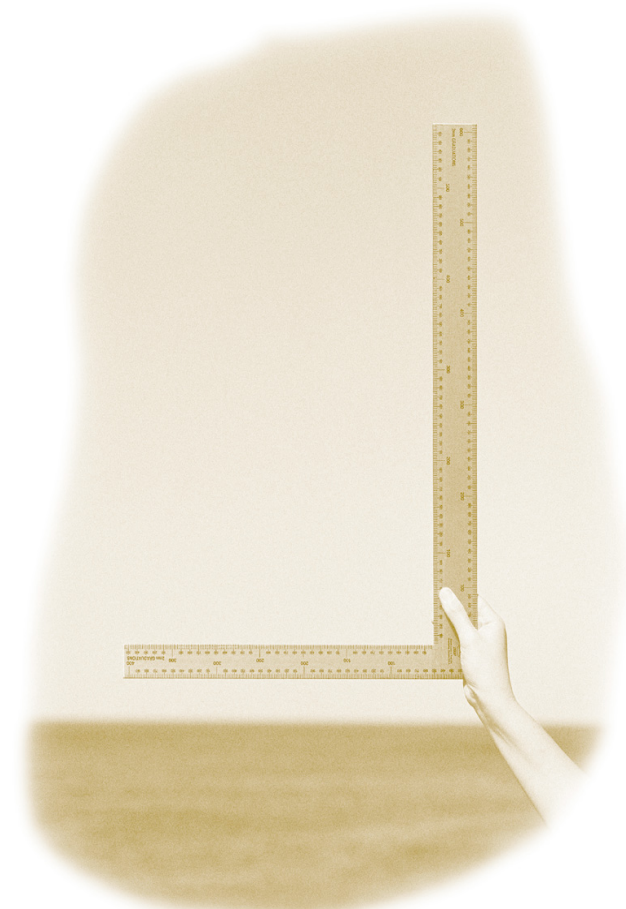


auDA Board Review

Report for Governance Committee

October 2016



Background

- auDA is an independent not-for-profit organisation with a government mandate to administer the .au domain
- It has a structured tri-partite Board – with four elected Supply-side Directors, four elected Demand side Directors and three Independent Directors appointed by the Board
- auDA has had a very long-serving CEO and Chair (and independents with comparatively long tenures)
- While these long-standing relationships have had considerable strengths, they have also continued early patterns of fairly informal Board practices over a period of some 15 years
- In our view, these practices have not kept pace with auDA's growth in scale and importance to the Australian community, nor with evolving good practice in governance and accountability
- In recent years, the relationship between the CEO and some Directors became increasingly strained over issues of process, transparency and accountability
- In late 2015, the Board voted for a change of Chairman – appointing a Demand-side elected Director to the role
- This was something of a surprise to a number of Directors, creating some uncertainty and anxiety – and while legitimate, went against the convention that an independent Director be the Chairman
- Despite this, there was support for the new Chairman and a general acceptance that it might be an appropriate time for some change to the auDA Board's way of operating
- A period of increased tension with the CEO followed this change, culminating in his termination in April 2016 – with the Deputy CEO appointed as acting CEO
- Coincidentally, CRN had been approached to conduct a long-planned Board Review and the new Chairman determined to proceed with the Review – primarily as a way of identifying good practice that the Board should adopt
- The Review commenced during this somewhat turbulent time

- The Review commenced as a conventional Board effectiveness review – with a questionnaire circulated to all Directors and key senior management. While we were aware that events may skew the results, on balance it was agreed that there would be benefits from this exercise – including giving participants a chance to reflect on what governance practices should apply in the auDA context.
- Follow-up interviews were conducted with each participant, with the understanding that the tumultuous events of the time would not permit a ‘conventional’ evaluation.
- Participants were interviewed in the period between the change of Chairman and the dismissal of the CEO, so there was further change to come.
- We found range of views about the changes, some strongly approving, some concerned about due process and others concerned about what it might all mean for future governance.
- There was however, general acknowledgement that it was time for some change – including a more appropriate relationship of accountability between management and the Board, some more formal and robust governance processes and some refreshment of the composition of the Board
- There was also acknowledgement that the relationship between much of the Board and the CEO had broken down significantly and that it would be very difficult to repair.
- Positively, amongst all participants at that time, we found a strong aligned commitment to auDA and to do what is needed to equip it with effective governance for the future – including a willingness to retire from the Board if that was what was best for auDA.
- As independent Reviewers, we have chosen not to comment on the events of the past, nor to attempt to provide an assessment of past effectiveness – rather to focus this report on forward directions for auDA’s governance.

