



Australian Government

Department of Communications and the Arts

21 December 2015

Australia's comments on CCWG-Accountability third draft report

The Australian Government welcomes the opportunity to comment on the Cross Community Working Group on Enhancing ICANN Accountability third draft report. We appreciate the significant effort involved in developing this proposal, and we wish to thank the volunteers for the many hours they have devoted to this work, their perseverance in seeking solutions to challenging issues, and the consultative approach they have maintained throughout the process.

Australia remains strongly committed to multi-stakeholder internet governance, and we note that the third draft proposal is based on achieving community consensus and builds upon ICANN's existing structures. We understand that parts of the proposal are conceptual in nature, and we reserve the right to make further comments as the proposal is finalised. In addition to any comments that the GAC may make on the proposal, we offer the following remarks:

Stress Test 18

We consider that governments have a vital role in providing public policy advice, and we consider that the GAC's role in providing internet-related public policy advice is fundamental to the multi-stakeholder model.

We support the proposed Bylaws amendment and consider that it will prevent a situation where the Board is required to negotiate with the GAC on the advice of some governments, when it is opposed by other governments.

Under the current Bylaws, the Board is required to give consideration to all GAC advice and we do not consider that the proposed amendment changes this. Instead, it defines how ICANN will treat the advice it receives, and ensures that the requirement to find a mutually acceptable solution will only be applied to advice when there is no formal objection.

We strongly support maintaining the GAC's current practice of developing consensus-based advice, which is understood to mean the practice of adopting decisions in the absence of any formal objection, and we consider that the Board should only be required to enter into a formal consultation process when it rejects advice that is based on this definition of consensus.

As ICANN's policies apply globally, it is appropriate that GAC advice is based on consensus of all GAC members. Consensus decision-making ensures that the views and concerns of all GAC members are taken into account, and means that a majority of governments cannot disregard the positions of other governments and impose their views on the minority.

In accordance with the current procedure, we consider that where consensus is not possible, the GAC Chair should convey the full range of views expressed by GAC members to ICANN's Board. This acknowledges that there may be times when the GAC wishes to provide advice that comprises more

than one opinion, and it ensures that proper deference is given to advice formed when all government are in agreement.

Human rights

The Australian Government supports an open internet where people can freely access information and express their ideas. We strongly support protection of and respect for human rights, and we affirm that the same rights people enjoy offline also apply online. As stated in our public submission on the CCWG Accountability second draft proposal, we do not in principle oppose the inclusion of a reference to human rights in ICANN's Bylaws. However, as there is not yet an agreed definition of ICANN's role in relation to human rights, we suggest that this issue is best deferred to Work Stream 2 to allow the community time to consider further.

In particular, two elements of the proposal stand out as concerning:

- It is not clear what is meant by "ICANN will respect internationally recognized human rights". Not all countries have adopted all UN Human Rights Treaties, and there is no international agreement on a number of human rights issues (for example, ensuring non-discrimination on the basis of sexual orientation and gender identity; and the balance in ensuring privacy, security and freedom of expression both online and offline).
- It is also not clear what is meant by 'applicable law' – which laws will apply and who gets to determine that?

Until there is agreement in the community on what rights are being protected and what ICANN's obligations are in respect of these rights, the Bylaw is open to interpretation. We do not consider that it is necessary to agree to a Bylaw (or an interim Bylaw) describing ICANN's commitment to human rights before the IANA transition takes place. We consider that any such Bylaws should not be included until the community has resolved these issues.