

Department of Communications and the Arts Feedback

Feedback: Nominations Committee Charter

Recommendations	Review feedback (Areas where document does not appear to meet / support requirements of the review)	Guidance / questions (Dept welcomes views on identified issues)	General Observations / Context	auDA response
<p>Rec 7: That auDA reform its governance arrangements to ensure:</p> <p>(a) That the nomination of all Board positions is undertaken by a Nomination Committee comprised of representatives from industry, the business sector, consumers, an auDA member representative, and the Commonwealth, represented by the Department.</p> <p>(i) in establishing the Nomination Committee, the auDA Board will undertake a consultative merit-based process to identify members, with a Department representative as a panellist, and the Department to select the committee members from this process</p> <p>(ii) the Nomination Committee will undertake probity and disclosure assessments and develop a skills matrix to ensure new directors have an appropriate mix of technical and corporate skills and industry experience</p> <p>(iii) the Nomination Committee will shortlist: member candidates to stand for election by members; and independent candidates to stand for election by the Board</p> <p>(iv) however, the first Board, following the reform of</p>	<ul style="list-style-type: none"> The Charter does not give effect to the Department agreeing to the shortlisted nominees of the first board (Rec 7aiv). The Charter does not reference a consultative merit-based selection process for Committee members (Rec 7ai). Rec 7d requires that within 12 months the Board is reconstituted to ensure all appointments meet the requirements of Rec 7 of the .au Review. A requirement of the Nomination Committee will be to support this reconstitution. This is not reflected in the Charter. For appointment of initial Nomination Committee members, the Board will appoint based on the recommendation of the Commonwealth (s2.2), while for appointment of subsequent committee members (s2.3) the Board will appoint following consultation with the Commonwealth. The process for appointment of subsequent Nomination Committee members should be the same as for initial committee members. 	<ul style="list-style-type: none"> The Charter states that the Committee can review and recommend to the Board the size and composition of the Board (3.3.b). How does this align with Rec 7c that specifies that the majority of the Board must be independent? Can auDA provide further information regarding how the Nomination Committee criteria provided in the 3 September board papers operate with the eligibility criteria in the Nominations Committee? Section 2.6(a)(iii) specifies how the Board can remove a committee member. Can auDA advise how 'prejudicial to the interests of the company' defined? Does this rule apply to the Government representative? The general eligibility criteria for Committee members (s2.5) would benefit from inclusion of reference to persons with 'a demonstrated understanding of the global internet governance landscape' or similar. Section 2.2 (a)(i) of the proposed Constitution states that the Governing Members will be the members of the Nomination Committee – how will any conflict of interests be managed? What are the procedures for Committee minutes be published? 	<ul style="list-style-type: none"> The Department anticipates correspondence from auDA providing assurance and clarification regarding the nomination committee, including composition and timeframes for establishment. The Department's feedback has considered this correspondence. During the transition period, the Nomination Committee will be the Governing Members Best practice would support transparency measures for the Committee including publishing minutes from committee meetings. 	<ul style="list-style-type: none"> Our response to the Department's comments on recommendation 7aiv is set out above under the heading "Attachment A – Constitution". We will amend the Charter to specifically include a provision to this effect. Clause 2.3(b) of the Charter provides that the Committee will undertake a consultative merit-based process to identify potential Committee Members who satisfy the eligibility criteria. The mechanism for reconstitution of the Board to comply with recommendation 7 is set out in clause 25.2 of the constitution, as described above under the heading "Attachment A – Constitution". Initial Committee Members are to be appointed based on the recommendation of the Department because the Committee will have to first be set up before the process in clause 5.3 of the new constitution for appointment or removal of members of the Committee following notification and consultation with the Department can be applied. The process in clause 5.3 of the new constitution permits the Department to either recommend (or "approve") proposed candidates or to elect not to comment on proposed candidates. This process was included to provide maximum flexibility for the Department in managing the process, however it was not practical to follow a similar process for the initial Committee. Please confirm whether the Department approves this mechanism for future appointments, or if the Department prefers a requirement that the Department specifically recommends the appointment of all Committee Members. Clause 5.1 of the new Constitution outlines the board composition. The Nomination Committee must adhere to this clause, however if the Nomination Committee considers that this Board structure is no longer appropriate, it would be open to the Nomination Committee to recommend to the Board amendments to the constitution. This is important because auDA must continue to review and assess its governance structure to ensure that it remains fit for purpose in a changing environment. Clause 2.6.a states that "with the exception of the Chairperson and the Government representative". Consequently, Clause 2.6.a.iii does not apply to the Government Representative. The concept of "prejudicial to the interests of the company" has been included to permit the Board (in consultation with the Department) to act where a Committee Member is acting improperly. It is expected that the power to remove a Committee Member will be exercised sparingly, however it was considered important that Committee Members could be removed from their position if there were serious misconduct.

<p>auDA's governance arrangements will be selected according to the skills mix identified by the Nomination Committee with shortlisted nominees agreed with the Department.</p> <p>(D) that within 12 months the Board is reconstituted to ensure all appointments meet this criteria.</p>				<ul style="list-style-type: none"> • Clause 2.5 relates to "General Eligibility Criteria". auDA and the independent recruitment agency are currently working with the Department on definitions consistent with 'Figure 4 – Proposed structure of the Nomination Committee' and the specific criteria relevant to each Committee representative. "Demonstrated understanding of the global internet governance landscape" can be included in these specific definitions. This is consistent with Clause 2.4.d of the Charter. • The role of the Nomination Committee is to recommend candidates for appointment or election to the Board. The most significant power of the members of a company is the power to elect or remove directors. There is unlikely to be a conflict of interests between a Committee Member's role on the Committee and the Committee Member's status as a Governing Member. However, conflicts may arise in other ways, and the Committee following its inception may develop standards and policies to address perceived or actual conflicts of interest, in accordance with best practice. • If the Nomination Committee does not develop a management of conflicts of interests' policy, clause 8.4 of the new constitution provides that the meetings and proceedings of the Committee will be governed by the rules in the constitution which regulate the meetings and proceedings of the Board (including conflict of interest policies). • Consistent with ICANN's Nomination Committee processes, it is not anticipated that Committee minutes will be made public.
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