Three imperatives

Based on interviews with participants and our own analysis of the circumstances, we have identified identified three key imperatives for the auDA Board:

1. **Appoint a new CEO**

The staff in the organisation have been through a number of shocks – including the change of a long-term Chairman, the loss of a long-term CEO and a shake up of the Board generally.

The organisation must continue to function and it must have a functional, effective relationship with its governing Board. Settling the leadership is a priority.

2. **Restore group dynamic within Board**

The unexpected changes to the Board, differences of view about the relationship with the CEO and uncertainty about succession for the independent Directors has left the Board with somewhat shaken relationships.

This must be repaired as a matter of some urgency. While under stress, a Board such as auDA can operate for a time by old-fashioned formal meeting process, with motions and voting determining decisions, this is not an effective way to run a Board that should be operating on a consensus model with collaborative group dynamics.

Given the quite different interests of the constituents, this is essential if auDA is to be effective as a governor/

regulator of a critical piece of Australia's infrastructure.

3. **Strengthen credibility of auDA Board with range of stakeholders (critical multi-dimensional challenge)**

While the CEO and group dynamics imperatives are important, they are just building blocks for the ultimate imperative – which is stakeholder confidence in the auDA Board.

While some refreshment of the auDA Board would likely be seen by most stakeholders as a healthy and normal part of an organisation's evolution, there is a significant risk that recent events at auDA go beyond this and may be undermining this precious confidence.

It is critical that 'the house' is restored to order in stakeholders' perception – including the government's. This requires action on a number of fronts, including the first two imperatives above and addressing some of the deeper issues about auDA's role and effectiveness.

Note that there are a very large number of recommendations at the end of this report – contrary to our usual practice. It is not our intention that all these be attempted at once - clearly the Board will have to prioritise. However, we include them to underscore that an effective, contemporary auDA with strong credibility and stakeholder support will require more than minor 'fixes'.

First imperative – appoint CEO

I. **Appoint the long-term CEO to take the organisation forward - build productive professional relationship with Board**

- Selection is the first step – which is well underway
- This will require a ‘normalising’ of the relationship between the Executive and the Board – over time including:
 - Joint development by the executive and the Board of a vision for auDA – ensuring alignment
 - Develop conventions and protocols for the working relationship
- Adopt the NIFO philosophy for the Board – ‘noses in, fingers out’
- Develop the Board information set that is appropriate to the respective roles of the Board and management – and to the skills, experience of the Directors
- Establish agreed delegated powers, expectations, matters reserved to the Board

RECOMMENDATIONS

1. **A Board strategy retreat be held about 90 days into new CEO’s term – developing a shared vision, reinforcing roles, identifying protocols and processes and building relationships**
2. **That auDA re-draft its delegation framework – including the (few) matters to be reserved for the Board**
3. **That management, in consultation with Directors, progressively and jointly adapt the Board information set to support the agreed roles and protocols**

Second imperative – Rebuild Group Dynamic

2. Restore group dynamic within Board and with management

- Already underway, albeit termination of independent Directors may be something of a setback
- Time will resolve much
- Note – that the measure is not politeness or conviviality – the measure is the ability to robustly challenge ideas and disagree with each other – without damage to

social fabric

- Some direct discussions may be needed – will put some load on the Chair
- CEO appointment will be critical to this
- Appointment of Independent Directors should be pursued as a matter of priority
- A Board and executive ‘retreat’ would be a good step. It should be professionally facilitated, run for at least one and half days and include some social time, eg. a dinner

RECOMMENDATIONS

4. Schedule a Board retreat – about 90 days into new CEO term – focused on vision, relationships, protocols and processes.
5. Develop self-regulation behaviours for the Board. eg – Are we adhering to agreed values and behaviours? How do we ‘call’ each other when we are not? How do we offer constructive criticism to management?

Third imperative – Strengthen credibility

3. Strengthen credibility of auDA Board with range of stakeholders (critical multi-dimensional challenge)

This means both actually improving these characteristics and strengthening stakeholder confidence in them – through concrete changes, transparency and communicated signals

a) Accountability of the executive to the Board

This needs some settling into a new ‘normal’ – internally, this will be addressed by Recs 1-3 and to some extent by Recs 4, 5. External signals can include the role that the Chair plays at the AGM, selected stakeholder liaison, commentary in Annual Report, other communications activity. Critical

that these settings strike an appropriate balance – neither exclusively CEO-driven nor implying that the Board runs the organisation itself.

b) Independent Chair

While a more thorough-going review of the Constitution and Rules (see later) could be useful, in the short-medium term, we think it would be worth exploring having the current (elected) Chairman appointed by the Board as an independent Director and therefore independent Chair. We think this would be more consistent with the intention of the current framework – and would have better ‘optics’ with stakeholders. It would have the secondary benefit of enabling proper remuneration of the Chair until such time as a change to the Constitution and Rules could be implemented.

