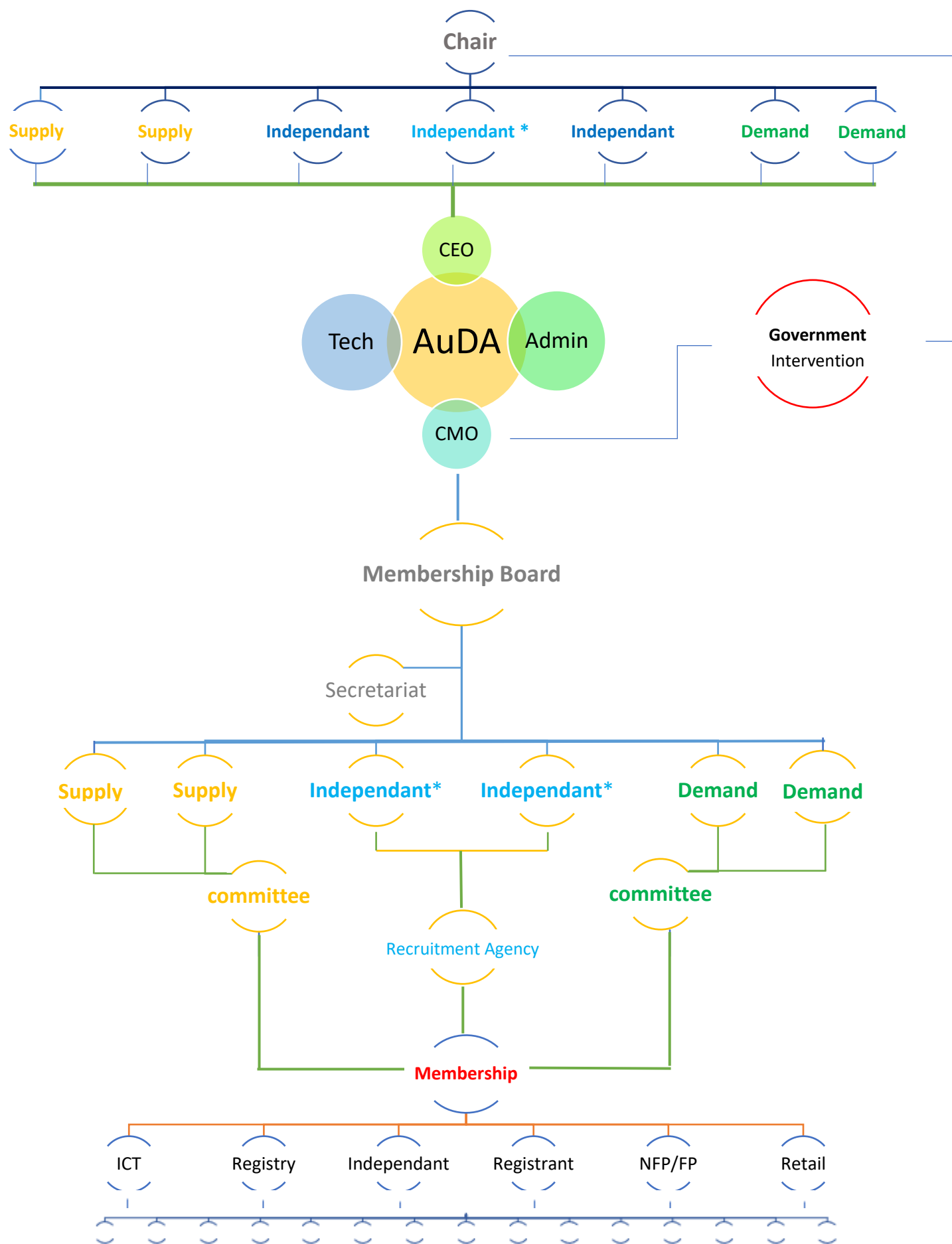
Incorporating the following for inclusion;

- Interwoven value based vision and mission into the Objects
- Incorporating registry and sub-contract components as per ICANN sponsorship agreement.
- Chairperson role included, and Values incorporated into the role
- CEO and Company Secretary roles
- Directorship Probity
- Committee and Panel remuneration schedule including remuneration for Directors on committees

Additional inclusions not in this paper include;

- New Membership Model (details)
- Director Terms
- Director Numbers on the Board
- Director Citizen and Age Requirements
- Quorum numbers
- Electronic Voting

New Membership Model



New Membership Model

The Board composes of 13 Elected Directors + Independent Chair

The Board contains two Principle Purposes

1. **Commercial**
2. **Social**

Please Note: This Model is intended for Discussion and is not a final draft.

