

**EXPLANATORY MEMORANDUM
to and forming part of**

**NOTICE OF ANNUAL GENERAL MEETING
of
.au DOMAIN ADMINISTRATION LIMITED**

**to be held at 2pm on Monday 17 October 2011
at Maddocks, Level 6, 140 William Street, Melbourne 3000**

Agenda Item 4: PROPOSED AMENDMENTS TO THE CONSTITUTION

Background

auDA's Directors propose three packages of amendments to auDA's constitution.

1. The first package of amendments is to introduce a new 'Life Member' Class of membership.
2. The second package of amendments is to streamline the process for removing a member who has not paid their membership fees.
3. The third package of amendments is largely of a 'housekeeping' nature to remove redundant provisions from the Constitution that are no longer operative and to clarify possible ambiguities and inconsistencies in the application of provisions.

A copy of auDA's current constitution is available from auDA's website at <http://www.auda.org.au/about/constitution>

A copy of auDA's constitution marked up to show how it will look if all proposed amendments are made is available from auDA's website at <http://www.auda.org.au/agm/agm2011-notice>

Voting on the resolutions

Each package of amendments will be proposed as a separate special resolution.

If the special resolution to implement a package of amendments is passed by the required majorities, then all amendments in that package will take effect.

The vote on each resolution will be conducted separately. One or more special resolutions may be passed even if the other(s) are not.

Under clause 16.2 of auDA's constitution, a 75% majority of members in each class must vote in favour of a special resolution in order for it to take effect.

The text of the Special Resolutions is set out and the purpose and effect of each is generally described below.

Recommendation by Directors

The Directors of auDA recommend that the members pass each of the proposed resolutions. This document explains each of the proposed resolutions below.

1. PACKAGE ONE: Introduction of "Life Member" Class of Members

1.1 Summary of proposed amendments

auDA's Board considers that it is appropriate to introduce a class of Life Members of auDA to recognise outstanding contributions made by certain individuals to the .au ccTLD.

It is proposed that Life Members will be:

- 1.1.1 individuals who the Board considers have made an outstanding contribution to the .au ccTLD;
- 1.1.2 appointed by the Board by ordinary resolution;
- 1.1.3 exempted from the obligation to pay any Membership Fees or other fees in relation to their Life Membership or any obligation to make any contribution upon the winding up of the company under clause 7 in relation to their Life Membership;
- 1.1.4 entitled to receive notice of, attend and speak at any General Meeting of auDA;
- 1.1.5 not entitled to vote on any matter (including any election) at any General Meeting; and
- 1.1.6 able to become or retain membership of auDA in any other class of auDA for which they are eligible and exercise all of the rights and be subject to all of the obligations of that class.

1.2 Proposed Special Resolution

RESOLVED as a Special Resolution that the Constitution be amended by:

1. Inserting after the definition of "Demand Class Members" in clause 1.2 the following:
 - "Life Members"** means those Members who have been admitted to membership pursuant to clause 9.6.
2. In clause 9.3:
 - 2.1 at the end of paragraph a. - deleting the word "and";
 - 2.2 at the end of paragraph b. - deleting the full stop and adding ";and";
 - 2.3 after paragraph b. - adding as a new paragraph the following:
 - c. Life Members appointed by the Board under clause 9.6.
3. Deleting clause 9.6 and its heading and replace with:
 - 9.6 Life Members of auDA**
 - a. From time to time the Board may by ordinary resolution appoint one or more individuals who the Board considers have made an outstanding contribution to the .au ccTLD as Life Members of auDA.
 - b. Despite any provision of this Constitution to the contrary a Life Member of auDA:

- i. is exempted from any requirement to pay any Membership Fees or other fees in relation to their Life Membership of auDA or any obligation to make any contribution under clause 7 in relation to their Life Membership of auDA;
- ii. may receive notice of, attend and speak at any General Meeting of auDA;
- iii. is not entitled to vote on matter (including any election) at any General Meeting by virtue of their Life Membership of auDA; and
- iv. may also be a member of auDA in another class for which they are eligible and exercise all of the rights and be subject to all of the obligations of that class.

2. PACKAGE TWO: Streamlining removal of Members for non-payment

2.1 Summary of proposed amendments

auDA's Board considers that the current mechanism for removing members who have not paid their membership fees, which takes a minimum of four months, may be improved.

Under the current process set out in clauses 12.3 and 13 of the Constitution:

- 2.1.1 a Member whose fees are overdue by more than 3 months may be sent a notice by the Secretary;
- 2.1.2 the Member's rights are suspended from the date of the notice, but are reinstated if and upon payment of the arrears is received.
- 2.1.3 If the fees are not paid within a further month of the notice of default, the Board may terminate the Member's membership under clause 13.2.

