

Submission to the Australian Government's review of Australia's .au domain management

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Introduction

Thank you to the Department of Communications and the Arts for the opportunity to provide input and feedback on the current management of Australia's .au namespace.

This is a timely and important initiative, for a number of reasons:

- No such formal, public review has occurred since the Government's initial endorsement of the current .au manager, .au Domain Administration Ltd (auDA) in 2000,
- As DoCA notes in its recently issued Discussion Paper¹, the Internet has grown exponentially in the last 17 years and the way Australians interact with the .au namespace has changed dramatically, and
- Turmoil, uncertainty and unprecedented reforms at auDA over the last two years bring in to question the suitability and stability of the current governance model.

By way of background, I have a long-standing interest in the .au space and have engaged in its growth both as a representative of the Australian Government and, later, as a senior employee at auDA.

My previous professional experience includes nearly nine years with auDA, from 2008 to 2017, predominantly as General Manager of International and Government Affairs.

I also worked at the Australian Department of Communications and its various previous incarnations between 2000 and 2008. In that time, I had extensive interactions with auDA as a primary liaison officer and auDA Board observer, as well as representing Australia in international Internet Governance matters, including as Secretariat of the Internet Corporation for Assigned Names and Numbers (ICANN's) Governmental Advisory Committee (GAC)² and later as

¹ <https://www.communications.gov.au/file/32286/download?token=m3VngNMO>

² <https://gac.icann.org/>

Australia's delegate to the GAC. I have also participated in numerous ITU and UN fora including WCIT³ and the Internet Governance Forum⁴, and established the Australian IGF⁵.

From the Department's Discussion Paper, I note that *"...the purpose of this review is to ensure that the management framework of auDA remains fit for purpose and the .au domain is serving the needs of the online Australian community. Consideration of auDA's governance arrangements and an assessment of the terms of endorsement will help determine whether Australia's top-level domain, .au, is being managed consistent with Government and community expectations."*

I welcome this review and believe that it is incumbent upon the Department, having initiated this process, to pay close heed, and respond to the comments and complaints of stakeholders, both over the last two years and in direct response to the Discussion Paper. While I acknowledge the Department (or the Government as a whole) has no direct ability⁶ to direct auDA to take certain remedial actions, it can and should issue clear recommendations for reform based upon its own observations as a stakeholder and the views of a broad cross-section of the relevant community.

³ <https://www.itu.int/en/wcit-12/Pages/default.aspx>

⁴ <https://www.intgovforum.org>

⁵ <https://www.igf.org.au/>

⁶ With the exception of invoking relevant powers under the Telecommunications and ACMA Acts.

Responses to questions

auDA's roles and responsibilities

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

auDA's roles and responsibilities are clearly defined in the organisation's Constitution⁷. These roles remain as appropriate today as they were at the time of auDA's foundation. In summary, auDA's role is to maintain the stable and secure operation of the .au namespace, while also facilitating competition and consumer choice. auDA is also tasked with ensuring regulatory compliance, setting and reviewing policy frameworks and participating in relevant international fora.

To cut through the keywords, auDA's role is simple: run the .au namespace at world's best practice standards. That is, to ensure the space is competitive, customer-focussed, stable and secure. No more and no less. These expectations accord with international standards for ccTLD managers.⁸

The most important point is that auDA must execute these duties in the best interests of the Australian Internet community – meaning for all users and suppliers based in Australia.

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

Yes, they do. As stated above, while the Internet landscape has changed significantly in 17 years, the fundamental role of a ccTLD manager has not. These structures for the management of the DNS have been clearly defined since before auDA's establishment. For example, RFC 1591, describing a model for Domain Name System Structure and Delegation, was drafted in 1994.

One could draw a comparison with the banking and financial services sector. Technologies, companies, mechanisms and services have evolved, but the sector remains underpinned by a number of key fundamentals in terms of regulation and operation that are not often changed.

Noting all of this, I believe that the principles behind Government's terms of endorsement, most notably the need for auDA to operate in an inclusive, open, stable, accountable and transparent manner, remain appropriate. The

⁷ <https://www.auda.org.au/about-auda/our-org/constitution/>

⁸ For example: <https://www.ietf.org/rfc/rfc1591.txt>

performance of the ccTLD manager should be assessed against these bed-rock principles, rather than questioning whether the principles themselves should be changed.

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

Yes. See my response to question 2. The community expects to be included and informed by an accountable, open and transparent ccTLD manager.

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

There are certain events that it is prudent for a ccTLD manager to monitor and participate in, as they have the potential to affect the status quo. For example, between 2014 and 2016, auDA participated in the process that led to the transition of international stewardship of key internet functions from the U.S. Government to the global stakeholder community.⁹ auDA has also represented Australian interests at United Nations events such as the 2012 World Conference on International Telecommunications¹⁰, where a number of nations pressed to establish a greater, pre-eminent role for governments in Internet Governance.