The Commercial Board

- 7 Elected Directors
- 1 Independent Chair
 - Chair Holds No² Casting Vote

Independent Directors

- 1 independent Directed is elected
- 2 Independent Directors are Recruited

Supply

- 2 Supply Elected Director

Demand

- 2 Demand Elected Directors

The Elected Directors hold office for 2 years

Roles and responsibility include

- Remuneration Committee
- Governance Committee
- Risk Committee
- Responsible for Commercial Decisions
- Internal and external Policy Decisions
- Expenditure
 - Commercial [product/services]

The Membership Board

- 6 Elected Directors
- 1 Company Manager Officer
 - CMO holds Casting Vote

Independent Directors

- 2 independent Directed is elected

Supply

- 2 Supply Elected Director

Demand

- 2 Demand Elected Directors

The Elected Directors hold office for 1 years

Roles and responsibility include

- Nomination Committee
- Governance Committee
- Membership Committee
- Responsible for Membership Decisions
- Policy Development
- Expenditure
 - Events and Programs,

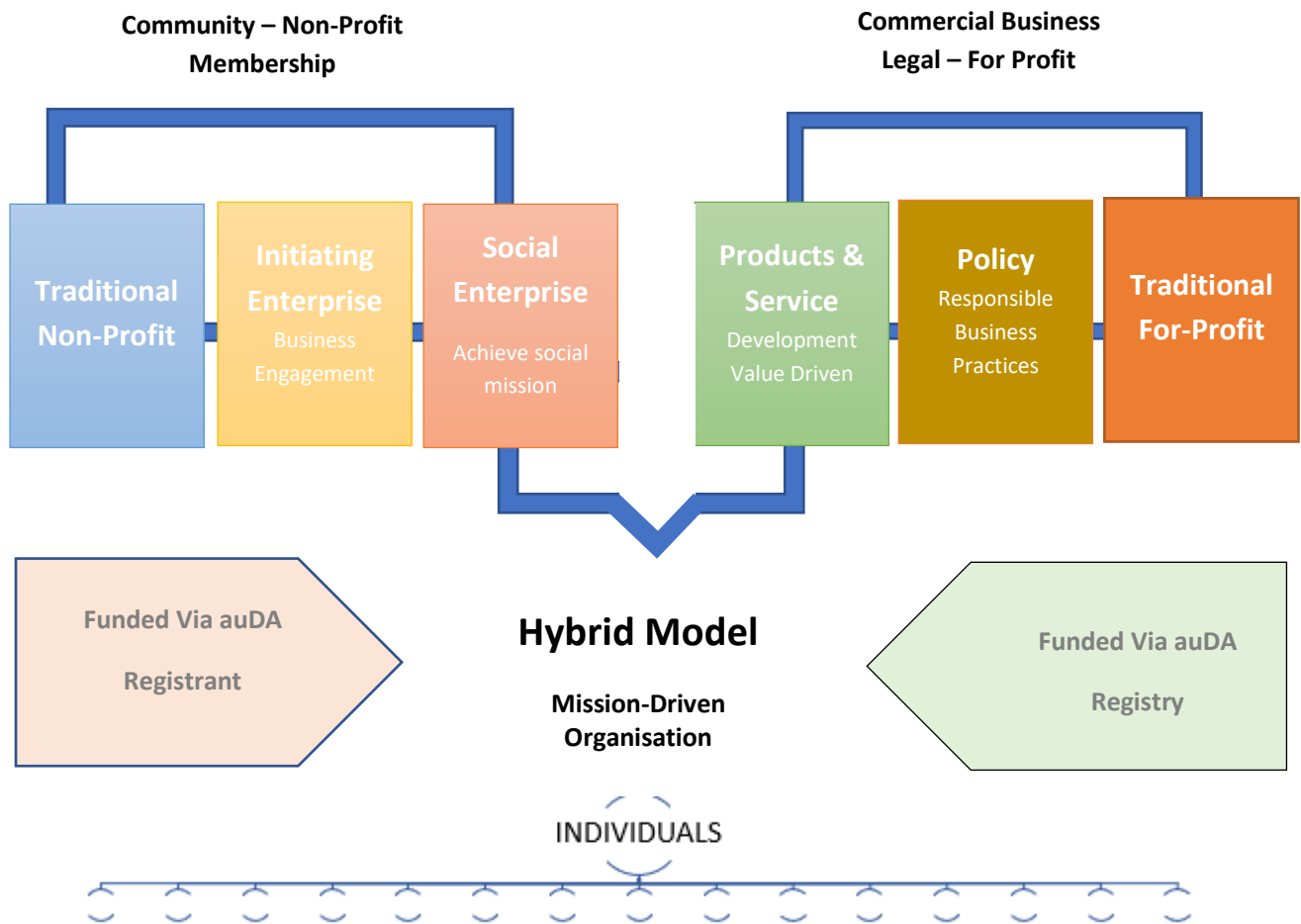
The Two Boards are One.