The proposed amendment is to amend the period referred to in paragraph 0 from three (3) months to one (1) month.

2.2 Proposed Special Resolution

RESOLVED as a Special Resolution that the Constitution be amended by, in each of clause 12.3(a), 13.2(a) and 13.2(b), replacing the words "three (3) months" with the words "one (1) month"

3. PACKAGE THREE: Housekeeping and Clarifying Amendments

3.1 Summary of proposed amendments

auDA's Board has reviewed the Constitution and considers that there are a number of redundant provisions that no longer have effect and which detract from the clarity of the Constitution. Some terminology used in the Constitution is no longer current and there are two provisions whose meaning is potentially ambiguous or inconsistent with the law.

3.1.1 "Housekeeping" Amendments

- (a) Replacing definition of and references to the "Corporations Law" with "Corporations Act" and deleting paragraph j. of clause 1.3;
- (b) Removing definitions of "Initial Board" and "Interim Board";
- (c) Removing redundant provisions in clauses 18.2 and 19.3 relating to the structure of the Board during the transition phase after the removal of the Representative Association Class of Members; and
- (d) Removing redundant provisions in clause 19.1 and 19.2 relating to the initial Board and election of the first Board.

3.1.2 Clarifying Amendments

- (a) In clause 11.2 replacing the words "before a general meeting" with "being considered by a general meeting" to remove the potential ambiguity.

The original purpose of clause 11.2 when inserted in 2003 was to prevent voting arrangements in relation to matters including elections being considered by a general meeting.

The purpose of this amendment is to clarify that the prohibition applies to voting arrangements in respect of matters being considered by a general meeting, irrespective of the timing of when the material benefit may be given or received.

- (b) In clause 21.4 deleting the last sentence of the clause which provides that a Director may make a decision in the best interests of the Legal Person which appointed the Director.

This sentence is inconsistent with the preceding sentences of clause 21.4 and the obligations of a public company's directors under the *Corporations Act* 2001 and the common law, to exercise their powers and discharge their duties for a proper purpose and in good faith in the best interests of the corporation as a whole.

Provisions such as the text of this sentence are not uncommon in proprietary limited (Pty Ltd) company constitutions, where shareholders have the right to appoint and remove directors. This provision may have been inadvertently included when the constitution was first drafted.

3.2 Proposed Special Resolution

RESOLVED as a Special Resolution that the Constitution be amended by:

1. In clause 1.2:
 - 1.1 deleting the definition of "Corporations Law" and replace with the following:

"Corporations Act" means the *Corporations Act* 2001 (Cth);
 - 1.2 deleting the definitions of "Initial Board", "Interim Board" and "Representative Association Class Members".
2. Deleting the words "Corporations Law" wherever appearing and replacing them with the words "Corporations Act".
3. In clause 1.3:
 - 3.1 at the end of paragraph h. – deleting the full stop and adding ";and";
 - 3.2 at the end of paragraph i. – deleting ";and" and replacing with a full stop; and
 - 3.3 deleting paragraph j.
4. In clause 11.2 – deleting the word "before" and replacing it with the words "being considered by".
5. Deleting clause 18.2 (but not its heading) and replacing the clause with the following:

The Board shall comprise:

 - a. four (4) persons elected by the Supply Class Members;
 - b. four (4) persons elected by the Demand Class Members;
 - c. the CEO of auDA as a non-voting member of the Board; and
 - d. not more than three (3) Independent Directors appointed by the elected Directors, for terms not exceeding two (2) years each.
6. Deleting Clause 19.1 and its heading and replacing the heading with "Not Used".
7. Deleting Clause 19.2 and its heading and replacing the heading with "Not Used".
8. Deleting Clause 19.3 (but not its heading) and replacing the clause with the following:

At each AGM of auDA the following Directors shall retire from office:

 - a. two (2) of the Directors elected only by the Supply Class Members;
 - b. two (2) of the Directors elected only by the Demand Class Members.

In each of the separate groups of Directors, the Directors to retire are the Directors who have been the longest in office since their last election. As between two (2) or more who have been in office an equal length of time, the Director or Directors to retire shall, in default of agreement between them, be determined by lot.

auDA may fill any Director's office so vacated by re-electing the Director or by electing some other natural person to fill the vacancy. A retiring Director is eligible for re-election, provided that no Director may retain office for more than two (2) years, without being subject to re-election. An election of Directors shall take place each year.

9. In clause 21.4 - deleting the final sentence.

