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The APNIC EC Member's Handbook

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Part 1. The Role of the Executive Council

The role of the Executive Council is described in the APNIC By-Laws. The provisions of the By-Laws as they relate to the powers and functions of the Executive Council are summarized here, with a reference to the Article of the APNIC By-Laws that describes this role.

Composition of the Executive Council

The Executive Council consists of seven Members elected at Annual General Meetings of Members, plus the Director General, who is an ex-officio Member of the Council.

- Executive Council Members are elected by the Members at the Annual General Meeting of the Members for a two-year term [APNIC By-Laws, Article 31, Article 32]
- Only one individual per Member organization may be elected to sit on the Executive Council. [APNIC By-Laws, Article 35]
- Individuals appointed by the Executive Council may fill casual vacancies on the Executive Council. They shall serve on the Executive Council until the next Annual General Meeting of Members. [APNIC By-Laws, Article 42]
- Executive Council Members may be removed from office by a two-thirds majority vote of the APNIC Members. [APNIC By-Laws, Article 25]
- The Director General serves as a fully qualified Member of the Executive Council by virtue of his office. [APNIC By-Laws, Article 54(i)]

Roles and Responsibilities of the Executive Council

The delegations of functions, powers, and authority within the overall structure of APNIC is derived by a sequence of delegations from the Director to APNIC Pty Ltd to the APNIC Membership (the “Special Committee”) to the Executive Committee (a subcommittee of the “Special Committee”), and, in a number of cases, to the Director General. The Executive Committee is responsible to the APNIC Membership by virtue of this delegation from the membership and to APNIC Pty Ltd by virtue of their effective role as an officer of APNIC Pty Ltd.

- Executive Council Members shall serve on the Executive Council in their personal capacity and shall act in the best interests of the APNIC membership and not the Member organization to which that individual belongs. [APNIC By-Laws, Article 35]

The Executive Council has the following roles and responsibilities:

- To be responsible to the Members to grant membership to qualified entities under the terms of the By-Laws and delegate the authority to undertake this function to the Director General [APNIC By-Laws, Article 4, Article 54(b)]
- Set membership dues from time to time [APNIC By-Laws, Article 4]
- Report to APNIC Members on the activities of APNIC [APNIC By-Laws, Article 5(b)]
- Fix the place and time of Annual General Member meetings [APNIC By-Laws, Article 6]
- Call Special Meetings of Members at a nominated place, date, and time [APNIC By-Laws, Article 7]
- The Chair of the Executive Council chairs Member meetings [APNIC By-Laws, Article 11]
- To be responsible to the Members to count Member votes and may for this purpose appoint two or more persons to serve as tellers [APNIC By-Laws, Article 13]

- To act on behalf of the Members in the interval between Annual General Member meetings, within the limits of the powers delegated to it by the Members [APNIC By-Laws, Article 30(a)]
- To be responsible to the Members and to provide direction to the Director General in the delegation of management of the activities, functions and affairs of APNIC and the corporation to the Director General [APNIC By-Laws, Article 30(b), Article 54(b)]
- To be responsible to the Members and to provide the authority to the Director General to exercise all such powers and do all such acts or things as may be required to be exercised or done by the corporation or the Directors of the corporation, subject to the provisions of the Memorandum and Articles of Association of the corporation and to such requirements as may be prescribed by a resolution of the Directors of the corporation [APNIC By-Laws, Article 30(c), Article 54(c)]
- To be responsible to the Members and to delegate to the Director General the authority to take all steps to facilitate and implement the decisions of the Members at Annual General Meetings and, where appropriate, of the decisions of other meetings of APNIC [APNIC By-Laws, Article 30(d), Article 54(e)]
- To be responsible to the Members and to delegate to the Director General the responsibility to consider broad Internet policy issues in order to ensure that APNIC's policies and strategies fully respond to the constantly changing Internet environment [APNIC By-Laws, Article 30(e), Article 54(e)]
- To be responsible to the Members and to delegate to the Director General the responsibility to ensure the efficient coordination of the work of APNIC [APNIC By-Laws, Article 30(f), Article 54(g)]
- To establish the basis for the budget of APNIC and determine, in the light of the decisions taken by the Members on the reports referred to in Article 5(b) of the By-Laws, a ceiling for the expenditure of APNIC until the next Annual General Meeting after considering all relevant aspects of the work of APNIC in that period [APNIC By-Laws, Article 30(g)]
- To delegate the authority to the Director General to provide any general directives dealing with the staffing of APNIC and to delegate the authority to fix the basic salaries, the salary scales and the system of allowances and pensions for all employees of APNIC [APNIC By-Laws, Article 30(h), Article 54(d)]
- Reduce or waive fees for 'deserving organizations' [APNIC By-Laws, Article 37]
- Request an audit on any or all aspects of the operation of the Secretariat [APNIC By-Laws, Article 37]
- To be responsible to the Members and to delegate to the Director General the responsibility to keep minutes of all meetings of the Executive Council and keep a record of resolutions passed by the Executive Council [APNIC By-Laws, Article 49(a), Article 49(b)]
- To be responsible to the Members and to delegate to the Director General the responsibility to keep minutes of all meetings of the Members and keep a record of resolutions passed by Members [APNIC By-Laws, Article 49(a), Article 49(b)]
- To be responsible to the Members and to delegate to the Director General the responsibility to keep such accounts and records as are necessary or desirable in order to reflect the financial position of APNIC and the corporation [APNIC By-Laws, Article 49(c)]
- To elect the Director General [APNIC By-Laws, Article 30(i)]
- By a three-fifths majority vote, remove the Director-General [APNIC By-Laws, Article 36]

Executive Council Decisions

- Decisions of the Executive Council shall be made by a majority vote of the Members of the Executive Council present at a meeting [APNIC By-Laws, Article 36]
- A decision of the Executive Council to remove the Director-General shall be made by a three-fifths majority vote of the Executive Council [APNIC By-Laws, Article 36]

Part 2. The Organizational Structure of APNIC

The following commentary is based on the APNIC By-Laws, the APNIC Pty Ltd Articles of Association, the APNIC Memorandum of Association, and the APNIC Membership Agreement.

These documents are available at the following URLs:

- By-Laws: <http://www.apnic.net/publications/media-library/corporate-documents/corporate/by-laws> (also in Part 5 of this handbook)
- Articles of Association: <http://www.apnic.net/publications/media-library/corporate-documents/corporate/articles-association>
- Memorandum of Association: <http://www.apnic.net/publications/media-library/corporate-documents/corporate/APNIC-MOA>
- Membership agreement: <http://www.apnic.net/publications/media-library/corporate-documents/membership/membership-agreement>

Members of the Executive Committee should ensure that they are thoroughly familiar with these APNIC corporate documents. The role of each Member of the Executive Council is consistent with undertaking the duties of an Officer of APNIC, and in order to undertake such a role responsibly, and in order to enjoy the protections of the indemnity provisions and the benefits of Directors and Officers liability insurance, then each Member of the Executive Council must act in strict accordance with the provisions of these documents, as well as in strict accordance with the Corporations Act 2001 of Australia.

APNIC Pty Ltd

APNIC Pty Ltd is a legal entity incorporated under the *Corporations Act 2001 of Australia*.

There is a single subscribed share in APNIC Pty Ltd, held by the APNIC Director General, Paul Wilson. Paul Wilson is the sole Member of APNIC Pty Ltd, holding this share in trust for the APNIC Executive Council, under the terms of a Trust Deed.

APNIC Pty Ltd has a single Director, also the APNIC Director General, Paul Wilson.

APNIC Pty Ltd has certain obligations under the Australian Corporations Act, and these obligations are imposed on the Directors and Officers of APNIC Pty Ltd. Failure to perform these obligations include civil and criminal penalties, personal liabilities and compensation orders and future prohibition on managing companies. These obligations include (and are not limited to) the obligation to:

- 1) Act honestly and in good faith exercising care and diligence;
- 2) Act in the best interests of the company;
- 3) Avoid conflicts of interest; and
- 4) Prevent the company trading if insolvent.

A Director or Officer may cite a defence to these obligations if expert advice were sought regarding the best interests of the company and reasonable reliance was placed on this expert information. That defence may be in doubt if expert advice was sought and not acted upon by the Director or Officer.

The APNIC Membership Association

APNIC as a membership association is distinct from APNIC Pty Ltd in a corporate sense. The Director of APNIC Pty Ltd has the power to appoint one or more Special Committees and delegate to such Special Committees some of the powers, authority, and functions of the Director of APNIC Pty Ltd. “APNIC” is defined as a Special Committee of the company, and “APNIC Members” are Members of that Special Committee [paragraph 9.3 of the APNIC Articles of Association, and Recital E of the APNIC Membership Agreement].

It is noted that this delegation of powers, authority, and function does not remove the liability of the Director and Officers to comply with their legal obligations under the Corporations Act 2001.

The Special Committee may further delegate these powers, authority, and functions to a subcommittee of this Special Committee, which is the Executive Council of APNIC [paragraph 9.3 of the APNIC Articles of Association].

