

**EXPLANATORY MEMORANDUM
to and forming part of**

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

**to be held at 10:30 am on Monday 22 April 2013
at Maddocks, Level 6, 140 William Street, Melbourne 3000**

Agenda Item 1: PROPOSED AMENDMENTS TO THE CONSTITUTION

Background

Two packages of amendments to auDA's Constitution are proposed.

1. The first package will, if adopted, implement a number of recommendations made by Westlake Consulting Limited (**Westlake**) following its independent review of the governance of .au in November 2011. The proposed amendments:
 - (a) reduce the number of directors elected by each of the supply and demand class from 4 to 3;
 - (b) increase the directors' length of term from 2 to 3 years;
 - (c) prohibit a person from standing for election in a class if that person has previously stood for election in a different class;
 - (d) prohibit directors from serving more than 3 consecutive terms; and
 - (e) prohibit the chairperson from acting as the chair for more than 10 continuous years.
2. The second package is a housekeeping change to remove a redundant provision in the Constitution that is no longer operative.

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

A marked up copy of auDA's Constitution showing how it will look if the amendments are made (first package shown in blue and the second package shown in green) is available from auDA's website at <http://www.auda.org.au/agm/egm2013-notice/>

Voting on the packages

An amendment to the Constitution of auDA requires a special resolution of the members in meeting. A special resolution means an affirmative vote in each and every class of members of more than 75% of members present and entitled to vote.

Each package will be proposed as a separate special resolution. In the case of the first package, members must vote on the package as a whole and cannot vote on a specific amendment within the package. This means that if the first package receives the requisite affirmative votes, all the amendments in the package will be made.

The purpose and effect of the amendments are set out below, along with the special resolutions to give effect to those amendments.

Package one: Implementation of Westlake recommendations

1.1 Background

- 1.1.1 In November 2011 auDA's Board commissioned Westlake to undertake an independent review into the governance of .au. The Board's full response to Westlake's report can be found at <http://www.auda.org.au/about/governancereview/>
- 1.1.2 Westlake recommended, amongst other things, certain changes to the structure and composition of auDA's Board. Constitutional amendment is required to implement the changes and the amendments proposed in paragraph 1.2, if passed by members, will give effect to Westlake's recommendations.
- 1.1.3 The Board has resolved to formally propose the amendments as a single package for consideration by members. As the changes have the potential to affect current directors, the Board does not support or oppose the amendments, to avoid any conflict of interest which may arise. The Board's collective view is that it is up to the members of auDA to decide whether or not to support the amendments.

1.2 Proposed amendments to composition of board, length of tenure and transitional arrangements

- 1.2.1 So that:
 - (a) reducing the number of directors elected by the supply and demand class from 4 to 3; and
 - (b) increasing the length of the directors' term of office from 2 to 3 years,

does not change the terms of which current directors have been elected, a "transitional" mechanism is required. The transitional mechanism reduces the number of directors elected by the supply and demand class from 4 to 3 and increases the length of the directors' term of office from 2 to 3 years, while allowing for persons elected as directors before the changes are made to serve out their existing terms.
- 1.2.2 To achieve this objective it is proposed that:
 - (a) at the AGM in 2013, 2 of the longest serving directors (since his or her last election) elected by each class will retire and 1 director will be elected by each class for a term of 2 years. This effects the change to the composition of the board referred to in paragraph 1.2.1(a);
 - (b) at the AGM in 2014, 2 of the longest serving directors (since his or her last election) elected by each class will retire, and 2 directors will be elected by each class – one for a term of 2 years and one for a term of 3 years (the person with the most votes will be elected for the 3 year term);
 - (c) at the AGM in 2015, 1 director elected by each class will retire and 1 person will be elected by each class for a term of 3 years. This effects the change to the length of the directors' term of office referred to in paragraph 1.2.1(b); and

- (d) at the AGM in 2016, and all subsequent AGMs, the longest serving director (since his or her last election) elected by each class will retire, and 1 director will be elected by each class for a term of 3 years.

1.2.3 To summarise:

- (a) on and from the AGM in 2013, the number of directors each elected by the supply and demand class will be 3; and
- (b) on and from the AGM in 2015, a director's term of office will be 3 years.

1.2.4 A diagram illustrating the proposed amendments to the composition of the board, the length of the directors' term of office and the transitional arrangements is annexed to this Explanatory Memorandum as "Annexure A".