Differing Responsibility

The Membership Board is a way to work with Members, a type of proxy 'let's get to know your skill & ability' It can be thought of as its own company – Membership is Open to all Registrants via OPT-OUT

- Should auDA administer its registry as Manager – its income will increase
- Should auDA implement 'Direct Registration – its income will increase
- Should the Government decide to revise the Endorsement; re: Supply and Demand and open up membership to 'All people with an interest and investment in the .au ccTLD – it will need robust management to keep pace with the increased number of growth.
- Focused on stakeholder concern and managing it.
- Organising events and functions for the promotion of the .au industry.
- Nomination committee is a work group, a filter processes, a proxy probity before Election.
- All-encompassing Vote – both Boards are subject to Member Vote.
- 249D or any other unmanageable Dispute is Escalated and resolved via Government.

auDA - Hybrid Model - Social / Commercial Enterprise



The Hybrid Model diagram demonstrates the various elements of engagement within the organisation.

Hybridization of business is not restricted to the supply side. One of the most crucial entrenched social contrasts is that of market participants being either *consumers or producers*, including intermediaries – is breaking down as value co-creation allows consumers to participate in the production of their goods.

Therefore, a social enterprise must be built as a robust integrated network of connections with the knowledge of who the constituents of the business are and where they can find value individually and together as a whole (= **ecosystem**).

1. it must be driven by a social mission (i.e., abstain from distributing profit to shareholders);
2. it must generate for positive externalities (spill overs) for society;
3. it must recognize the centrality of the entrepreneurial function;
4. it must achieve competitiveness on markets through effective planning and management

These seem to be necessary ingredient of all social business models.¹

¹ ACRN Journal of Entrepreneurship Perspectives
Vol. 1, Issue 1, p. 37 – 60, Feb. 2012 ISSN 2224-9729 P45
http://www.acrn.eu/resources/Journals/JoE012012/Grassl_SE-Hybridity.pdf

Proposed change to the Objects of auDA

Reflect core values

3 OBJECTS

3.1 Principal Purposes

The principal purposes of auDA are:

- a) to be the Australian Internet Addressing Manager in the Administration of the Australian Domain Name System for the social and economic **benefit of all Australians**.
- b) to be a **self-reliant** non-profit membership organisation and;
- c) to act **ethically** in the production and administration of, rules and policy regarding the creation and use of domain names within the .au ccTLD and;
- d) to **promote the success** of the .au ccTLD locally and internationally for the benefit of all Australians.
- e) to administer and facilitate fairness and equity in;
 - i. the registry supply of domain names within the .au ccTLD; and
 - ii. the supply of domain names to customers by service providers.
- f) ensure **reliable** and **independent** management of the registry service; and
- g) perpetually **protect** the **integrity** of the .au ccTLD
- h) to develop, implement, and promote actionable dispute resolution, mediation, arbitration or complaint conciliation services for internet naming system.

