#### **APNIC EC Meeting Minutes**

Face-to-Face Meeting, Shangri La Hotel, SIngapore

Monday, 25 February 2013

Meeting Start: 9:05am (UTC +8:00)

#### **Present**

Akinori Maemura Che-Hoo Cheng Kenny Huang James Spenceley Gaurab Raj Upadhaya Ma Yan Wendy Zhao Paul Wilson

Geoff Huston Craig Ng Richard Brown Connie Chan Sanjaya

#### **Agenda**

- 1. Agenda Bashing
- 2. Review of Minutes
- 3. Financial Report
- 4. DG Report
- 5. APNIC 35 EC Election Procedure
- 6. NIR Agreement
- 7. EC Procedures
- 8. EC Development Goals for 2013
- 9. AOB

#### **Minutes**

The EC Chair called the meeting to order at 9:05 am (*UTC* +8:00), Monday 25 February.

The meeting adjourned at 12:35 pm, resumed at 5:00pm, and closed at 5:50 pm.

#### 1. Agenda Bashing

The Chair of the EC chaired the meeting.

The EC unanimously resolved to:

Call an extraordinary meeting of the EC at 4:00pm UTC + 8:00 on Friday 1 March 2013 at the Shangri La Hotel, Singapore, with an agenda of the election of EC Office holders for 2013.

Motion to hold an extraordinary EC meeting proposed by Paul Wilson, seconded by Che-Hoo Cheng

#### 2. Review of Minutes

The minutes of the meeting held on 17<sup>th</sup> and 18th December 2012 were unanimously approved.

Motion to approve the minutes proposed by Akinori Maemura, seconded by Kenny Huang

The EC reviewed the outcomes of the December 2012 retreat (attached).

The EC noted their intent to increase EC involvement in the preparation for the 2014 member and Stakeholder Survey.

It was proposed to add a report on an APNIC Risk Register as a standing report at EC meetings, reporting on the status of identified risk factors and current and proposed mitigations.

#### 3. Financial Report

The EC reviewed the financial report for December 2012, the Audited Financial Report for 2012 and the Auditor's Closing Report (attached).

The EC noted the total asset position of \$25.2M, representing a 25% increase in total assets through 2012. Total revenue for 2012 was \$17.7M for the year, which is 7% above the 2012 budget forecast. Total expenses are \$14.4M, which is 8% below the original budget forecast. The operating surplus for 2012 was \$3.2M.

At the end of 2012 APNIC had a total of 3,593 members. There were 891 new members, and 245 members who had closed their accounts, representing a net increase of 646 members during the course of 2012.

The EC was updated regarding the Investment Policy which is being developed by the Secretariat, for EC approval at the next meeting. This Policy will provide the DG and Secretariat with specific guidelines for ongoing management of APNIC's capital reserves across a number of investment options and risk profiles.

With respect to APNIC's taxation status as a Membership Association, it was reported that the Australian Taxation Office's Private Ruling relating to APNIC's eligibility to apply the principle of mutuality to member subscriptions has expired. As advised by APNIC's taxation consultants, APNIC is operating on the basis that mutuality still applies to the taxation treatment of member subscriptions, on the basis that there have been no substantive changes to the corporate governance structures of APNIC in this time.

The EC noted the December Financial Report, the Audited Special Purpose Financial Report for 2012, and the Auditor's Closing Report to the Executive Council. The EC adopted the Special Purpose Financial Report for 2012 as representing the financial position of APNIC as of the end of the 2012, and noted that APNIC is solvent and able to meet all current debts.

Motion to adopt the financial reports and auditors' report proposed by James Spenceley, seconded by Ma Yan

#### 4. DG Report

The D-G noted the main activities since the last EC meeting in December.

Prior to the APNIC 35 Meeting the CEOs of the RIRs, the chairs of the IETF and the IAB, the CEO of ICANN and the CEO of ISOC held a two day retreat.

The NRO EC also held a retreat prior to APNIC 35. The NRO EC decided to add two more inter-RIR coordination groups, the Registration Service Managers and coordination of the RIRs' efforts relating to IPv6 support and promotion.

With respect to public affairs the DG noted a number of ITU-related meetings in 2013, including the WTPF, the WTDC, WSIS+10 and the preparatory process leading to the ITU Plenipotentiary meeting to be held in 2014. There is also the prospect of a further UN Working group that is to examine the means of enhanced cooperation in the general area of Internet Governance. The DG also noted some looming issues related to the funding of the 2013 IGF, to be held in Bali later this year.

The DG noted that the APNIC Secretariat is pursuing ISO 9000 Quality Certification.