The Articles of Association allow the Directors of APNIC Pty Ltd the power to promulgate By-Laws for the purpose of establishing, governing, and prescribing the functions, powers, and authorities of the Special Committee [paragraph 9.4 of the APNIC Articles of Association]. This document is the APNIC By-Laws. The By-Laws may be amended or annulled by the Director or by the Special Committee [paragraph 9.8 of the APNIC Articles of Association]. The Special Committee may only amend the By-Laws through the affirmative vote of two-thirds of the entire membership [Part XIII, Article 83 of the APNIC By-Laws].

Indemnification by APNIC of liabilities for persons acting on APNIC Pty Ltd's behalf only applies if the person acted honestly and in good faith with a view to the best interests of the Company and had no reasonable cause to believe that their conduct was unlawful [paragraph 13.1 of the APNIC Articles of Association].

The APNIC Executive Council

The Executive Council consists of the following Members:

- Seven individuals who are elected at APNIC AGMs in accordance with the provisions of the By-Laws [Article 31 of the APNIC By-Laws]; and
- The Director General, by virtue of his position (ex-officio) [part VI Article 54 (i). of the APNIC By-Laws].

The By-Laws also contains the provision that the "Director General must not be a Member of APNIC, the representative of a Member of APNIC, nor a Member of the Executive Council" [Part VI, Article 51. of the APNIC By-Laws]. The apparent contradiction between this provision and the provision for the Director to act as an ex-officio Member of the APNIC Executive Council [part VI Article 54 (i). of the APNIC By-Laws] is resolved through the interpretation of Article 51 as a qualification for appointment to office as Director General, such that the Director General must not be an *elected* Member of the Executive Council. Accordingly, it appears that the appropriate interpretation of the By-Laws is that the Director General is a Member of the Executive Council, and is accorded all the powers, functions, and authority of a Member of the Executive Council by virtue of his office.

The Director General is a fully qualified Member of the Executive Council, and is eligible to attend all meetings of the Executive Council and participate in all Executive Council activities. As with all Executive Council Members, it is the responsibility of the Director General to identify those matters that represent a conflict of interest and to recuse himself from consideration of such matters, as appropriate. There is no mention of any matter in the By-Laws where the Director General is excused from any activities of the Executive Council by virtue of his ex-officio membership of this Council.

The Executive Council operates under the delegation of powers, authority, and functions from the Director of APNIC Pty Ltd. While this does not limit the liability and obligation of the Director to act within the provisions of the Corporations Act 2001, this delegation also has potential liabilities for Members of the Executive Council. Paragraphs 62 through 66 of the APNIC By-Laws indemnify Members of the Executive Council, as long as it is established that the Executive Council Member acted honestly and in good faith in serving the best interests of APNIC and had reasonable cause to believe that his or her conduct was not unlawful. APNIC has purchased insurance against the liabilities as set out in Article 62 of the By-Laws. This does not in any way lessen the obligation of each of the Members of the Executive Council to act honestly in the best interests of APNIC and to avoid conflicts of interest.

The Executive Council has formally adopted a set of procedures for calling meetings of the Council, the procedure for the conduct of meetings, other activities, functions, and affairs and the manner of carrying motions put to the Council, and the required manner of recording the deliberations of the Council.

If Members of the Executive Council meet in a manner that does not post due notice of the meeting, or excludes any Member of the Executive Council from participation in the meeting, whether face-to-face or by electronic means, then the actions of those Executive Council Members that meet in such a manner incur a significantly higher level of risk of individual liability, as it is unclear whether it is a valid meeting of the Executive Council with valid outcomes. If any meeting of Executive Council Members is held outside of the provisions of the APNIC By-Laws, it is not a valid meeting of the Executive Council,

and any outcomes of such a meeting are not binding on APNIC. In such a case it is likely that there is no form of individual indemnification on the part of APNIC relating to any potential liabilities that may be incurred by the attendees at such a meeting, and the Council Members that meet in such a manner may be highly exposed to allegations of collusion, conspiracy or fraudulent behaviour with attendant civil or criminal sanctions depending on the nature of the accusation and the matter leading to the accusation.

The Executive Council has the power to “to act on behalf of the Members in the interval between Annual General Meetings within the limits of the powers delegated to it by the Members” [Part V, Article 30 (a), APNIC By-Laws]. In addition to, and outside this delegation by the Members, the Executive Council has the responsibility to set Member fees by virtue of the provision in the By-Laws that “Members shall pay dues as established by the Executive Council from time to time, and the payment of such dues shall be a condition precedent to effective Membership of APNIC.” [Part IV, Article 4, APNIC By-Laws].

Any decision of the Executive Council, whether made by the delegation of powers by the APNIC membership to the Executive Council, or made by functions explicitly delegated to the Executive Council (such explicitly delegated functions include fee setting, and all functions enumerated in items “b” through “i” of the APNIC By-Laws, Part V, Para 30), may be reviewed and amended by the Members. Such an amendment requires the affirmative vote of a two-thirds majority of the entire APNIC Membership [Part IV, Article 5, item f, APNIC By-Laws].

Under the APNIC By-Laws, the Members have explicitly delegated to the Executive Council the responsibility to set membership dues from time to time. Given this delegation of function has taken place, this function is no longer a membership responsibility. The Membership has the power to rescind this delegation and undertake this fee setting function directly, but this would require an amendment to the APNIC By-Laws. This could only be undertaken by the Membership through the affirmative vote of two-thirds of the entire APNIC Membership.

The Members of the Executive Council are constrained by the By-Laws such that they “shall serve on the Executive Council in their personal capacity and shall act in the best interests of the APNIC Membership and not the Member organization to which that individual belongs” [Part VI, Article 35, APNIC By-Laws].

Executive Council Members should bear in mind at all times their obligations to act honestly, to act in their personal capacity, to act in the best interests of the APNIC Membership and not the Member organization to which that individual belongs, to avoid personal conflicts of interest, and to take all reasonable measures to avoid a situation of APNIC trading while insolvent. Executive Council Members should note all expert advice that has been reasonably provided to APNIC concerning the best interests of APNIC, and ensure that no Executive Council decisions contravenes applicable provisions of APNIC corporate documents or contravenes statutes and regulations as they apply to APNIC’s activities.

APNIC Members

It is the role of the Members of APNIC, as constituted as a Special Committee of APNIC Pty Ltd, to examine the accounts of APNIC, and to adopt decisions on strategic policy and planning for APNIC [Part IV, Article 5 (b), APNIC By-Laws].

The process of review of strategic policy and planning has been undertaken through the use of periodic Member surveys. The outcome of these surveys is the membership’s instruction to commit APNIC to a specific set of strategic objectives and services. Failure of the APNIC Executive Council to act in accordance with this membership directive could be interpreted as a failure of the APNIC Executive Council to operate in accordance with the By-Laws.

Part 3. Legal Obligations of Executive Council Members

In 2007 and 2008 APNIC sought legal advice from DLA Philips Fox on the role, obligations, and legal liabilities under Australian Law of individual Members of the APNIC Executive Council, and conflict of interest. The following material is based on the advice, and is provided to Members of the Executive Council and prospective candidates for election to the APNIC Executive Council.

Recommendations

In view of the serious liability which can attach to a failure to make a decision on the correct basis and according to the correct process set out by the By-Laws it has been recommended that all the Directors of APNIC Pty Ltd and the Executive Council Members of APNIC be advised of their responsibilities under Australian Law.

It has also been recommended that the Directors and Executive Council be made aware of the legal requirement that strict compliance with the process as defined in the By-Laws for calling, holding, and recording Executive Council meetings be met, failing which the defences against personal liability under the Corporations Act 2001 and the rights of indemnification and insurance cover could be lost.

The Structure of APNIC Pty Ltd

APNIC Pty Ltd is currently a legal entity incorporated in Australia and operating under the Corporations Act of Australia. It raises revenue, from its membership-base, and operates as a not-for-profit organization, comprising:

- Members;
- Executive Council; and
- The APNIC Secretariat

Their respective roles are set out in the APNIC By-Laws.

APNIC Pty Ltd as the legal entity consists of the:

- Sole Director of APNIC Pty Ltd; and
- Sole Shareholder of APNIC Pty Ltd (held on trust for the Executive Council of APNIC under the Trust Deeds of 24 June 1998 and 24 August 1998).

APNIC Pty Ltd is constituted by the following documents:

- Memorandum of Association of APNIC Pty Ltd (20 January 1998), and
- Articles of Association of APNIC Pty Ltd (24 June 1998).

As APNIC Pty Ltd is a legal entity under the Corporations Act 2001, section 198D of the Act allows a Director to delegate any of their powers to:

- (a) A committee of Directors;
- (b) A Director;
- (c) An employee of the company; or
- (d) Any other person.

This power to delegate is subject to any specific rules in the Articles of Association of APNIC Pty Ltd. The relevant sections of the Articles of Association are:

- Clause 9.3 of the Articles of Association stipulates that:
“The Directors may, by a resolution of Directors, appoint one or more Special Committees of the Company, and may delegate to any Special Committee any of the powers, authority and functions of the Directors, including the power and authority to affix the Seal, except that no Special Committee shall have the power or authority to fix the emoluments of Directors.”
- Clause 9.4 provides that:
“Where any Special Committee is appointed by the Directors, the Directors shall by a resolution of Directors, promulgate By-Laws for the purpose of establishing, governing, and

prescribing the functions, powers and authority of such Special Committee. Every Special Committee so appointed by the Directors shall be governed by the same By-Laws and shall comprise of one or more persons (known as Members of the Special Committee) who may be Directors, Officers or agents of the Company, or such other persons as the Directors may approve. A Member of the Special Committee may be an individual or a corporation, and a Member which is a body corporate may appoint any person its duly authorised representative for the purpose of representing it at meetings of the Special Committee.”