1.3 Prohibition on nominating for election as a director in different class

It is proposed that a candidate for election who has previously been elected by a class is not eligible to stand for election by a different class.

1.4 Prohibition on directors serving more than 3 consecutive terms

1.4.1 It is proposed that:

- (a) on and from the AGM in 2015, a person may not be nominated as a candidate for election if they have previously been elected as a director on 3 or more consecutive occasions at which they have been a candidate for election on or after the AGM 2013; and
- (b) proposal 1.4.1(a) does not prevent a director being re-elected for a term if there has been 1 AGM between the person being nominated as a candidate for election.

1.4.2 The continuous service limit in paragraph 1.4.1(a) only applies to directors who have been appointed for 3 years on or after the AGM in 2015. This means a director's term before the AGM in 2015 will not be taken into account when determining whether a director has been elected on 3 or more consecutive occasions. This ensures directors appointed for 3 years on or after the AGM in 2015 are all subject to the same service limit, that is, the continuous service limit applies to all directors equally.

1.5 Prohibition on chairperson acting as the chair for more than 10 continuous years

It is proposed that no person may occupy the role of chairperson for a continuous period of more than 10 years.

1.6 Proposed special resolution

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

1. In clause 18.2:

1.1 at the start of the paragraph inserting the words "Until the AGM of auDA in 2013,"

1.2 adding a new subclause (b) that provides:

"As and from the AGM of auDA in 2013, the Board shall comprise:

- i. three (3) persons elected by the Supply Class Members;
- ii. three (3) persons elected by the Demand Class Members;
- iii. the CEO of auDA as a non-voting member of the board;
and
- iv. not more than four (4) Independent Directors appointed by
the elected Directors,

for terms not exceeding three (3) years each."

2. In clause 19.3:

2.1 inserting a new sub-clause (a) that provides:

"At the AGM of auDA in 2013, the following Directors shall retire from office:

- i. two (2) of the Directors elected only by the Supply Class Members;
- ii. two (2) of the Directors elected only by the Demand Class Members,

and one Director shall be elected by each Class for a term of two (2) years until the AGM of auDA in 2015."

2.2 inserting a new sub-clause (b) that provides:

"At the AGM of auDA in 2014, the following Directors shall retire from office:

- i. two (2) of the Directors elected only by the Supply Class Members;
- ii. two (2) of the Directors elected only by the Demand Class Members,

and two Directors shall be elected by each Class, one for a term of three (3) years, and one for a term of two (2) years, with the Director with the greater number of votes being elected for the longer term."

2.3 amending the existing paragraph (now sub-clause (c)) by:

2.3.1 replacing the word "each" with "the" at the start of the paragraph;

2.3.2 adding the word and number "in 2015" after the words "AGM of auDA";

2.3.3 replacing the words and letters "two (2)" with "one (1)" before the words "of the Directors"; and

2.3.4 adding the words at the end of the sub- paragraph "and one (1) Director shall be elected by each Class for a further term of (3) years."

2.4 inserting a new sub-clause (d) that provides:

"At the AGM of auDA in 2016, and subsequent AGMs, the following Directors shall retire from office:

i. one (1) of the Directors elected only by the Supply Class Members;

ii. one (1) of the Directors elected only by the Demand Class Members,

and one (1) Director shall be elected by each Class for a term of three (3) years.

2.5 amending the second existing paragraph by:

2.5.1 replacing the word "groups" with "Classes";

2.5.2 adding the words "Director or" before the words "Directors to retire";

2.5.3 replacing the word "are" with "is" in the first line;

2.5.4 adding the words "Director or" before the words "Directors who have been the longest in office";

2.5.5 replacing the word "their" with the words "his or her" in the second line; and

2.5.6 deleting the words "or Directors" before the words "to retire shall".