Only with relevant expertise and connections within the stakeholder community can auDA effectively assist in facilitating (as in the IANA transition) or preventing (as at WCIT) external developments that have the potential to alter the ecosystem within which ccTLD managers operate.

Corporate governance

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

Good corporate governance at auDA should draw upon recognised sources (including, but not limited to, those listed in the Department's discussion paper) and tailor that general advice to the ccTLD environment. That is, adapt general principles to reflect the provisions of auDA's Constitution, its objects and functions, and the terms of endorsement from government.

Every element of auDA's corporate governance should tie back to the broad goals of openness, accountability, not-for-profit operation and stakeholder

⁹ <https://www.icann.org/stewardship>

¹⁰ <https://www.itu.int/en/wcit-12/Pages/default.aspx>

accountability. I believe this is an area in which auDA has been relatively weak in the last few years.

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

My answer to question 5 covers this issue. While appropriate, the ASX principles are not sufficient by themselves. I would also note that auDA has many international counterparts, many with similar corporate law frameworks, that it could seek guidance from to ensure that it achieves best corporate practice in a ccTLD-specific context.

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

Yes, reform should be considered. Reform should occur in key areas of Board structure and qualifications, development and effective communication of strategic objectives, accountability to the community, general governance and organisational culture. These areas accord with a number of themes in the government's discussion paper.

An underlying theme in all of these areas is the communication of roles, responsibilities and strategic aims to stakeholders. I believe it is in this area that auDA currently suffers the greatest deficit. A number of recent Freedom of Information requests, online complaints and formal letters to the auDA Board seeking formation are a sign that auDA is not communicating as effectively and openly as it should.

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

No. I believe this is one of the greatest structural and governance failings at auDA at the moment. The Board was originally constructed with three membership classes, however "Representative Associations" were eventually removed due to a lack of membership (and therefore Director candidates) in that membership class. With three distinct membership groups represented on the Board, there was less potential for capture and the arrangement avoided a directly adversarial Supply vs Demand situation.

Under the current Board structure, member-elected Directors are over-represented, occupying 8 of 11 seats (not counting the non-voting seat held by the CEO). When considering policy matters that may liberalise the .au namespace

there are obvious conflicts of interest that can arise, particularly within the Supply class.

The situation is worsened by auDA's relatively small membership base, which has approximately 250 Demand class members and only approximately 50 Supply class members. Once again, this greatly increases the chance of capture. For example, a Supply class stakeholder may operate 4 or 5 "Resellers" of .au names and could register each as a member – for only \$110 per year each. Anecdotal evidence already shows that some degree of "branch stacking" has happened in this way, in the past.

There is also a lack of clarity about the boundaries of each class and has resulted in the transition of auDA Directors from representing one class to another (most recently at the 2017 AGM).

This uncertainty, the lack of a deep stakeholder pool and over-representation of member-elected Directors have all contributed to a sub-optimal Board structure.

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

Reform should not only be considered, but should also be initiated as a matter of urgency. Governance and structure issues are over-riding matters and affect all other activities of the organisation.

The community should be extensively consulted with the aim of immediately reforming and restructuring the auDA Board. Although I do not wish to be prescriptive regarding a preferred Board model, I would suggest that a greater number of Independent Directors are required. These Directors should hold the balance of voting power. By widening this group, auDA will be able to harness the experiences of a greater range of people, providing the organisation with, for example, broader governance, financial, legal and security skillsets.

The number of member-elected Directors should be reduced (to no more than 4 in total) and the distinction between Supply and Demand should be removed.

With the increased importance of Independent Directors, the process of their selection should be opened up to ensure greater stakeholder involvement and input. Selection by existing Board directors has proven a flawed process and is not appropriate going forward. One useful model in this regard is ICANN's Nominating Committee¹¹, that represents a range of community sectors and gathers annually to select individuals for various leadership roles. Adopting a

¹¹ <https://www.icann.org/resources/pages/nomcom-2013-12-13-en>

similar system would greatly increase transparency, accountability and stakeholder satisfaction.

Stakeholder engagement

10. Who are auDA's stakeholders?

auDA's governance documents clearly outline its stakeholder community. Most broadly, auDA is answerable to "the Australian Internet community" – which, in 2017 is very nearly everyone. At a more granular level, stakeholders include the registry operator, industry participants such as registrars and resellers, domainers, relevant business and community groups / sectors, the Australian Government and its various agencies and domain registrants.

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

In engaging stakeholders, auDA's guiding principle should be one of maximum transparency and openness. auDA should make all efforts to reach out to stakeholders, both in regular communications and in the announcement of (and consultation on) major policy or operational initiatives. This should take the form of regular community events, such as member briefings, town hall meetings and the recently axed Australian IGF.