A 'Special Committee' in the form of the Executive Council of APNIC Pty Ltd was established under a Resolution of Directors on 27 May 1998 in accordance with clause 9.3 of the Articles of Association. Subsequently, the By-Laws of the Special Committee were adopted at a Director's Meeting on 24 June 1998 in accordance with clause 9.4.

Under article 5d of the By-Laws, the Members of APNIC Pty Ltd elect the individuals who are to serve on the Executive Council. This is done at the Annual General Meeting, where Officers who have held their position on the Executive Council for two years relinquish their position on the Executive Council.

Obligations of Members of the Executive Council

APNIC Pty Ltd is a legal entity incorporated under the Corporations Act of Australia. Directors and Officers of APNIC Pty Ltd are subject to the obligations imposed under the Corporations Act (sections 180-190 and 588G). Some of the more important duties of Directors and Officers are to:

- Act in good faith;
- Act in the best interests of the company;
- Avoid conflicts between the interests of the company and the Director's or Officer's interests;
- Act honestly;
- Exercise care and diligence.
- Prevent the company trading while it is unable to pay its debts.

There are also similar duties imposed on Directors and Officers by the Australian courts under the common law of Australia.

Obligations as a Director or Officer of a company may continue under Australian law even after the company has been deregistered.

Are Executive Council Members "Officers"?

A person can be said to be an Officer of APNIC Pty Ltd if that person:

- Is a Director or Secretary of APNIC Pty Ltd.
- Makes or participates in making decisions that affect the whole or a substantial part of the business of APNIC Pty Ltd.
- Has the capacity to significantly affect the financial standing of APNIC Pty Ltd.
- A person whose instructions Directors of APNIC are accustomed to follow.

On the basis that under the provisions of the APNIC By-Laws the Executive Council makes decisions that affect the whole or a substantial part of the business of APNIC Pty Ltd, and that the Executive Council has the capacity to significantly affect the financial standing of APNIC Pty Ltd, and that the Directors are accustomed to following the direction of the Executive Council, then the Executive Council Members are in effect Officers of APNIC Pty Ltd with the same duties and personal liabilities as the Directors under Australia law.

Conflict of Interest issues for Members of the Executive Council

All conflicts of interest must be disclosed by Executive Council Members to ensure compliance with their duties. Conflicts of interest should be disclosed by way of declaration and Executive Council Members must be aware that this is an ongoing process. If an already disclosed conflict of interest changes, then an Officer needs to disclose this further change.

Due to the Executive Council being comprised of individuals from Member organizations, there will be inherent conflicts of interest that arise due to the decision-making functions of the Executive Council

overlapping with Executive Council Members employer interests. However, these conflicts will generally fall under two categories, with different recommended disclosure procedures for each.

General Conflicts of Interest

The first category are 'general' conflicts of interest, which are those conflicts held in common with all Members of the Executive Council. These conflicts arise for Executive Council Members solely as a result of being employees of Member organizations and are uniform for all Executive Council Members. The nature and extent of these conflicts of interest will be held in common with all other Members of the Executive Council and will not be particular to the Member organization to which an individual belongs.

Specific Conflicts of Interest

The second category is 'specific' conflicts of interest and will include any particular conflicts that are not held in common with all other Members of the Executive Council. These conflicts can still arise as a result of an individual's employment with a Member organization but will be particular to the individual or Member group to which the individual belongs. This would include, for example, where some organizations are associated with National Internet Registries, which is an affiliation not shared with the general membership, or where an Executive Council Member has a personal business interest affected by a particular Executive Council decision. This would also include, for example, the situation where an organization is contracted to provide goods or services to APNIC and the Executive Council Member is employed by that organization, or is a Director or Officer of that organization.

Best Practice - Procedure for disclosures of Conflicts of Interest for the APNIC Executive Council

General conflicts of interest arising due to membership of the Executive Council

As noted above, there will be general conflicts of interest for Executive Council Members arising solely due to an individual Executive Council Member's affiliation with their respective Member organizations. In these situations, the nature and extent of the conflict is held in common with all the other Members of the Executive Council.

It would be best practice in these situations for each individual Executive Council Member to give 'standing notice' of the conflict at the beginning of their term on the Executive Council. The procedure for giving 'standing notice' of a conflict (using the Corporations Act 2001 as guidance) would be for an individual Executive Council Member to give details of the nature and extent of the interest either orally or in writing. This should occur at an Executive Council meeting or alternatively, should be given to the APNIC Secretary General. If the notice of the conflict of interest is given at an Executive Council meeting then it should be recorded into the minutes of the meeting. If the standing notice is given to the APNIC Secretary-General in writing, it must then be tabled at the next Executive Council meeting.

Standing notice of an interest should occur at the commencement of each Member's term on the Executive Council and will constitute sufficient notice of the general conflict of interest for the duration of a Member's term on the Executive Council. The standing notice would include details of the following:

- The nature of the individual's Member organization and how its nature relates to the decision-making capacity of the Executive Council; and
- The individual's role within their Member organization and any personal interest they have within the organization.

It is important to note that if any further matters arise that alter the nature or extent of the Member's conflict, then this will need to be further disclosed. Whilst the standing notice would constitute sufficient notice of the general conflict interest for the duration of the individual's tenure on the Executive Council, it would not constitute sufficient disclosure if the nature or extent of the interest changed.

Specific conflicts of interest arising for Executive Council Members

As noted above, specific conflicts of interest will arise for Executive Council Members when a conflict does not arise solely due to their affiliation with a Member organization, which is a conflict that is held in common between all Executive Council Members. Examples of specific conflicts will include when an individual Executive Council Member has a personal business interest in a transaction affected by an

Executive Council decision or where their Member organization has an affiliation with an National Internet Registry.

Further relevant duties for APNIC Executive Council Members

It is also pertinent to emphasize that in instances where APNIC Executive Council Members have conflicts of interest, these individuals must ensure they act in accordance with their other duties as officers of APNIC. Executive Council Members have duties to ensure that they act in good faith in the best interests of APNIC and that they do not improperly use their position to gain an advantage for themselves or their employer organizations.

With particular reference to instances where Executive Council Members have a conflict of interest, as officers of APNIC it will be critical that they evaluate Executive Council decisions without any bias to their own position. Where a conflict has already been correctly disclosed, the critical issue that will expose an officer to liability will be whether they allowed this conflict to affect their decision-making to ensure a personal benefit for themselves or their Member organization.

Legal Liabilities

The Directors and Officers have a duty to ensure that the company does not trade while it is insolvent. A company is insolvent if it is unable to pay its debts as and when they fall due. A Director or Officer may be personally liable for any debts incurred by the company while it is insolvent, and suffer a range of consequences including:

- Being found guilty of a criminal offence with a penalty of \$200,000 or imprisonment for up to five years, or both.
- Contravening a civil penalty provision (and the Court may order the person to pay the Commonwealth an amount of up to \$200,000).
- Being found personally liable to compensate the company or others for any loss or damage they suffer.
- Being prohibited from managing a company.

The Directors and Officers may also incur legal liabilities at a personal level if they fail in undertaking the following duties:

- To act in good faith;
- To act in the best interests of the company;
- To avoid conflicts between the interests of the company and the Director's or Officer's interests;
- To act honestly;
- To exercise care and diligence.

Defences available to Members of the Executive Council

There are four defences that can be raised in response to an allegation that a Director or Officer has breached their duty of good faith by not acting in the best interests of the company.

- (a) Section 1317S of the Corporations Act 2001 entitles a party to relief if it appears to the Court that the person has, or may have, contravened the Directors duty provisions but has acted honestly, and having regard to all of the circumstances of the case, ought fairly be excused for the contravention. The Court may relieve the person either wholly or partly from liability.
- (b) Similarly, section 1318 of the Corporations Act 2001 empowers the Court to grant relief where it appears that the person accused to have breached their duty to a company has acted honestly and having regard to all the circumstances of the case, including those connected with the person's appointment, the person ought fairly to be excused for the breach. The Court may relieve the person either wholly or partly from liability.
- (c) More specifically, section 180(2) contains a 'business judgment rule' defence that can be relied on by a Director or other Officer to defend a claim for breach of duty. Under this section, a Director or other Officer of a corporation who makes a business judgment is taken to meet their required duty to a company if:
 - The judgment is made in good faith and for a proper purpose; and

- The Director or Officer does not have a material personal interest in the judgment; and
- The Director or Officer informs himself/herself about the subject matter of the judgment to the extent they reasonably believe appropriate; and
- The Director or Officer believes the judgment is in the best interests of the corporation.

No such defence against personal liability could be maintained if a decision was based on favouring Executive Council Member organizational interests (for example, lower Member fees) above the best interests of APNIC and its membership.