-
- 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.

Chairperson, CEO and SECRETARY

(appointment and responsibility)

33. Chairperson ²

33.1 Appointment and Responsibilities of the Board Chairperson³

33.2 In accordance with this Constitution, the Board will appoint a Chairperson and Deputy Chairperson.⁴

33.3 The specific roles of the Board Chairperson include:

- a) providing **leadership** and **vision** to the Company⁵
- b) ensuring the **efficient** organisation and conduct of the Board's function⁶
- c) ensuring all directors are **informed** of all material matters
- d) evaluating the **performance** of the Board, Directors, and the CEO⁷
- e) exercising such specific and express powers as are delegated to the Chairperson by the Board from time to time.⁸

Values include:

- **Leadership** (ability to motivate, taking ownership, of attitude)
- **Vision** (well planned, of foresight, toward collective goal)
- **Efficiency** (get it done 'simply' & 'Effectively')
- **Inform** (duty to inform, ability to articulate the matter)
- **Performance** (of righteous intent, unbiased, consistent with the company objectives and purpose)

² Non-gender bias (Chairman, replace with Chairperson)

³ Include: "Responsibility of"

⁴ Referencing Director appointment – Probity and quorum requirements. Specifically – the Board will appoint.

⁵ To Lead and To Guide

⁶ **To Ensure** – meaning... ensure (verb) confirm, corroborate, endorse, guarantee, keep from harm, make certain, make sure, safeguard, secure, verify, warrant

Efficient organisation – (adjective) able, capable, competent, effective, expedient, expert, functional, practical, productive, skilled.

Organisational skill, productive – applying speed of delivery, process, procedural quality. Not lazy or complaintive.

Conduct of the Boards Function: Function (noun) appropriate activity, assignment, business, chore, design, duty, employment Function (verb) achieve, act, act effectively, answer a purpose, avail, be effective, be in operation, carry out, effectuate, execute, have effect, operate, perform, render a service, run, serve, work.

⁷ Recommendation 1.6 (a) of the ASX

Corporate Governance Council's Corporate Governance Principles and Recommendations 3e (2014) which states that listed companies should:

"... have and disclose a process for periodically evaluating the performance of the board, its committees and individual directors".

https://aicd.companydirectors.com.au/~media/cd2/resources/director-resources/director-tools/pdf/05446-2-1-director-tools-bp_board-evaluation-director-appraisal_a4_web.ashx

⁸ Of note here, s 41A of the Interpretation of Legislation Act 1984 provides that where there is a power to make an instrument, there is also a power to amend it or revoke it.

An instrument of delegation may be amended or revoked at any time by the delegator.

Deputy Chairs

34 Deputy Chairs

- 34.1 If a Deputy Chair is appointed, payment will be made at the member's rate. If the Deputy Chair assumes the role of the Chair, the Chair's fee will be payable for the period the Deputy Chair acts as the Chair. The remuneration of the Deputy Chair when acting as the Chair must be outlined in the Deputy Chair's instrument of appointment.

35. Chief Executive Officer - CEO⁹

- 35.1 Appointment and Responsibilities of the Chief Executive Officer
- 35.2 The Board may appoint or designate a person to be Chief Executive Officer for such period and on such terms as it thinks fit and, subject to the terms of any agreement entered, may revoke any such appointment in its absolute discretion.¹⁰
- 35.3 The Board has approved a general delegation of financial authority.¹¹ The CEO may authorise all expenditures in accordance with that delegation, or any other delegation by the Board, subject to:
- a) All CEO compensation, outside of normal remuneration, must be authorised by the Board Chairperson.¹²
 - b) Whilst the Board (via the Remuneration Committee) approves the remuneration of employees reporting to the CEO, the appointment of individuals to specific management roles is the responsibility of the CEO.
- 35.4 A Chief Executive Officer is entitled to attend all meetings of the Board and all general meetings of the Company and may be heard on any matter unless the Board directs that the Chief Executive Officer may not attend a particular meeting of the Board.¹³
- 35.5 The Board may confer on the Chief Executive Officer any of the powers exercisable by it on such terms and conditions and with such restrictions as it thinks fit. Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the Board. The Board may at any time withdraw or vary any of the powers conferred on a Chief Executive Officer.
- 35.6 The CEO is responsible for, and has the necessary powers to administer, the day to day operations of the Company.¹⁴

⁹ The Board must obtain a quorum agreement before it exercises these powers.