In addition, auDA should embrace the latest communications technologies. auDA should no longer be limited to face-to-face meetings that are necessarily inaccessible to some members. Video- and tele-conferences, webinars, social media, forums, mailing lists and collaborative workspaces are widely used by ICANN at a global level and should be similarly embraced by auDA.

12. Are auDA's stakeholder engagement processes effective?

No, I do not believe current processes are effective. auDA only periodically issues statements / updates on its website. The newly-established members' forum is a closed space and poorly utilised. Regular newsletters are welcome, but need to provide much more detail than short updates. auDA also only uses social media sporadically, typically re-tweeting others' messages on Twitter.

13. Is a transparency and accountability framework effective?

Generally, transparency and accountability frameworks are an excellent idea in the Internet industry. They enshrine the fundamental principles of openness and engagement of all stakeholders. However, auDA's current levels of transparency

and accountability are very poor, having taken a backward step in the last two years. As noted above, communications are sporadic and seem to take the form of announcements and news clips, rather than engaging and informing members on a regular basis. auDA's Board Minutes and working documents are rarely made available in a timely fashion and with adequate detail. The Minutes, in particular, are now heavily redacted, with many key discussions occurring *in camera*. I do not accept that privacy, security and operational considerations outweigh the need for openness and these documents should be restored to at least the same quality as auDA issued for 15 years.

Membership

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

As I alluded to in my response to Question 8, I believe that auDA's current membership structure is woefully inadequate, undersized, unreflective of the stakeholder community and prone to capture.

While anyone can register to become a member, uptake has been low, benefits are few and the process is not closely tied to registering a domain name.

That said, I believe a robust, representative membership model is still the best option for .au – it has simply not been executed well. Alternatives such as single-member model or a Board comprised of sector representatives (consumer interests, competition watchdog etc) would represent too radical a departure from the current bottom-up, community-focussed structure. (As an aside, these constituent interests could be represented by an increased number of Independent Directors).

auDA must urgently expand and simplify its membership base. A viable model exists in Canada's .ca, where every domain registrant can opt-in to becoming a member at the time of registration. This has not automatically resulted in millions of members, but rather a volume in the thousands, which can be managed efficiently while also decreasing the risk of capture.

In the further interests of balanced representation and avoiding capture, the distinction between Supply and Demand should be abolished. Any increase in membership will inevitably worsen the imbalance between volumes of membership in each class, as it is unlikely Supply will expand dramatically.

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

I believe I have covered this in my response to Question 14. The membership structure does not currently reflect nor represent the broad stakeholder community and, as such, does not support auDA in fulfilling its roles and responsibilities (which include representation and accountability).

Security of the .au domain

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

17. What is best practice for DNS administration?

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?

As I cannot profess to detailed expertise in cyber-security, particularly relating to secure DNS operations, I have chosen to answer these questions collectively rather than individually.

I note that question 18 is very difficult for any stakeholder to answer – auDA's detailed security mitigation strategies are kept confidential and, without detailed insider knowledge, the question is problematic.

I will note that over the years I followed or worked at auDA, the organisation always strove for best practice in DNS administration. This was based on direct and meaningful engagement in relevant fora, including the standard-setting body IETF, and ICANN's Security and Stability Advisory Committee and Technical Days. auDA also participated in a number of international cyber-exercises and developed meaningful relationships and agreements with relevant stakeholders. The .au infrastructure has numerous redundancies built in, overseas server hubs and mutual assistance arrangements with other ccTLDs.

While auDA's technical preparedness is not of concern, I am worried that by seemingly adopting a broader cyber-security position, auDA is distracting itself from the key function of maintaining a stable and secure .au namespace. In this day and age, auDA is a part of the security community but has a small role to play and should focus entirely on security of the DNS, while monitoring developments

in related spaces. Given its limited resources, it should not become an entity focussed exclusively, or prominently, on security.

Final Comments

Overall, I believe that auDA is at a critical juncture in its existence. While the organisation evolved slowly for 15 years, it did so in a methodical and calculated manner. It developed an excellent international reputation and improved previously tense relationships with many domestic stakeholders, while also building new ones.

In the last two years, there has been violent upheaval and massive turnover of expertise, growing uncertainty over strategic direction, weakened accountability and transparency and a resultant increase in stakeholder dissatisfaction and negative media reporting.

I believe auDA has been captured by a small cabal with specific interests, that have only taken actions and made appointments to solidify their positions. This must be undone, and the organisation must return to its original best practice principles.

DNS-specific expertise needs to be re-engaged, stakeholder relations mended, and meaningful international engagement resumed.

This Departmental review provides an opportunity to commence such reform. Informed by the considerable stakeholder input it has gathered, I believe DoCA should take affirmative action (much like NOIE did back at the formation of auDA) and develop a strong and clear set of observations / recommendations for auDA to address.

I do not believe in complete re-construction of the management of .au, however if auDA is unable or unwilling to enact these reforms, then the Government should consider stronger options that are available to it.