- (d) Section 189 of the Corporations Act 2001 contains a defence for Directors and Officers who rely on information or professional or expert advice prepared by an employee, professional adviser or another Director in executing their duty to the company. If the reliance is made in good faith, and after making an independent assessment of the information provided, the Director's reliance on the information or advice is taken to be reasonable unless the contrary is proved. Directors and Officers may rely on this defence in circumstances where a decision was made in relation to the affairs of a company and the basis for making the decision was information provided by an employee, professional adviser, or third party expert.

Preconditions to Protections Against Personal Liability

Article 35 of the APNIC By-Laws provides as follows:

“Executive Council Members shall serve on the Executive Council in their personal capacity and shall act in the best interests of the APNIC Membership and not the Member organization to which that individual belongs. Only one individual per Member organization may be elected to sit on the Executive Council.”

For the Members of the Executive Council or the Directors of APNIC Pty Ltd to take the benefits of defences against personal liability provided by the Corporations Act 2001, proper process must be followed in arriving at Executive Council decisions.

The process for convening and undertaking meetings of the Executive Council as the basis for arriving at valid decisions of the Executive Council is set out in articles 44 through to 50 of the APNIC By-Laws.

- Article 44 of the By-Laws provides:

“The Executive Council may meet at such times and in such manner and places as the Executive Council may determine to be necessary or desirable.”
- Article 45 of the By-Laws provides that a meeting of the Executive Council is duly constituted for all purposes if at the commencement of the meeting there are present in person not less than one half of the total number of Executive Council Members or their duly authorized representatives.
- Article 48 of the By-Laws provides for notice of Executive Council meetings as follows:

“An Executive Council Member shall be given not less than seven days notice of meeting of the Executive Council, but a meeting of the Executive Council held without seven days notice having been given to all Council Members shall be valid if all the Executive Council Members entitled to vote at the meeting who do not attend waive notice of the meeting.”
- Articles 49 and 50 of the By-Laws set out the record keeping obligations of the Executive Council as follows:

“The Executive Council shall cause the following corporate records to be kept:

 - (a) Minutes of all meetings of the Executive Council and the Members;
 - (b) Copies of all resolutions passed by the Executive Council Members; and
 - (c) Such accounts and records as are necessary or desirable in order to reflect the financial position of APNIC and the corporation.”

“The books, records and minutes shall be kept by the General Secretariat or at such other place as the Executive Council may determine.”

Article 54 of the By-Laws provides that one of the functions of the Director General is as an ex-officio Member of the Executive Council. Accordingly, for an Executive Council meeting to have any legal effect the Director-General must also be given notice of the Executive Council meeting and should be present, participate, and witness any resolutions passed by the Executive Council as a precondition to that Executive Council decision being said to be valid.

If the correct process for holding meetings and passing resolutions at an Executive Council meeting is followed, and Directors are aware of conflicts of interests and are diligent in acting in the best interests at all times then the By-Laws provide indemnification and insurance against liability of the Directors, management and Executive Council Members above and beyond the defences against personal liability that are provided in the Corporations Act 2001.

Indemnification Provisions

Article 62 of the By-Laws provides as follows:

“To the extent permitted by law, and subject to By-Law 64, the corporation may indemnify against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings, any person who:

- (a) Is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was an Executive Council Member, the Director General or a Member of any subcommittee of APNIC; and
- (b) Is or was serving as an Executive Council Member, the Director General or a Member of any subcommittee in accordance with these By-Laws and the Memorandum and Articles of Association.”

Article 63 of the By-Laws provides:

“By-Law 62 only applies to a person referred to in that By-Law if the person acted honestly and in good faith with a view to serving the best interests of APNIC and, in the case of criminal proceedings the person had no reasonable cause to believe that this conduct was unlawful.”

Article 64 of the By-Laws provides that the decision of the Executive Council as to whether the person acted honestly and in good faith and with a view to serving the best interests of APNIC and as to whether the person had no reasonable cause to believe that his conduct was unlawful is in the absence of fraud, sufficient for the purposes of these By-Laws unless a question of law is involved.

Article 66 of the By-Laws provides:

“If a person referred to in By-Law 62 has been successful in the defence of any proceedings referred to in that By-Law that person is entitled to be indemnified against all expenses including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred by that person in connection with the proceedings.”

Insurance

Directors and Members of the Executive Council are also provided with the benefit of insurance cover to be provided by APNIC as an added protection against personal liability claims when satisfying their responsibilities as Directors and Executive Council Members.

Article 67 of the By-Laws provides:

“To the extent permitted by law the corporation may purchase and maintain insurance in relation to any person who is or was an Executive Council Member, the Director General or a Member of a subcommittee of APNIC, or who at the request of the Executive Council is or was an Executive Council Member, a Director General or a Member of a subcommittee, against all liability asserted against that person and incurred by that person in that capacity, whether or not the corporation has or would have the power to indemnify that person against liabilities set out under By-Law 62.”

Accordingly, before any right to indemnification can occur then the preconditions to indemnification under Article 63 of the By-Laws need to be satisfied that the relevant Director General or individual Executive

Council Member acted honestly and in good faith; with a view to serving the best interests of APNIC; and in the case of criminal proceedings the person had no reasonable cause to believe that his conduct was unlawful.

These requirements reflect quite closely the usual preconditions under Australian law to claiming the benefit of any Director and Officer insurance policy.

As a result, if any decision of the Directors or Executive Council could not be said to have been made in good faith for the proper purpose of being in APNIC's best interests then their right to indemnity and coverage under the Director and Officer insurance policy could be prejudiced.

Accordingly, it is vitally important that every decision reached by the Executive Council should be made on the following basis:

- (a) In good faith for the proper purpose and in best interests of APNIC;
- (b) Without any consideration given as to the benefit or detriment of the organizations who nominated individuals on the Executive Council; and
- (c) Must be a decision made at a properly convened Executive Council meeting at which correct notice of the meeting has been given to all Executive Council Members and the Director General with proper records of minutes of meetings being taken and recorded to satisfy Articles 49 and 54 of the By-Laws.

Part 4. Procedures for the Conduct of Business for the APNIC Executive Council

Adopted by the Executive Council as of 21 November 2007

The procedures relating to the conduct of the APNIC Executive Council, together with the delegation of powers, functions and authorities to the Executive Council are defined in the APNIC By-Laws. This document contains additional procedures relating to the conduct of activities undertaken by the Executive Council.

Notwithstanding any provisions contained here, these procedures are subject to the provisions of the APNIC By-Laws, the APNIC Articles of Association, the APNIC Memorandum of Association, and the powers of the corporation and its directors, other officers and Members.

1. Meeting Conduct

All meetings of the Executive Council shall be conducted according to **Roberts Rules of Order** (<http://robertsrules.com>).

2. Confidentiality

All Executive Council Members shall sign a binding non-disclosure agreement with APNIC. Failure to do so shall affect the ability of the Member to view certain documents and reports that relate to the status and activities of individual APNIC Members.

All proceedings of Executive Council meetings and all correspondence among the Executive Council are strictly confidential except where explicitly allowed for under these procedures or under the provisions of the APNIC By-Laws or applicable law.

Executive Council Members must not share information or material divulged to them in their role as Members of the Executive Council, in whole or in part, with any other persons or parties.

Executive Council meetings are not to be recorded in any form except by the designated minute taker, and access to telephonic meetings shall not be granted to any other person except with notice to, and consent of, the meeting.

Executive Council Members are elected and serve in their individual capacities. These confidentiality provisions apply to all Executive Council Members individually.

3. Notice of Meetings

The Chair of the Executive Council shall schedule regular meetings of the Executive Council with at least two weeks notice to all Executive Council Members. Extraordinary meetings may be proposed by any Executive Council Member and held at any time, by unanimous consent, of all Executive Council Members.

Due notice of regular meetings shall consist of notification via the Executive Council's mailing list and notification posted on the Executive Council's web page.

4. Agenda Items for Meetings

Any Executive Council Member may request that an item to be included in the agenda. Items from other sources may be included at the discretion of the Chair of the Executive Council.

Where an Executive Council decision is requested, a written proposal must be supplied, either on paper or electronically.

Agenda items, and documents for inclusion in those items, must be in the hands of the Executive Secretary of the Executive Council at least 10 days prior to the meetings. Agenda items and documents received after that date will only be included at the discretion of the Chair of the Executive Council, and with the consent of all those Executive Council Members present at the meeting.

The agenda and documents of a meeting will be made available to all Executive Council Members one week prior to the meeting.

The agenda of Executive Council meetings will contain the following standing items:

- Roll Call
- Minutes of last meeting and matters arising
- Finance Report
- Director General's Report
- Items submitted by Council Members

5. The Chair of the Meeting

The Chair of the meeting will be the Chair of the Executive Council, or in his absence the Secretary of the Executive Council or in their absence the Treasurer of the Executive Council, or in their absence the Director General.

6. Executive Secretary

The Director General of APNIC shall appoint an Executive Secretary for the Executive Council from time to time.

The responsibilities of the Executive Secretary include:

- Preparation of agenda and materials for Executive Council meetings,
- Recording of minutes of Executive Council meetings,
- Tracking of actions arising from meetings, and
- Other activities as required ensuring smooth operations of the Executive Council, under delegation from the Secretary of the Executive Council.