¹⁰ The board may appoint or designate – if in the event of an abrupt departure of the CEO, auDA should be able to “designate” a CEO instantly. The succession plan should outline a course of action, or the emergency contingency in this regard. If not, its in this constitution.

¹¹ The Board has approved a general delegation of financial authority. Generally, this should be found in their succession plan. It should be the board decision and no other, based on a consensus.

¹² Common Sense – Again even this delegation must have limits.

A delegation policy is appropriate and known to Directors.

¹³ The CEO must be informed and if necessary lead in operational discussion about issues.

¹⁴ The CEO should not be distracted from the task at hand concerning the administration of day to day operations.

SECRETARY

36 SECRETARY

36.1 Company secretary

- (a) The Board will appoint a person to the office of Company Secretary¹⁵ for such period and on such terms as it thinks fit and, subject to the terms of any agreement entered into in a particular case, may revoke any such appointment in its absolute discretion.
- (b) A Company Secretary may, subject to the terms of any agreement entered into in a particular case, receive such remuneration as the Board determines.¹⁶
- (c) A Company Secretary is entitled to attend all meetings of the Board and all general meetings of the Company and may be heard on any matter unless the Board directs that the Company Secretary may not attend a particular meeting of the Board.¹⁷
- (d) The Board may confer on the Company Secretary any of the powers exercisable by it on such terms and conditions and with such restrictions as it thinks fit. Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the Board. The Board may at any time withdraw or vary any of the powers so conferred on a Company Secretary.

¹⁵ WILL = A MUST The secretary shall also undertake probity as per Probity Checks for all Staff.

¹⁶ The board can review the terms of remuneration and change it.

¹⁷ The Secretary can assume all board meetings, AGM and or any matter unless, the Board decides the company Secretary NOT to attend.

Committees & Panels (C&P) Remuneration schedule

Why should auDA remunerate Committees and Panels?

When auDA was initially formed it wasn't exactly financially popular, very little funds were available to it prior to opening up the .au namespace to public / commercial registration, it survived in part from the generosity of Telstra and the volunteering efforts of a couple of dedicated individuals who eventually transitioned the .au to auDA in 1999.

Volunteers were the backbone of getting auDA up and running, and many people in that day were contributing vast amounts of voluntary effort to constructively coordinate the company into a regulatory body to administer the .au DNS.

Internationally, the domain name industry's rapid maturity through the 1990s and the broader dot com boom which drove share prices for online companies to stratospheric heights before a sustained crash in late 1999 and through 2000 was not optimally timed for auDA. The company had very little cash reserves (see auDA business plan) and very little technical expertise due to the majority of bigger companies absorbing the best of the best to develop their technical and brand outreach.

Domestically, there was a significant push towards making the .au space more commercial in its operation and more transparent in its regulatory management.

The auDA generic names auction was a useful benchmark of both the popularity and utility of domain names in the .au space and provided auDA with available funding to establish itself as the regulator and administrator of the .au DNS.

Quoting auDA's 1 October 2002 press release on generic names, "1,612 generic names were allocated, either to a single eligible applicant or at auction. The highest price paid for a generic name was \$153,000 for flowers.com.au. The median auction price was \$2,900. Most names were allocated for the minimum reserve price of \$100. The process raised approximately \$2,611,000 in total ...".¹⁸

auDA successfully raised the necessary capital via the generic domain name auction, and commenced its work in developing the important policy infrastructure to sustain itself as a Self-Regulatory Administration.

