Comments on the Draft Final Report of the ICANN Board Review Working Group

November 2009

.au Domain Administration Ltd (auDA) is the not-for-profit organisation endorsed by the Australian Government to administer the .au domain space under an industry self-regulatory regime. auDA is a long-standing, active participant in ICANN's country code Names Supporting Organization (ccNSO).

auDA welcomes the opportunity to comment upon the draft final report of the ICANN Board Review Working Group. Our comments have been divided into those relating to specific recommendations of the draft final report and more general observations about this and other ICANN review processes.

Key Points

- The Board Review Working Group's dismissal of independent, expert, external advice regarding the key issue of Board size:
    - Runs counter to the draft advice provided by the Working Group in earlier interim reports;
    - Is inadequately explained and reasoned in the WG's draft final report;
    - Is based on the current Board's "extremely high workload" – though it is doubtful the ICANN Board will ever be "less busy";
    - Ignores the option of conducting further research into possible alternative Board models; and
    - Fundamentally brings into question ICANN's organisational commitment to review and reform processes.

- There is inherent long-term value in reducing the size of the ICANN Board and auDA encourages the WG to recommend further investigation into possible Board structures.

- It is vital that ICANN and its community members resist institutional inertia in undertaking review processes and considering significant organisational changes.

- Review processes should be coordinated, timely and effective. They should also be afforded the genuine support and engagement of the whole ICANN community.

Specific Comments on the ICANN Board Review WG's final draft report

auDA notes the observations of other commentators and the Board Review Working Group regarding the independent external reviewers' (Boston Consulting Group and Colin Carter & Associates) experience providing consultancy services for predominantly "for-profit" organisations. However, this observation alone does not justify the Working Group's complete dismissal of a number of the reviewers' recommendations.

ICANN is a unique entity that shares similarities with both traditional "for profit" and "not for profit" structures. However, it is directly analogous to none. The external reviewers were explicitly required by the review's Terms of Reference to factor ICANN's unique structure and processes when developing their recommendations and auDA believes ICANN can adopt many without compromising the Board's geographical, cultural and stakeholder diversity.

The Board Review WG has significantly amended its position regarding "Recommendation #1: Reducing Board size" between its interim (February 2009) and draft second interim (June 2009) reports and the draft final report.

While, previously, the majority of Working Group members had favoured a reduction in Board size, all but two members supported the retention of the status quo in the draft final report.

Even more significant is the Working Group's strongly-worded observation that "*the reviewers' recommendation to adopt major reductions of the size of the Board was inappropriately based on practices in the corporate sector*".

This demonstrates precisely how much the Working Group's position has changed and such a comment only serves to bring into question ICANN's commitment to its review processes, this review's Terms-of-Reference, and – inappropriately – the expertise of the external reviewers.

The WG's recommendation runs counter to reviewers' clear advice that a 21-member Board is too large, and the surveyed views of two-thirds of ICANN's Board directors and 85% of senior management who believe that the current Board size does not work satisfactorily.[1]

Despite diverging so significantly from expert recommendations, the Working Group's reasoning – citing ICANN's high workload and the Board's style of

_____

[1] http://www.icann.org/en/reviews/board/report-02nov08-en.pdf

operation – is only afforded a very general and brief explanation and requires further expansion.

In fact, between its interim and final reports, the WG has changed its position on a number of issues (format of Board Minutes, remuneration for AC and SO Chairs etc). These changes reflect reconsiderations that are likely based upon strong community opposition to initial proposals and should therefore be borne out further in the final report.

For the Working Group to largely adopt Recommendations 2, 4, 5, 6, 7, and 8 and note that recommendation 3 has already been actioned, without supporting the primary, most significant recommendation that these others help facilitate, brings into question why such a review is being undertaken in the first place. If the WG endorses a suite of current and planned changes that will help improve workload levels, strategic balance, and overall Board effectiveness, why stop short of delivering full reform?

While organisational improvement should be an incremental process, an absence of change to the core of ICANN's operations means all other refinements become largely peripheral and superficial.

auDA acknowledges that the Board is currently enduring a heavy workload. However, it is difficult to foresee a circumstance where the Board will ever experience a significant reduction in expected output. Reforms and a more strategic focus will help, but, if not now, when will be a good time for change? Furthermore, Board structural change is a significant undertaking – it is not likely to take effect in the coming months while post-JPA, new gTLD and IDN fast-track implementation processes are underway.