7. Minutes of Meetings

All meetings and proceedings are to be held with a designated minute taker present. The designated minute taker is the Executive Secretary of the Executive Council, or, in his absence, a Member of the Secretariat as nominated by the Director General.

Minutes will normally consist of a record of the agenda, the documents of the meeting, a summary of each item considered, and a record of the decisions taken by the Executive Council. The minutes will contain an action list with names responsible for the actions.

The Executive Secretary shall produce minutes of a meeting as soon as possible after the meeting. The minutes shall be circulated electronically to the Council Members for review. Normally, this

circulation should take place no later than two weeks after the meeting. The minutes will be approved at the subsequent Executive Council meeting and published thereafter.

8. Publication of Minutes and Papers of Meetings

All minutes and all meeting documents will be catalogued and held electronically. All minutes and meeting documents, except those deemed to be confidential by the Executive Council, and except those that relate to the status or activities of individual APNIC Members or individual clients of APNIC's services, will be published in accordance with these procedures as the record of the Executive Council's actions.

9. Exclusion

No items of Executive Council business shall be conducted in a manner that deliberately excludes any Member of the Executive Council from being present, or excludes the presence of the designated minute taker.

10. Declaration of Conflict of interest

All elected Members of the Executive Council serve on the Executive Council in their personal capacity and shall act in the best interests of the APNIC Membership and not the Member organization to which that individual belongs.

If an Executive Council Member has a conflict of interest, that is a material personal interest in a matter that relates to the affairs or decisions of the Executive Council of APNIC, then this interest must be disclosed.

General conflicts of interest resulting from Executive Council Members being employees of APNIC Member organizations and other appointments or positions held by the Executive Council Member that may conflict with the role of an Executive Council Member must be declared by filling in a conflict of interest declaration, a copy of which is attached to this Handbook. This notice is to be in written form, given at the individual's first Executive Council meeting, and will be included in the minutes of the meeting.

During the execution of duties as a Member of the Executive Council an individual may encounter specific Conflicts of Interest where the individual, or their employer may have a particular interest that relates to a particular matter or item of business. Any Executive Council Member must declare any specific conflict of interest. This should occur in the consideration of an item of business for the Executive Council, and declaration may be given verbally.

Executive Council Members declaring a specific conflict of interest will excuse themselves from the discussion of the item and abstain from the vote on any motion related to the item. The Member's declaration of conflict of interest and the abstinence from any vote will be recorded in the minutes of the Executive Council meeting.

11. Voting Procedure at the Meeting

Unless stipulated in the APNIC By-Laws or other binding documents, an Executive Council vote shall be considered to have passed if a majority of the Executive Council Members present at the meeting vote in favour of the motion. If a vote is tied the Chair of the meeting shall exercise the casting vote.

All majority votes shall be undertaken by affirmation. Any Member may request the Chair of the meeting to perform a vote according to a roll call procedure.

All other votes shall be performed according to a roll call procedure.

The Executive Secretary shall conduct all roll call procedure votes. In a roll call vote each Member shall respond when their name is called, indicating that they support or oppose the motion, or that they choose to abstain from the vote.

12. Electronic Voting Procedure

Any Member of the Executive Council may submit a proposal to the Executive Secretary for electronic voting.

The Executive Secretary shall circulate the proposal to the Executive Council via the Council's email list, with a copy posted to the Executive Council's web page. A time limit for the discussion period of one week will commence as of the circulation of the proposal to the Executive Council.

At the expiration of the discussion period, the Executive Secretary shall call for an electronic vote with a deadline for voting of one week. Votes must be sent to the Executive Council email list so that all Executive Council Members can audit the outcome.

For an electronic vote to be valid, the votes of the majority of the Executive Council Members must be received by the deadline for voting.

The electronic voting options are: Yes / No / Abstention / Veto.

Any Executive Council Member that fails to respond will be deemed as having abstained from the vote.

Up to the time of the completion of voting any Member may change their vote, including a veto.

The "veto" option is to be selected by an Executive Council Member if they are of the view that the issue has not been vetted to their satisfaction and therefore wishes to reopen discussion.

At the deadline of voting, if a "veto" vote option has been cast then the process reverts to the consideration stage or is referred to an in-person (face-to-face or telephonic) meeting, at the proposer's discretion.

A proposal is accepted if the majority of the Members give a positive vote and no "veto" is recorded. For decisions where a larger majority is required by the APNIC By-Laws or other binding documents, that rule will prevail.

Upon resolution of an electronic vote (closure or referral to an in-person meeting), the Executive Secretary will state the issue and the result for recording in the relevant minutes.

13. Reporting to the APNIC Membership

As part of the Executive Council's report to the APNIC AGM, the Executive Secretary shall prepare a report to the APNIC Members, indicating for each membership-elected Member of the Executive Council:

- The record of Executive Council meeting attendance for each Member of the Council;
- The record of trips and meetings attended as a representative of APNIC and the total amount funded by APNIC for these activities; and
- Whether the Executive Council Member has executed a non-disclosure agreement with APNIC.

14. Provision of Documents, Analysis, and Research by the Secretariat

The Secretariat shall provide to the Executive Council the accounts and records as necessary to reflect the current financial position of APNIC. These accounts and records shall be presented in the Finance Report standing agenda item.

Any additional requests for documents, analysis, or reports shall be made by resolution of the Executive Council and be passed to the Executive Secretary for response by the Secretariat. The Executive Secretary shall acknowledge the request and provide an initial estimate of when the response material will be circulated to the Executive Council.

All provided material will be circulated to all Members of the Executive Council, except in the case that the Member has failed to execute a binding non-disclosure agreement with APNIC and the information to be circulated includes confidential information relating to individual Member activities or status.

15. Election of Officers of the Executive Council

The Executive Council holds an internal election to select a Chair, Treasurer, and Secretary for the calendar year. This election is held at the Board's first regularly scheduled meeting following the membership election of Council Members at the APNIC Annual General Meeting.

Each officer shall be elected for a one-year renewable term by the affirmative vote of at least a majority of the Members of the Executive Council then in office. An individual may not hold more than one office.

The Director-General, as the only non-elected Executive Council Member, chairs the first Council meeting following the Annual General Meeting until the Chair is elected.

The Director-General asks for candidates to run for Chair of the Executive Council. The Director-General holds a roll call vote for each candidate and declares the winner. While no candidate achieves a majority vote, the candidate with the least votes is removed from the slate and the voting procedure is repeated. The Chair takes office immediately upon election.

The newly elected Chair chairs the remainder of the meeting, including the selection of the Secretary and Treasurer.

The Chair asks for candidates for Secretary and Treasurer. The Chair then holds a vote for each office according to the procedure used to elect the Chair.

16. Subcommittees of the Executive Council

All subcommittees formed by the Executive Council shall be constituted with a defined lifetime, at the expiration of which the subcommittee shall be extended for a further defined period or wound up, at the discretion of the Executive Committee.

All subcommittees formed by the Executive Committee shall have a charter to describe its role, and any delegated powers and authorities, and a membership.

All subcommittees formed by the Executive Council shall adhere to these procedures for the conduct of their business.

Part 5. By-Laws of APNIC

PREAMBLE

Recognising that APNIC Pty Ltd ("the corporation") is a non-profit corporation providing the service of allocating and registering Internet resources in the Asia and Pacific Rim region;

By resolution of the directors passed on June 24 1998, the Special Committee herein known as "APNIC" is appointed in accordance with Article 9.3 of the Articles of Association of the corporation ("the Articles") and is governed by these By-Laws promulgated under Article 9.4 of the Articles, whose objects and purposes are set out hereinafter;

Notwithstanding any provisions contained in these By-Laws, the By-Laws are subject to the Articles and the powers of the corporation and its directors, other officers and Members.

PART I – NAME

1. The name of this Special Committee shall be "APNIC" comprising of Members ("Members") from the Asia and Pacific Rim region.

PART II – OBJECTS

2. The objects of APNIC are to:
 - a. Provide the service of allocating and registering Internet resources for the purpose of enabling communications via open system network protocols and to assist in the development and growth of the Internet in the Asia and Pacific Rim region;
 - b. Assist the Asia and Pacific Rim Internet community in the development of procedures, mechanisms, and standards to efficiently allocate Internet resources as a service to the community as a whole;
 - c. Provide educational opportunities to further Members' technical and policy understanding of the industry;
 - d. Develop public policies and public positions in the best interest of the Members and to seek legislative and regulatory consideration of issues of general benefit to the Members, where and when appropriate;
 - e. Serve as the administrative, managerial, and operations arm of APNIC Pty Ltd, and to transact all activities, functions, and affairs on behalf and in the name of the corporation.

PART III - STRUCTURE OF APNIC

3. APNIC shall comprise of the following:
 - a. Members, who are the governing body of APNIC;
 - b. The Executive Council, which acts on behalf of APNIC;
 - c. The Secretariat, headed by a Director General; and
 - d. One or more Subcommittees designated by the Executive Council, if any.