RECOMMENDATIONS

6. The CEO and Chair should jointly develop key messages on accountability, test with Board and identify a few opportunities for Chair and CEO to ‘demonstrate’ these messages and their relationship externally (eg. at AGM, annual report, stakeholder briefings, industry conferences, etc)
7. The Board should appoint a fourth Independent Director – to be the independent Chairman of the Board. (Note this will require rule changes).

c) **Credibility of membership as a representation/accountability mechanism**

It is critical to note that this is not a 'membership organisation' per se. Members do not 'own' the organisation, nor is the organisation established for the benefit of its members.

The membership act as a proxy accountability mechanism for the participant, community and national interest.

As a proxy mechanism, it is always exposed to criticism over its validity.

It would benefit auDA long-term if members, future members and other stakeholders better understood this role. It is essential to strengthen auDA's credibility by ensuring that the membership base is large enough, includes diverse enough membership, has sufficient integrity and its election processes are beyond reproach.

RECOMMENDATIONS

8. auDA staff should continue work to expand and broaden the membership base
9. auDA staff should continue to work to ensure the membership base is resistant to criticism, including establishing a 'fit and proper' criteria, a stronger vetting process for new member applications and cleaning up the existing database of members where members do not meet the expected standard
10. auDA should ensure that the role of members as representatives of broader interests is made explicit to new and existing members
11. auDA should look at use of an independent service for elections – eg. The AEC or a law or audit firm

d) Evident expertise

This is essential to the auDA Board level of credibility in the community. In a technical domain, it is very easy to undermine the organisation by accusations of lack of expertise. Expertise should be demonstrable at a number of levels.

- A conscious approach to selection and succession planning should be evident to stakeholders
- A desired skills matrix could be developed, refreshed for each vacancy and published
- Director training & development should be offered to Directors without extensive board experience
- Members and other stakeholders should be aware of structured use of external expertise (eg advisory panels, consultants) where appropriate

RECOMMENDATIONS

- 12. The governance committee should develop/update a skills matrix (including for elected Directors) and when vacancies are notified, the desired skills profile should be emphasised**
- 13. Induction and development for new Directors should include auDA-specific and general governance material. Each Director should have a development plan tailored to their specific needs and cost-effective training should be sourced for Directors to access over the period of their term**
- 14. The use of external expertise should be communicated to stakeholders**

e) **Modernised governance rules and processes**

As noted by Board members, the internet has evolved somewhat (!) since auDA was established.

It would be entirely sensible for auDA to conduct an exercise of modernising its constitution and rules to meet modern practice and to reflect its changed responsibilities.

This exercise could be used to facilitate a number of the recommendations under the previous headings. It could also enable some other improvements including a small increase

in the number of independent Directors, longer terms of office, better management of elections, etc.

A project to do this would be a non-trivial endeavour –and would carry some risks with it. However, this may be as good a time as any to tackle this re-equipping of the organisation. It may also be that government would be supportive of this and could be persuaded to add its own weight to the push for modernisation.

Clearly, some care would need to be taken to bring members along the process and obtain their support, so this would need to be considered a medium to long term project.

RECOMMENDATIONS

15. The auDA Board should look at appropriate timing for a project to modernise and reform its Constitution and Rules.

16. In the meantime, the Board should consciously work to adopt ASX good governance principles to the extent practicable within the current Constitution and Rules

The incoming auDA CEO has provided the following commentary and response to the Recommendations.