Many stakeholders passionately defend the Board's size, citing the need for geographic, cultural and stakeholder diversity. However, the need for structural effectiveness should not be completely dismissed. The goals of efficiency and representational diversity can, and must, be balanced.

auDA sees significant merit in a reduction in directors on the ICANN Board and strongly encourages the Board Review Working Group to recommend immediate, further investigation into possible Board structures, rather than deferring such a review for at least three years. The WG's current recommendation would only serve to ensure that no structural changes occurred at the ICANN Board level until at least 2014. Furthermore, a 3-year

blanket ban on further review is also inconsistent with ICANN's obligations under the recently-announced Affirmation of Commitments. [2]

Aside from its concerns about the Board Review WGs position regarding Board size, auDA supports many of the WG's other recommendations. These will serve to streamline decision-making and governance processes and facilitate change at Board level.

- auDA supports recommendations for the Board to move to fewer, but longer meetings and notes that this is consistent with changes the Board has already undertaken. While there appears to be resistance within the community and the Board to discontinue monthly teleconferences, these calls are a significant time and resource imposition upon directors. Winding back the frequency and eventually ending the practice of holding these calls should be retained as a future reform goal – once other performance improvements have taken effect on workloads.

- auDA supports the WG's suite of recommendations to broaden the Board's skills, build a 'high performance' culture and strengthen strategic focus and accountability. Collectively, these are common-sense examples of best practice and should be implemented as a matter to priority.

- The issue of Board sustainability is particularly important. As the organisation moves well into its second decade, it is timely for ICANN to introduce remuneration for Board directors to ensure ICANN attracts the 'best and brightest' candidates. This development should not be drawn-out – and, as such, the recommended study into fiscal and legal implications should be completed as soon as practicable.

- ICANN should also implement a mechanism for ensuring gender balance at Board level, consistent with those in place in numerous IGOs and not-for-profit bodies. The current representation by females

---

[2] http://www.icann.org/en/announcements/announcement-30sep09-en.htm#affirmation : *ICANN commits to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders by: (a) continually assessing and improving ICANN Board of Directors (Board) governance which shall include an ongoing evaluation of Board performance, the Board selection process, t**he extent to which Board composition meets ICANN's present and future needs,** and the consideration of an appeal mechanism for Board decisions;*

(6% of the Board, 14% including liaisons) is a situation that must be remedied, either as a recommendation of this Working Group, or as a separate resolution of the Board.

General Comments on ICANN's review processes

While ICANN's broad commitment to reviewing organisational structures and processes to ensure optimal utility and representation for the broader Internet community is an admirable goal, auDA shares the view offered by other commentators[3] – that the mechanisms, timeframes, and consultations involved in these reviews may not be delivering the best results for all stakeholders. While ICANN struggles with current review schedules, the obligations placed upon the organisation under the Affirmation of Commitments exert further pressure to deliver effective, efficient and timely assessment and reform.

As outlined in this submission, the final draft report of the Working Group tasked with the Board review has dismissed a number of recommendations from independent reviewers and noted the existing implementation of others.

Fundamentally, this gives rise to questions of whether reviews are being conducted in an effective, timely, coordinated and needs-based fashion, and more importantly, whether ICANN maintains a genuine commitment to generating institutional improvement rather than merely undertaking reviews to satisfy organisational commitments[4] and community expectations.

The process of ongoing review is worthwhile, but not at the cost of organisational stability – and not if executed poorly. auDA urges ICANN to urgently refine its organisational review processes and to ensure alignment between existing review structures and those introduced by the AoC. These reviews should also be afforded the genuine support and engagement of the whole ICANN community and must be undertaken in an open and transparent manner. It is vital that ICANN and its community members resist institutional inertia in undertaking review processes and considering significant organisational change.

---

[3] For example, ICANN Board review comments by Marilyn Cade - http://forum.icann.org/lists/board-review-report/msg00010.html

[4] http://www.icann.org/en/general/bylaws.htm#IV