PART IV – MEMBERS

Conditions of Membership

4. Membership shall be open to any person, unincorporated association, firm, corporation governmental organization or non-governmental organization, engaged in the use of or business of providing open system protocol network services. The Executive Council may grant Membership to any other person or persons as it deems appropriate from time to time. Memberships shall be in the name of the person, firm, or corporation as may be doing

business and shall not be held by individuals who own, represent, or are employed by such eligible Member. Members shall pay dues as established by the Executive Council from time to time and the payment of such dues shall be a condition precedent to effective Membership of APNIC.

Functions of Members

5. The Members shall:
 - a. Determine the general policies for fulfilling the objects of APNIC prescribed in by-law 2 above;
 - b. After considering the reports by the Executive Council on the activities of APNIC since the previous Annual General Meeting and on the recommended strategic policy and planning for APNIC, adopt all decisions it considers appropriate;
 - c. Examine the accounts of APNIC and finally approve them, if appropriate;
 - d. Elect the individuals who are to serve on the Executive Council;
 - e. Consider and adopt, if appropriate, proposals for amendments to the provisions of these By-Laws in accordance with the provisions herein and subject to provisions contained in the Memorandum and Articles of Association of the corporation respectively;
 - f. Have the right to review and/or to amend the decisions of the Executive Council by a two-thirds (2/3) majority of the votes of the entire membership;
 - g. Have the right to convene Special Meetings by way of a petition signed by not less than one-quarter (1/4) of the votes of the entire membership;
 - h. Deal with such other questions as may be necessary.

Annual General Meeting

6. The Annual General Meeting of the Members, for the election of Executive Council Members (as applicable according to the expiration of their terms of office as provided elsewhere herein) and for the transaction of such other business as may properly come before the meeting, shall be held every fiscal year at such place and at such time as the Executive Council shall each year fix.

Special Meetings

7. Special meetings of the Members, for any purpose described in the notice of the meeting, may be called by the Executive Council or by the Director General, and shall be held at such place, on such date, and at such time as they or the Director General shall fix.

Quorum

8. A meeting of Members is duly constituted and a quorum is said to be present if, at the commencement of the meeting, there are present in person or by proxy not less than either 30 per cent of the votes entitled to vote on resolutions of Members to be considered at the meeting, or 20 Members, whichever is less.
9. Members shall be deemed to be present at a meeting of Members if they participates by other electronic means and all Members participating in the meeting are able to acknowledge each other in real-time, providing notice is given to the Secretary of the Executive Council ("Secretary") by that Member at least 48 hours in advance of the means of communication.
10. If within one hour from the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to the next business day at the same time and place or to such other time and place as the Executive Council or the Director General may determine, and if at the adjourned meeting there are present within one hour from the time appointed for the meeting in person or by proxy not less than either 20 per cent of the votes entitled to vote on the resolutions to be considered by the meeting or 20 Members, those present shall constitute a quorum, but otherwise the meeting shall be dissolved.

Chair of Meetings

11. At every meeting of Members, the Chair of the Executive Council shall preside as Chair of the meeting. If the Chair of the Executive Council is not present at the meeting, then if the Director General is present, the Director General shall preside as Chair of the meeting, otherwise the Members present shall choose someone of their number to be the Chair. If the Members are unable to choose a Chair for any reason, then the person representing the greatest number of votes present in person or by prescribed form of proxy at the meeting shall preside as Chair failing which the oldest individual Member (in terms of age) or representative of a Member present shall take the Chair.

12. The Chair may, with the consent of the meeting, adjourn any meeting from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
13. At any meeting, Members the Executive Council shall be responsible for the counting of votes in such manner as it considers appropriate in the circumstances and may, for this purpose, appoint two or more persons to serve as tellers.

Authorized Representatives

14. Where a Member is not an individual then, subject to By-Law 15, the right of any individual to speak for or represent such Member shall be determined from any documents. This may include electronically verifiable signatures or identification codes presented to the Chair which purports to authorize that individual to represent the Member. If the Chair is not reasonably satisfied as to that individual's authority to represent the Member, the individual shall not represent the Member until further evidence has been presented to the Chair and he or she is satisfied that that individual has authority to represent the Member.
15. The Chair of any meeting at which a vote is cast by proxy or on behalf of any Member who is not an individual may call for a copy of such proxy or authority certified by a solicitor, barrister, Justice of the Peace, Commissioner for Declarations, Notary Public, or other person holding an equivalent office, which shall be produced within 48 hours of being so requested, failing which the votes cast by such proxy or on behalf of such Member shall be disregarded.
16. Any Member other than a Member who is an individual may, by resolution of its directors or other governing body, authorize such persons as it thinks fit to act as its representative at any meeting and the person so authorized shall be entitled to exercise the same powers on behalf of the Member which he or she represents as that Member could exercise if it were an individual Member of APNIC.

Notice of Meetings

17. Written notice of the place, date, and time of all meetings of the Members shall be given by the Executive Council or the Director General acting on behalf of the Executive Council not less than ten days before the date on which the meeting is to be held, to each Member entitled to vote at such meeting, except as otherwise provided herein. Notice is deemed to be given as soon as it is posted or otherwise issued, and no account shall be taken of the non-receipt or non-delivery thereof.
18. When a special meeting is adjourned to another place, date or time, written notice need not be given of the adjourned meeting if the place, date, and time thereof are announced at the meeting at which the adjournment is taken; provided, however, that if the date of any adjourned meeting is more than thirty days after the date for which the meeting was originally noticed, written notice of the place, date, and time of the adjourned meeting shall be given in conformity herewith. At any adjourned meeting, any business may be transacted which might have been transacted at the original meeting.
19. The inadvertent failure of the Executive Council or the Director General to give notice of a meeting to a Member, or the fact that a Member has not received notice, does not invalidate the meeting.

Proxies

20. A proxy may represent a Member at any meeting of Members. The proxy may speak and vote on behalf of the Member.
21. The instrument appointing a proxy shall be produced in person or by verifiable electronic means to any Member of the Executive Council or the Director General, or at the principle place of business of the corporation, 48 hours before the time for holding the meeting at which the person named in such instrument proposes to vote.
22. An instrument appointing a proxy shall be in substantially the following form or such other form as the Chair of the meeting shall accept as properly evidencing the wishes of the Member appointing a proxy.

Voting

23. Except where stated otherwise in the notice of meeting, voting on issues to be determined at meetings may be cast by electronic mail ("email") or other verifiable electronic means. The notice of meeting shall stipulate the manner in which votes may be cast together with the address or location of the designated repository where such votes may be directed. Votes cast in such a manner must reach the designated repository at least 48 hours in advance of the date and time appointed for the said meeting, or such longer period as the notice may stipulate.
24. Every Member shall be entitled to cast the number of votes allotted to that Member according to that Member's tier of membership.
25. All matters other than election or removal of Council Members or the amendment or repeal of these By-Laws or the review or amendment of any decision of the Executive Council shall be determined by a majority of the votes cast. All elections of Council Members shall be determined by a plurality of the votes cast, and in the event of a tie, a re-casting of votes is to take place. The removal of a Council Member or the amendment or repeal of these By-Laws or the review or amendment of any decision of the Executive Council shall each require the affirmative vote of two-thirds of the votes of the entire membership as paid-up 48 hours before the meeting.

Resignation

26. Any Member may resign at any time by giving written notice to the Executive Council or Director General. Unless otherwise specified in such written notice, such resignation shall take effect upon receipt thereof by the Executive Council or Director General, and the acceptance of such resignation shall not be necessary to make it effective.
27. With the exception of the case in which APNIC and a Member agrees that prior to the use of any APNIC allocation services the Member no longer requires the services of APNIC in which case the Member's membership may be terminated and the Member will receive a refund as agreed between APNIC and the Member in the Member's Membership Agreement, fees paid-up by Members are not refundable, whether in part or in whole, if a Member resigns.

Consent of Members in Lieu of Meeting

28. Any action required to be taken at any meeting or any action which may be taken at any meeting of the Members may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action to be taken, shall be signed by the number of Members having not less than the minimum of votes that would be necessary to authorize or take such action at a meeting at which all Members entitled to vote thereon were present and voted and shall be delivered to APNIC by delivery to the principal place of business of the corporation, or to a Council Member having custody of the book in which proceedings of meetings of Members are recorded, or to the Director General, or by verifiable electronic means. Delivery made to the principal place of business of the corporation shall be made by hand or by certified or registered mail, with a return receipt requested.
29. Every written consent shall bear the date of the signing by each Member who signs the consent. No written consent shall be effective unless, within sixty (60) days of the date the earliest dated consent is delivered, a written consent or consents signed by a sufficient number of Members are delivered in the manner prescribed hereinbefore.