Over the years, auDA organically grew integrated and relevant to the .au namespace. providing policy consistency coupled with multi-stakeholder input, to test and measure the effectiveness of its policy within a dynamically changing environment. Its growth exploded after deregulating certain domain name policy restrictions, this wise move truly opened up the namespace. Registration demand for .com.au experienced significant growth rates reaching 3 million in 2015, and income generated since has seen auDA prosper.

Unlike 17 years ago, the internet has truly integrated into our daily lives both personally and professionally, leaving very little time away from this digitalised economy. Our lives have become full of activity, our work demands have dramatically increased to meet the needs of a highly engaged consumer and; annual wage growth at just 1.9 per cent is the lowest and probably the slowest rate of pay rises since the last recession. In this regard, auDA's income and time poor volunteer industry expertise provided opportunity for auDA to move away from voluntary stakeholder advisory to commissioned consultative advisory. Therefore, incentive should be introduced, to bring back specialist knowledge and experience about the .au namespace without imposing financial loss to that person's income.

¹⁸ <https://www.auda.org.au/news/new-aunic-hosting-arrangements/>
<https://www.apnic.net/manage-ip/manage-historical-resources/returned-ipv4-address-space/letter/#9>

Proposed resolution for inclusion of Committees and Panels

36. **Committee and Panels**

- 36.1 The Board may delegate any of its powers and/or functions (not being duties imposed on the Board as the directors of the Company by the Corporations Act or the general law) to one or more committees consisting of such persons as the Board thinks fit. Any committee so formed must conform to any regulations imposed by the Board. Subject to any regulations imposed by the Board:
- (i) a committee appointed in accordance with this Article will have power to co-opt any persons; and
 - (ii) all members of such a committee will have one vote.
- 36.2 A committee may meet and adjourn as it thinks proper. Questions arising at any meeting must be determined by a majority of votes of the members of the committee present. In the case of an equality of votes, the Chairperson will have a second or casting vote. The Chairperson is to be determined by the Board or as the Board otherwise directs.

The constitution should recognise Committee and Panels and their role and remunerations.

Including:

Company Chairs and Directors of Committees.

- Governance Committee:
- Security and Risk Committee:
- Recruitment Committee:
- Remuneration Committee:

LEVEL PROFESSIONAL EXPERIENCE

Committee and Panel

LEVEL A

- Achievement of professional distinction and recognition as an authority in their field.
- The equivalent of ten years' full-time practice as a professional in their field.
- Proven skills and experience in analysing and interpreting research material and social discussion.
- Proven skills and experience in preparing written material of a high standard.

LEVEL B

- Well-developed knowledge of the industry and the task of concern.
- Knowledge of procedures, with broad experience in preparing material for publication.
- Capable of providing advice on matters of interpretation.
- Experience in undertaking research under limited supervision.

Using the Scale:

1. The Scale is intended to apply to the non-permanent engagement of Committee and Panel appointments.
3. The Scale represents fixed costs. Variable and out-of-pocket costs, including income cost recovery.
4. A core principle is that the value of Committee and Panel member appointment are similarly normal employment expectation within any given workplace.
6. The two levels in the Scale equate to specific experience and expertise. Committee and Panel appointments schedule of rates will reflect the expertise carried to a specific commission.

Level A

Provides for the skills and experience of Professional appointees with formal academic credentials and are employed within their respective profession. All professional Persons have skills acquired through relevant university study but it is their subsequent experience that sees them develop their expertise in and across diverse fields.

Level B

Provides an entrance for non-professional appointees without academic credentials; All Level B appointees have skills acquired through their relevant industry activities and it is their subsequent experience and expertise that requisitions their appointment.

The fee levels DO NOT equate with any industry standard wage; where an industry award represent benchmarks based on employment that underpin expertise or academic qualification.

7 Committee Remuneration

The Board shall appoint a Remuneration Committee to develop and maintain a Publicly Available Remuneration Committee Policy for Directors, Panels and Committees.

7.1 Determining remuneration

The Remuneration Committee Directors are generally responsible for setting remuneration for appointments. When setting remuneration levels Directors should consider:

- a) the nature of the work;
- b) the degree of accountability and responsibility; and
- c) the skills and experience of the appointee.

The rationale for remuneration should be outlined in the Remuneration Committee report or by the CEO brief.