1. **A Board strategy retreat be held about 90 days into new CEO's term – developing a shared vision, reinforcing roles, identifying protocols and processes and building relationships.**
 - **Agreed** – however as the new CEO commenced on the 22nd of August 2016, and with the AGM due by the end of November, this is not practical until after the AGM. It is therefore recommended that a board retreat be planned for mid-late January 2017 combined with an appropriate planning session(s) incorporating senior staff.
 - This retreat should also focus on evaluating the current strategic vision of the organisation with a view to setting new priorities, mission and values.
2. **That auDA re-draft its delegation framework – including the (few) matters to be reserved for the Board**
 - **Agreed** – as the new CEO has commenced an organisational review of all processes and delegations, this will be included and recommendations will be made to the Board following this process.
3. **That management, in consultation with Directors, progressively and jointly adapt the Board information set to support the agreed roles and protocols.**
 - **Agreed** – the CEO will work with the new Company Secretary on this task.
4. **Schedule a Board retreat – about 90 days into new CEO term – focused on vision, relationships, protocols and processes.**
 - **Agreed** - see response to recommendation 1. Recruitment of new Independent Directors is well advanced and recommendations on appointments will be put to the Board meeting of the 10th of October
5. **Develop self-regulation behaviours for the Board. eg – Are we adhering to agreed values and behaviours? How do we 'call' each other when we are not? How do we offer constructive criticism to management?**
 - **Agreed** – see reply to recommendation 1 re development on new mission and values and developing appropriate behaviours. The Chair and CEO will work with directors collectively and individually to ensure that new relationships are developed and nurtured, and that expectations consistent with the organisation's requirements and expectations are managed.

6. **The CEO and Chair should jointly develop key messages on accountability, test with Board and identify a few opportunities for Chair and CEO to ‘demonstrate’ these messages and their relationship externally (eg. at AGM, annual report, stakeholder briefings, industry conferences, etc).**
 - **Agreed** – this process and improvement on auDA's stakeholder engagement and communication strategy are advanced. External expertise and advice has been obtained to assist with this priority.
7. **The Board should appoint a fourth Independent Director – to be the independent Chairman of the Board. (Note this will require rule changes).**
 - **Agreed with qualification.** Clause 18.2 of auDA's Constitution stipulates the current Board composition with Clause 15.3 stipulating the appointment process for the "Chairperson" at general meetings.
 - Currently auDA's Constitution does not define separately the role of independent "Chairperson" save for the conduct of meetings.
 - As the Constitution can only be varied by special resolution at a general meeting (Clause 31), it may be possible for the current Chair to vacate his elected position and seek endorsement from the Board to be appointed to one of the current Independent Director vacancies, and then subsequently be endorsed as "Chairman". The CEO is seeking further advice regarding this and will provide the Board with a recommendation at the next meeting.
8. **auDA staff should continue work to expand and broaden the membership base.**
 - **Not agreed** – auDA's membership classes and qualifications are specified in Clauses 9.3, 9.4 and 9.5. Membership classes have not been reviewed to assess contemporary applicability since 2006. The focus should be for auDA to consider its wider membership requirements as its further assesses its longer term strategic vision.
9. **auDA staff should continue to work to ensure the membership base is resistant to criticism, including improving establishing a ‘fit and proper’ criteria, a stronger vetting process for new member applications and cleaning up the existing database of members where members do not meet the expected standard.**
 - **Agreed** – see response to recommendation 8.

10. **auDA should ensure that the role of members as representatives of broader interests is made explicit to new and existing members.**
 - **Agreed** – see response to recommendation 8.
11. **auDA should look at use of an independent service for elections – eg. The AEC or a law or audit firm.**
 - **Agreed** - the new CEO will examine options.
12. **The governance committee should develop/update a skills matrix (including for elected Directors) and when vacancies are notified, the desired skills profile should be emphasised.**
 - **Agreed** – recommendations and actions will be discussed by the governance committee and skills gaps/requirements is a key consideration of current Independent Directors candidate assessment.
13. **Induction and development for new Directors should include auDA-specific and general governance material. Each Director should have a development plan tailored to their specific needs and cost-effective training should be sourced for Directors to access over the period of their term.**
 - **Agreed with qualification.** The Corporations Act stipulates requirements and expectations of directors, and members who nominate themselves for election need to be aware of their individual obligations.
 - There would be a substantial cost to auDA to develop individual training and development, which would need to be considered due to current Constitutional limits on directors' terms. The CEO will work with the Chair and the board and a relevant and cost effective solution.
14. **The use of external expertise should be communicated to stakeholders**
 - **Agreed** – as and when needed and this is well advanced.
15. **The auDA Board should look at appropriate timing for a project to modernise and reform its Constitution and Rules.**
 - **Agreed** – see responses to recommendations 7,8 and 9. This will be a key focus of the board retreat in early 2017 to examine all of auDA's strategic requirements.

16. In the meantime, the Board should consciously work to adopt ASX good governance principles to the extent practicable within the current Constitution and Rules.
- **Agreed** – see response to recommendation 13. This will be part of new (current) director induction and will be monitored to ensure adherence.

Next Steps

The next steps for this process should be:

1. Discuss Report and CEO response with Governance Committee
2. Governance Committee response
3. Full report with recommendations to Board
4. Agree a communication strategy for stakeholders

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