PART V - The Executive Council

Powers of the Executive Council

30. The main functions of the Executive Council are to:
 - a. Act on behalf of the Members in the interval between Annual General Meetings within the limits of the powers delegated to it by the Members;
 - b. Manage the activities, functions and affairs of APNIC and the corporation;
 - c. Exercise all such powers and do all such acts or things as may be required to be exercised or done by the corporation or the directors of the corporation, subject to the

- provisions of the Memorandum and Articles of Association of the corporation and to such requirements as may be prescribed by a resolution of the directors of the corporation;
- d. Take all steps to facilitate and implement the decisions of the Members at Annual General Meetings and, where appropriate, of the decisions of other meetings of APNIC;
 - e. Consider broad Internet policy issues in order to ensure that APNIC's policies and strategies fully respond to the constantly changing Internet environment;
 - f. Ensure the efficient coordination of the work of APNIC;
 - g. Establish the basis for the budget of APNIC and determine, in the light of the decisions taken by the Members on the reports referred to in By-Law 5(b) above, a ceiling for the expenditure of APNIC until the next Annual General Meeting after considering all relevant aspects of the work of APNIC in that period;
 - h. Provide any general directives dealing with the staffing of APNIC and, if necessary, fix the basic salaries, the salary scales and the system of allowances and pensions, if any, for all employees of APNIC;
 - i. Elect the Director General.
31. The first Executive Council shall be composed of five Members who shall be appointed by the Director General. From the time of completing the Executive Council elections at the first Annual General Meeting, the Executive Council shall be composed of seven Members elected at Annual General Meetings in accordance with the provisions of these By-Laws.
 32. The first Executive Council shall hold office until the first Annual General Meeting is convened, whereupon two of the five Members of the first Executive Council shall relinquish office and the Members shall elect four succeeding Executive Council Members (two to replace the Members relinquishing their office and a further two to bring the total of the Executive Council to seven) to office in accordance with these By-Laws. The two Members of the first Executive Council who shall relinquish office at the first AGM will be chosen by the Director General. Upon election, the four succeeding Executive Council Members shall hold office for two years. The remaining three Members of the first Executive Council shall continue in office until the second Annual General Meeting whereupon their successors shall in like manner be elected and hold office for two years.
 33. Successive Executive Council Members shall each serve a two-year term of office, but shall be eligible for re-election. To avoid any lack of clarity it is specifically recognized that the Members of the first Executive Council are also eligible for re-election when they respectively relinquish office either at the first or second Annual General Meeting.
 34. Each Member voting at an Annual General Meeting may nominate one individual who shall then be eligible to stand for election to the Executive Council. Nominations of individuals for election to the Executive Council must be received at the principle place of business of the corporation, or other address designated by the Executive Council, no less than two weeks and no more than eight weeks prior to the date of the Annual General Meeting.
 35. Executive Council Members shall serve on the Executive Council in their personal capacity and shall act in the best interests of the APNIC membership and not the Member organization to which that individual belongs. Only one individual per Member organization may be elected to sit on the Executive Council.
 36. Decisions of the Executive Council shall be made by a majority vote of the Members of the Executive Council present at a meeting, except that decisions to remove the Director General shall require a three-fifths majority vote of all Members of the Executive Council (present or otherwise).
 37. The Executive Council shall have the discretion and power to reduce or waive the requirements of fees for deserving organizations from year to year and shall have the discretion and power to request an audit of any or all aspects of the operation of the APNIC Secretariat (as defined in part VI) at any time with the costs of such audit to be borne by the corporation.

Chair of the Executive Council

38. The Executive Council shall by majority elect one of the Members of the Executive Council as Chair of the Executive Council, who shall serve as Chair until such time as that Member's term as a Member of the Executive Council has expired or that Member's earlier resignation or removal. Any Member of the Executive Council who has served as Chair of the Executive Council is eligible to be re-elected as Chair, at the discretion of the Executive Council.
39. The duties of the Chair of the Executive Council are to:
- a. Call meetings of the Executive Council;
 - b. Preside at all meetings of the Executive Council; and
 - c. Perform such duties and exercise such powers as are given to the Chair by order of the Executive Council.

Treasurer

40. The Executive Council shall by majority elect one of the Members of the Executive Council as Treasurer of the Executive Council. The Treasurer shall, with the assistance of the General Secretariat, have the responsibility for preparing and maintaining the financial records of APNIC and the corporation and for custody of all moneys and securities of the corporation. The Treasurer shall make such disbursements of the funds of the corporation as are authorized. The Treasurer shall also perform such other duties as the Executive Council may prescribe from time to time.

Secretary

41. The Executive Council shall by majority elect one of the Members of the Executive Council as Secretary of the Executive Council. The Secretary shall, with the assistance of the General Secretariat, issue all authorized notices for, and shall keep minutes of, all meetings of the Members and the Executive Council. The Secretary shall have charge of the records of APNIC and shall perform such other duties as the Executive Council may prescribe from time to time.

Vacancy

42. The continuing Executive Council Members may act (notwithstanding any vacancy in their body, save that if their number is reduced below the number fixed by or under these By-Laws as the necessary quorum for a meeting of the Executive Council) only for the purpose of appointing Council Members to fill any vacancy that has arisen or for summoning a meeting of Members. A Council Member so appointed shall hold office until the next Annual General Meeting, whereupon an election will take place in accordance with these By-Laws.

Resignation

43. Any Council Member may resign at any time by giving written notice to the Chair of the Council or the Director General. Unless otherwise specified in such written notice, such resignation shall take effect upon receipt thereof by the Director General, and the acceptance of such resignation shall not be necessary to make it effective.

Proceedings of the Executive Council

44. The Executive Council may meet at such times and in such manner and places as the Executive Council may determine to be necessary or desirable.

Quorum

45. A meeting of the Executive Council is duly constituted for all purposes if at the commencement of the meeting there are present in person not less than one half of the total number of Council Members or their duly authorised representatives.
46. An Executive Council Member shall be deemed to be present at a meeting of the Executive Council if he or she participates by electronic means and all Council Members participating in the meeting are able to acknowledge each other in real time.

Resolutions in Writing

47. A resolution in writing, signed by all the Executive Council Members for the time being entitled to receive notice of a meeting of the Executive Council, shall be as valid and effectual as if it had been passed at a meeting of the Executive Council duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more Council Members.

Notice of Meetings

48. An Executive Council Member shall be given not less than seven days' notice of meetings of the Executive Council, but a meeting of the Executive Council held without seven days' notice having been given to all Council Members shall be valid if all the Executive Council Members entitled to vote at the meeting who do not attend waive notice of the meeting. The inadvertent failure to give notice of a meeting to a Council Member, or the fact that a Council Member has not received the notice, does not invalidate the meeting.

Keeping of Records

49. The Executive Council shall cause the following corporate records to be kept:
- a. Minutes of all meetings of the Executive Council and the Members;
 - b. Copies of all resolutions passed by Executive Council Members, and the Members; and
 - c. Such accounts and records as are necessary or desirable in order to reflect the financial position of APNIC and the corporation.
50. The books, records, and minutes shall be kept at the General Secretariat or at such other place as the Executive Council may determine.

PART VI - GENERAL SECRETARIAT

51. The General Secretariat, which shall comprise the staff of the corporation, shall be directed by a Director General. The Director General must not be a Member of APNIC, the representative of a Member of APNIC, nor a Member of the Executive Council.
52. The Director General shall be elected by a majority vote of the Members of the Executive Council.
53. The Directors of the corporation shall appoint the first Director General.
54. The main functions of the Director General are to:
- a. Act as the chief executive officer of APNIC and the corporation;
 - b. Have, subject to the provisions of these By-Laws and to the direction of the Executive Council, the responsibility for the general management and control of the activities, functions and affairs of APNIC and the corporation and perform all duties and have all powers which are commonly incident to the office of chief executive or which are delegated by the Executive Council;
 - c. Execute all contracts, agreements, and other instruments of the corporation that are authorized including affixing the seal of the corporation;
 - d. Appoint and have general supervision and direction of all of the other staff and agents of APNIC and the corporation, including but not limited to bookkeeping, accounting, and treasury functions on behalf of the Treasurer;
 - e. Implement strategic policies, prepare plans for APNIC, and shall coordinate its activities, functions and affairs;
 - f. Report to the Executive Council and to put forward resolutions for the consideration of the Executive Council;
 - g. Take all the actions required to ensure the economic use of APNIC's resources and shall be responsible to the Executive Council for all the administrative and financial aspects of APNIC's activities;
 - h. Act as the legal representative of APNIC and the corporation;
 - i. Act as an ex-officio Member of the Executive Council.

55. The Director General shall not be removed from office except by an affirmative vote of three-fifths of the Members of the Executive Council.

PART VII - SUBCOMMITTEES

56. The Executive Council may from time to time designate subcommittees of APNIC, with such lawfully delegable powers and duties as it thereby confers, to serve at the pleasure of the Executive Council.
57. Except as otherwise provided herein and except as may be otherwise provided by the Executive Council in designating the sub-committee, each sub-committee may determine the procedural rules for meeting and conducting its activities, functions and affairs and shall act in accordance therewith. Adequate provision shall be made for notice to Members of the sub-committee of all meetings, and all matters shall be determined by a majority vote of the Members present. Action may be taken by any subcommittee without a meeting if all Members thereof consent thereto in writing, and the writing or writings are filed with the minutes of the proceedings of such subcommittee.

PART VIII - FINANCIAL TRANSACTIONS

58. All cheques, promissory notes, drafts, bills of exchange, and other negotiable instruments and all receipts for moneys paid to the corporation shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in the name of "APNIC Pty Ltd" or in such other manner as may from time to time be determined by a resolution of the Executive Council.

PART IX - CONTRACTS WITH THIRD PARTIES

59. All agreements, contracts, and other authorized instruments of the corporation duly entered into by APNIC with third parties shall be entered into on behalf of, and in the name of, the corporation, "APNIC Pty Ltd".