7.2 Committee Remuneration Tiers

7.3 Remuneration for Committee appointments are tiered rates according to scale of duty. The Directors are responsible for determining levels of remuneration within the relevant tiers.

7.4 Membership Committee Remuneration

7.5 The Schedules set out separate fee scales for Chairs and Members and their respective competency. Chairs are generally remunerated at higher rates than members in recognition of their additional leadership and relationship management responsibilities.

7.6 Appointment and Remuneration Guidelines

Sessional rates – full and half day rates

7.7 Sessional rates are recommended for all committees. This is because the workload, regularity of meetings, and other Committee activities can vary over the duration of a Committee or Panel timeframe. No additional payment is made for reading and preparation time, this is included in the daily sessional rate.

7.8 Sessional rates are not capped at an annual maximum amount. However, Directors should arrange to monitor the performance of these entities to ensure that payment is made when the relevant duties have been performed.

7.9 As a guide, payment should be made for the following:

- a) Attendance at meetings;
- b) formal visits with industry representatives;
- c) for time spent on work directly related to the business of the organisation, such as preparation of reports, briefs and recommendations.
- d) in special circumstances, authorised by the Directors, time spent on additional work directly related to the business of the body, such as preparation of reports formally commissioned for a meeting or for Government. If substantial blocks of time are involved, a separate rate should be negotiated.

ACNC - A not-for-profit can provide direct benefits (such as distributing money or gifts) or indirect benefits (such as a member receiving help that is consistent with the not-for-profits' purpose). A staff member and, sometimes, a responsible person (such as a board or committee member or trustee) can be paid for their work, but not an unreasonable amount. Your organisation's governing documents (such as its constitution) may include clauses about reasonable payments

7.10 Payment must not be made for:

- a) individual research, or reports (unless authorised by The Board); or
- b) preparation time for meetings (as this is incorporated into the daily fee).

Approving remuneration levels

7.11 Unless otherwise specified in the Remuneration Committee Policy, remuneration is approved by the same decision-maker that approves the appointment. Therefore, if an appointment must be approved by The Board of Directors and/or made by the Chairperson, remuneration must also be approved by The Board and/or made by The Chairperson. Similarly, if the appointment can be made by the Remuneration Committee Director, the remuneration rate will also be set by the Director.

Record of appointment and remuneration

7.12 Approval requirements for appointments and remuneration is to be maintained and kept as the Remuneration Committee Policy.

The Table below is not published in the Constitution but referred to as Annex A or other and incorporated into a Committee and Panel Policy Framework.

Panels and committees shall not exceed 10 persons.
GUIDE ONLY (MATH IS NOT CALCULATED)

Panel and Committee Remuneration Schedule						
auDA	Class	Daily Rate	Half-Day Rate	Hour Rate	Cap (yearly)	
					Daily	Hourly
A	Chairperson	\$ 475.00	\$ 255.00	\$ 55.00	60	500
B	Chairperson	\$ 315.00	\$ 175.00	\$ 35.00	60	500
A	Director	\$ 425.00	\$ 215.00	\$ 55.00	40	300
B	Director	\$ 235.00	\$ 135.00	\$ 40.00	40	300
P & C	Class	Daily Rate	Half-Day Rate	Hour Rate	Cap (yearly)	
					Daily	Hourly
A	Chairperson	\$ 475.00	\$ 255.00	\$ 55.00	60	500
B	Chairperson	\$ 275.00	\$ 155.00	\$ 40.00	60	500
A	Members	\$ 195.00	\$ 95.00	\$ 30.00	20	200
B	Members	\$ 155.00	\$ 75.00	\$ 25.00	20	200
A	Non-Members	\$ 150.00	\$ 75.00	\$ 30.00	20	200
B	Non-Members	\$ 135.00	\$ 55.00	\$ 21.50	20	200

Note: Cap = Budget cap is not to exceed unless exception is made by director's. The schedule is capped at 2.5% increase per annum.

