



8 May 2019

Ms Vicki Middleton
First Assistant Secretary
Department of Communication and the Arts

By email

Dear Ms Middleton,

DoCA's Non-voting Observer Role on the auDA Board

I refer to your memorandum dated 7 May 2019.

The role and conduct of the board observer, as outlined in your memorandum, is generally acceptable to auDA. Furthermore, We agree that some form of board oversight is desirable while auDA is implementing the agreed reforms. However, the following matters should be clarified to ensure there is a shared understanding of these governance protocols.

Discontinuation of Board Observer Role

We note your acknowledgement that the board observer role may be discontinued once auDA has successfully completed its reforms. It is our expectation that the board observer role will be discontinued once the reforms are completed, and ideally will be discontinued even earlier.

Specifically, it is my understanding that the board observer role will be discontinued when the Department is satisfied that an orderly board process has operated for a period of time. This point was noted in my feedback as part of the Review of the .au namespace, and this point was discussed (without controversy) with Richard Eccles (Deputy Secretary, DoCA) and myself on a number of occasions.

Even after the board observer role has been discontinued, we would welcome an appropriate representative from DoCA providing an update to the board from time to time.

Shadow Director

We remain concerned that the board observer, as described in your memorandum, may be considered a 'shadow director' under the Corporations Act. This is a concern for auDA, in terms of its role as the independent authority mandated by both ICANN and the Commonwealth to manage the .au namespace, and also for the risk that may attach to the board observer and the Department more generally. Without determining the shadow director issue, it would be good practice for the board observer to declare any material personal interest, as is required of directors under the Corporations Act. The chair will request each director, and the board observer, to make such a declaration at each meeting of the board.

Conduct in board meetings

We note your requirement that the board observer only attend board meetings for agenda items that relate to the Review of the .au namespace.

To facilitate an orderly board discussion, the chair will seek to ensure (as far as practicable) that these items are grouped together at the beginning of a board meeting, together with the standing agenda item being an update on government activity relevant to auDA. As you would appreciate, the board observer will be required to accept the chair's direction to leave the board meeting when a matter is deemed to represent a potential conflict with the board observer's role, or if the matter is not relevant to the Review of the .au namespace.

Should the board observer wish to ask a question, the question is to be directed to the chair.

Publication of your memorandum

We agree that auDA should publish your memorandum and this response, as this is consistent with auDA's Transparency and Accountability Framework.

I look forward to working with the Department to implement these governance protocols.

Your sincerely



Chris Leptos AM
Independent Chair
.au Domain Administration Ltd