PART X - NOTICES

60. Except as otherwise specifically provided herein or required by law, all notices required to be given to any Council Member, Member, Officer or Agent shall be in writing and may in every instance be effectively given by hand delivery to the recipient thereof, by depositing such notice in the mails, postage prepaid, or by sending such notice by prepaid telegram or mailgram or by telex, facsimile or other electronic means of transmission. Any such notice shall be addressed to the Executive Council Member, Member, officer or agent at such person's last known address as shown on the books of the corporation. The time when such notice is received, if hand delivered, or dispatched, if delivered by mail or by telegram, mailgram, or other electronic means of transmission, shall be the time of the transmission, dispatch, or posting of the notice.

Waiver of Notice

61. A written waiver of any notice, signed by a Council Member or Member whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such Council Member or Member. Neither the business nor the purpose of any meeting need be specified in such a waiver.

PART XI - INDEMNITIES

Right to Indemnification

62. To the extent permitted by law, and subject to By-Law 64, the corporation may indemnify against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative, or investigative proceedings, any person who:
 - a. Is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was an Executive Council Member, the Director General or a Member of any sub-committee of APNIC; and
 - b. Is or was serving as an Executive Council Member, the Director General or a Member of any subcommittee in accordance with these By-Laws and the Memorandum and Articles of Association.
63. By-Law 62 only applies to a person referred to in that By-Law if the person acted honestly and in good faith with a view to serving the best interests of APNIC and, in the case of criminal proceedings, the person had no reasonable cause to believe that his conduct was unlawful.
64. The decision of the Executive Council as to whether the person acted honestly and in good faith and with a view to serving the best interests of APNIC and as to whether the person had no reasonable cause to believe that his conduct was unlawful is, in the absence of fraud, sufficient for the purposes of these By-Laws, unless a question of law is involved.
65. The termination of any proceedings by any judgment, order, settlement, conviction or the entering of a nolle prosequi does not, by itself, create a presumption that the person did not act honestly and in good faith and with a view to serving the best interests of APNIC or that the person had reasonable cause to believe that his conduct was unlawful.
66. If a person referred to in By-Law 62 has been successful in the defence of any proceedings referred to in that By-Law that person is entitled to be indemnified against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred by that person in connection with the proceedings.

Insurance

67. To the extent permitted by law the corporation may purchase and maintain insurance in relation to any person who is or was an Executive Council Member, the Director General or a Member of a subcommittee of APNIC, or who at the request of the Executive Council is or was serving as an Executive Council Member, the Director General or a Member of a sub-committee, against all liability asserted against that person and incurred by that person in that capacity, whether or not the corporation has or would have had the power to indemnify that person against the liabilities set out under By-Law 62.

PART XII - MISCELLANEOUS

Facsimile Signatures

68. Facsimile signatures of any Council Member or the Director General may be used whenever and as authorized by the Executive Council.

Corporate Seal

69. The directors of the corporation must provide a suitable seal, containing the name of the corporation. The Director General shall be in charge of the seal. If and when so directed by the Executive Council, the Director General may use the seal.

Members of previous "APNIC"

70. APNIC may provide services to any Member of the body also named "APNIC" which was established by the Asia Pacific Network Information Centre, Ltd (a company incorporated under the sovereign laws of the Seychelles) by resolution of the directors of the Asia Pacific Network Information Centre, Ltd on 18 May 1996 ("the First APNIC"). However no Member of

the First APNIC shall be entitled to any rights (including voting rights), powers or privileges under these By-Laws except as decided by the Director General, the Executive Council, or a majority vote of the Members of APNIC.

Time Periods

71. In applying any provision of these By-Laws, which requires that an act be done or not done, a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used. The day of the doing of the act shall be excluded and the day of the event shall be included.

Official Language

72. The official language of APNIC shall be English and all meetings and all minutes, documents, instruments, or any form of communication whether in electronic form or otherwise, shall be in English.

Dispute Resolution

73. Any dispute arising between or among any Member(s), Executive Council Member(s), subcommittee Member(s), the Director General, or the corporation as to any matter arising under or out of or in connection with these By-Laws, or any agreement entered into between any of the aforementioned parties, or the Memorandum and Articles of Association of the corporation, and whether in contract or tort, ("Dispute") the parties to the Dispute must follow the dispute resolution procedures set out below before commencing legal proceedings (except for legal proceedings seeking interlocutory relief).
74. A party claiming that a Dispute has arisen must notify in writing each other party to the Dispute giving details of the Dispute.
75. Within seven days after a notice is given under By-Law 74 each party to the Dispute ("Disputant") must nominate in writing a representative authorized to settle the Dispute on its behalf.
76. During the 20 day period after expiration of the 7 day period referred to in By-Law 75 (or longer period agreed in writing by the Disputants) ("Initial Period") each Disputant must in good faith use its best endeavours to resolve the Dispute.
77. If the Disputants are unable to resolve the Dispute within the Initial Period they must refer the Dispute to arbitration to one arbitrator agreed to by the parties or, if they cannot agree, by the Chair of the Institute of Arbitrators Australia, or the nominee of the Chairs, and the arbitration will be conducted in accordance with the UNCITRAL rules for the conduct of commercial arbitrations.
78. Any information or documents prepared for the arbitration and disclosed by a Disputant during the arbitration process must:
- a. Be kept confidential; and
 - b. Not be used except for the purpose of resolving the Dispute.
79. Each Disputant must bear its own costs regarding arbitration of a Dispute under these clauses, and the Disputants must bear equally the fees, and any other costs or charges, of any arbitrator engaged, unless a binding decision of the arbitrator states otherwise.
80. The place for any arbitration will be at a time and at an address in the City of the principal place of business of the corporation appointed by the arbitrator, unless otherwise agreed by the Disputants and the arbitrator.
81. If, in relation to a Dispute, a Disputant breaches any of the provisions of By-Laws 74 to 76, each other Disputant need not comply with these dispute resolution clauses in relation to that Dispute.

Governing Law

82. The governing law of these By-Laws and all agreements entered into between Members and the corporation shall be the law of Queensland, Australia, and the parties irrevocably submit to the jurisdiction of the Courts of Queensland, Australia.

PART XIII - AMENDMENTS

83. These By-Laws may be amended by the Members at any meeting by an affirmative vote of two-thirds of the votes of the entire membership.

Attachment A. Consent and Declaration of Interests



Consent to Appointment to the Executive Council of APNIC

I consent to my appointment to be on the Executive Council of APNIC.

I acknowledge that I must abide by the By-Laws of APNIC as are contained from time to time on APNIC's web site (<http://www.apnic.net>).

1. Personal details

First name: _____

Family name: _____

Address: _____

Phone: _____

Facsimile: _____

E-mail: _____

Date and place of birth: _____

All former first and family names: _____

2. Disclosure of interests in contracts, property, offices

(a) The interests that I have in contracts or proposed contracts with APNIC or APNIC Pty Ltd are as follows:

(b) I give general notice that I am an officer, shareholder or employee of the following corporations and firms which are Members of APNIC:

(c) The offices and property that I hold where duties or interests might be created in conflict with my duties or interests as a Member of the Executive Council and the nature, character and extent of the conflict, are:

3. General

I agree to notify the APNIC Pty Ltd of any change in these particulars as soon as possible after the change.

Signature: _____

Date: _____

Attachment B. Non Disclosure Agreement



APNIC Pty Ltd

Non-Disclosure Statement

I, _____

of _____,

as a condition of membership of the Executive Council of APNIC Pty Ltd ("APNIC"), make the following statement relating to the non-disclosure of information.

1. I understand that in the normal course of its business, APNIC receives from organizations detailed information; for example, about the internal network infrastructure, customers, and development plans of those organizations. I understand that such information is provided to APNIC for the purpose of enabling APNIC to properly carry out its business; for example, through evaluating requests for Internet resources and registering allocations and assignments of those resources in accordance with its policies.
2. Further, I understand that an organization providing information to APNIC may consider much of that information to be of a confidential nature and that unauthorized disclosure of that confidential information to the public or its competitors could be harmful to the business of the organization or its customers.
3. Further, I understand that certain information about APNIC itself, including information relating to financial, legal, technical, operational, and strategic matters, may also be considered by APNIC to be confidential.
4. Therefore, I agree that if, in the course of my membership of the Executive Council of APNIC,
 1. I receive information about an organization using APNIC services, about a customer of an organization using APNIC services, or about APNIC itself; and
 2. that information is specifically designated as confidential information, or may reasonably be considered to be confidential information,then I will take all reasonable care not to disclose such information to any party outside APNIC either during the term of my membership of the Executive Council, or subsequently.
5. This agreement will not apply to information that:
 1. Is provided for the specific purpose of registration on a public database;
 2. Is specifically authorized by the relevant organization for disclosure;
 3. Is disclosed by the relevant organization to another party without restriction;
 4. Enters the domain of common industry knowledge through other means beyond my control.
6. Further, this agreement will not apply to a specific disclosure of information which is required by a court order.

I _____ **acknowledge that I have read and understood this document and agree to its terms.**

Signed: _____

Date: _____