Proposed Constitution wording for Probity Checks

19.1 Probity checks

- 19.2 Probity checks must be undertaken for all staff appointments and;
- 19.3 Probity checks are mandatory for all Director appointments, unless an exception applies.
- 19.4 Probity checks are used prior to providing a brief to the Board, to determine whether an employee or candidate:

- a) is bankrupt or trading insolvent;
- b) has a police record;
- c) has been convicted of an indictable offence;
- d) has been convicted of fraud; or
- e) has been disqualified from acting as a director or acting in the management of a company.

19.5 Mandatory probity checks

- 19.6 The minimum required probity checks are listed below.
- a) National Criminal Record Check.
 - b) Check of the Australian Securities and Investment Commission (ASIC) Register of Persons Banned and Disqualified. A register of persons banned or disqualified under the provisions of the Corporations Act 2001 (Cth).
 - c) Australian Financial Security Authority (AFSA) National Personal Insolvency Index (NPII) check. This database is the public record of personal insolvency proceedings in Australia under the Bankruptcy Act 1966 (Cth).

19.7 Additional probity checks

- 19.8 International Criminal Record Checks are recommended if a candidate has lived in an overseas country for more than 12 months in the past 10 years, or has become an Australia citizen less than 12 months.

19.9 Probity Exceptions:

19.20 Discharged Bankruptcy –

- a) Any person or Director can be appointed and reappointed to the Board provided the candidate or Director has no outstanding or current personal insolvency proceedings in Australia under the Bankruptcy Act 1966 (Cth) and;
 - i. the discharged bankruptcy is greater than 7 years.
- b) Board nominated Committee and Panel members are exempt from probity checks.
- c) Membership is exempt from probity check. (unless subject to Clauses 19.3)

18. Does auDA maintain appropriate mitigation strategies? What additional mitigation strategies should be considered? How should these strategies be assessed?

19. What is the optimal mix of capabilities to expand auDA's cybersecurity preparedness?

20. How should auDA engage with the Government in its management of risks?

My apologies –

Unfortunately, due to work, family and voluntary commitments, I'm out of time to address the remaining questions; I'm happy to submit responses at a later date or discuss them with you.

I do hope I have provided some insight into the issues, problems, and how it came to be and how it may impact the future should auDA remain unchanged. In due course, these important matters for consideration and the decisions that must be made in the interest of all Australians are only going to succeed when everyone involved is willing to accept compromise, in doing so, we can all benefit from continued expansion of the Internet naming system and its personable integration into our lives.

**Regards,
Scott Long.
auDA Member 2017**

ⁱ References

i

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ASX principles paper
<http://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-3rd-edn.pdf>

G20/OECD Principles of Corporate Governance
<http://www.oecd.org/corporate/principles-corporate-governance.htm>

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Evaluating Governance and Market of Country Code Top Level Domain (ccTLD)
http://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1022&context=cppa_capstones

Change Management Best Practices – QLD

https://www.lgnsw.org.au/files/imce-uploads/361/change-management-best-practice-guide-QLD_0.pdf

A Guide to Achieving Corporate and Societal Value

http://www3.weforum.org/docs/WEF_Social_Innovation_Guide.pdf

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<https://www.auda.org.au/pdf/2012iap-final-report.pdf>

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<https://www.auda.org.au/assets/Annual-Reports/2016-17-auDA-Annual-Report.pdf>

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<https://web.archive.org/web/20010812210815/http://www.auda.org.au:80/constitution.html>

auDA Constitution

<https://www.auda.org.au/assets/About-auDA/Constitution/auda-constitution-2013-2.pdf>

ICANN auDA sponsorship agreement

<https://www.icann.org/resources/unthemed-pages/sponsorship-agmt-2001-10-25-en>

Building Better Governance - Australian Public Service (APS)

http://www.apsc.gov.au/__data/assets/pdf_file/0010/7597/bettergovernance.pdf

strategies to mitigate against Cyber Security incidents

<https://www.asd.gov.au/infosec/mitigationstrategies.htm>

spoofing

<https://www.caida.org/projects/spoofers/faq.xml>

IPv6 – The Internet's vital expansion

<https://www.icann.org/en/system/files/files/factsheet-ipv6-26oct07-en.pdf>

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