2.6 amending the third existing paragraph by:

2.6.1 inserting the words "subject to clause 19.4(c)" at the beginning of the paragraph;

2.6.2 adding the words ", if that Director was elected before the AGM of auDA in 2013;" after the words "for more than two (2) years";

2.6.3 adding a sub-clause (b) that provides "for more than three (3) years, if that Director was elected at or after the AGM of auDA in 2013,"

3. In clause 19.4:

3.1 by inserting a sub-clause (b)(i) which provides:

"who has previously stood for election by a Membership Class is not eligible to stand for election by a different Membership Class; and"

3.2 by inserting a new sub-clause (c) which provides:

"From the AGM of auDA in 2015 a person is ineligible for re-election if they have previously been elected as a Director on three (3) or more consecutive occasions at which they have been a candidate

for election on and after the AGM of auDA in 2015. For the avoidance of doubt, this limitation does not prevent a Director being re-elected if there has been an interval of at least one (1) year between the two (2) periods of office."

4. In clause 24.4 by adding, at the end of the first sentence, the words "provided that no person may occupy the role of Chairperson for a continuous period of more than ten (10) years after the end of the AGM of auDA in 2015".

2. Package two: Proposed Housekeeping change

2.1 Review of Constitution

auDA's Board has reviewed the Constitution and considers that there is a redundant provision that no longer has effect.

2.2 Redundant provision

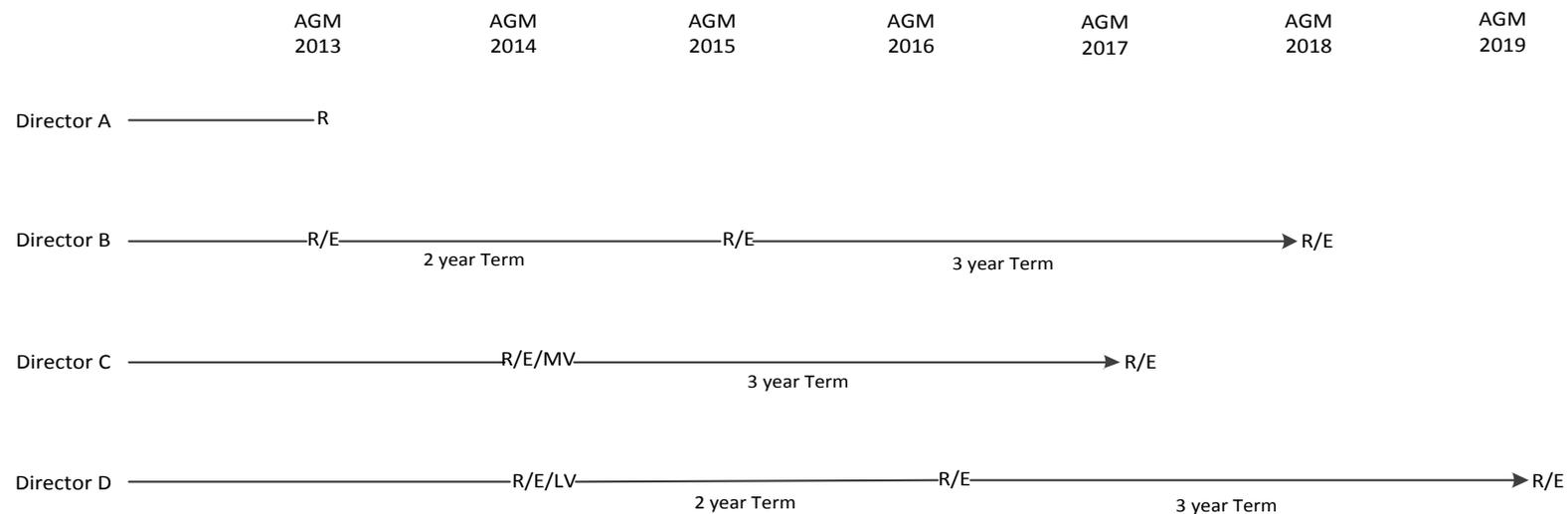
As auDA no longer has a Representative Association Class, clause 9.6 providing for membership to the Representative Association Class is redundant, and the Board recommends its deletion.

2.3 Proposed Special Resolution

RESOLVED as a Special Resolution that the Constitution be amended by deleting clause 9.6.

Annexure A

**TRANSITIONAL ELECTION PROCESS
(THIS PROCESS APPLIES TO BOTH SUPPLY AND DEMAND CLASS)**



R = longest serving director since his/her last election retires

*E = elected

MV = more votes received than Director D

LV = less votes received than Director C

* For the purpose of simplicity in this diagram, where a director is elected, the retiring director is shown as being re-elected, however in practice any eligible candidate for election may be elected at "E" (including directors eligible for re-election)