The DG briefed the EC on the preparation for APNIC 36 and the 20<sup>th</sup> anniversary of APNIC to be celebrated at that meeting.

#### 5. APNIC 35 - EC Election Procedures

The EC resolved to appoint Mr George Kuo and Ms Connie Chan of the APNIC Secretariat as Election Officers, and Ms Anna Mulingbayan and Mr Tom Do as Election Tellers.

Motion to appoint the EC Election Officers and Tellers proposed by, Che-Hoo Cheng, seconded by Akinori Maemura.

EC Members Gaurab Raj Upadhaya, Wendy Zhao and Kenny Huang abstained from voting. James Spenceley was not present when the motion was put to the meeting.

#### 6. NIR Agreement

The EC unanimously resolved to adopt the NIR Relationship Agreement (attached) as the standard agreement to be used by NIRs.

Motion to adopt the NIR Relationship Agreement proposed by Kenny Huang, seconded by Che-Hoo Cheng.

#### 7. EC Procedures

The EC unanimously resolved to adopt the EC Procedures (attached) to govern the conduct of EC business.

Motion to adopt the EC Procedures proposed by Paul Wilson, seconded by James Spenceley.

#### 8. EC Development Goals

The EC will be briefed at a future meeting on aspects of Australian Company Law as they relate to the governance of not-for-profit membership associations..

#### 9. AOB

There were no items raised under AOB

#### **Next EC Meeting**

1 March 2013, commencing at 4:00 pm UTC + 8:00 (Extraordinary Meeting called by EC resolution)

#### **Next Regularly Scheduled Meeting**

11 May 2013

Meeting Adjourned: 5:50 pm (UTC+8:00) Monday 25 February 2013

## APNIC EC – On Governance

#### Vision

#### We should:

- Be visionary
- Be pro-active (but consult members first)
- Also be re-active
- Have a good balance between innovation and reactiveness

#### **Process**

#### We should improve:

- Processes
   (eg. timing for budget preparation)
- Diligence/Discipline
- Structure (eg. formal resolutions)
- Accountability

### Meetings

#### We can improve by:

- Changing frequency of EC meetings to quarterly face to face
- Not using laptops
- Having a rotating meeting chair

# Interaction with members

We can improve by:

- Taking ownership over membership survey
- Having an EC social event at APNIC meetings
- Better communication with members (eg. EC page in Apster; engagement with C\*O)
- EC participating fully at APNIC meetings
- Reviewing AMM timing

## APNIC EC – Meeting Program 2013

February 2013 (APRICOT/APNIC 35, Singapore)	<ul> <li>Audit review and sign-off</li> <li>Election procedures and review</li> <li>EC procedures and review</li> <li>EC officers appointment (chair/treasurer/secretary)</li> <li>EC own development goals</li> </ul>
May 2013	Liaison and policy issues
(RIPE, Dublin)	EC training/coaching (if new EC members: induction training)
August 2013	Members' survey results review
(APNIC 36, Xi'an)	Strategic priorities
	Budget guidance
	DG appraisal
November/December	Appointments (ASO, etc)
(TBC)	<ul> <li>HR survey (staff satisfaction) report</li> </ul>
	Members' survey planning
	EC meeting program 2014 planning

## APNIC EC – Top issues facing APNIC

- Losing engagement with current members and new members (they don't care or know about our activities)
- Internet governance/Governmental intervention/securing Government support continued existence of the multi-stakeholder model
  - o ICANN stability (as a result of new gTLDs)
- NIRs
  - Financial impact
- Overhead vs core registry business
- Corporate governance
  - Keeping key staff; managing growth; board takeover; inability to adapt to changing world; HR issues; legal threat
- Financial security
  - o New NIRs
  - IPv6 pricing model
- Response to security issues
  - Cyber warfare; security crisis and APNIC's role within those

## Responding to those challenges

- (existing and new members) serving our members better by understanding their needs
- (Internet governance) Continued engagement with ITU, IGF, NRO etc.
- (NIRs and fees/financial security) review our business and pricing model
- (Overhead vs core registry business) better explain our mission and vision and activities; publicity and information sharing
- (Corporate governance) react quickly when we identify issues
- (Security issues) anticipate and build our capacity to respond; accuracy of registry data/ RPKI

## APNIC EC – What do our members think of us?

#### What do our members think of us?

- Address allocation but not clear about our direction (?)
- Satisfied with our services // [Alternatively] Service delivery quality lacking
- Where are they/Who are they? [From communities served by their local NIRs] [Also from invisible community members – eg. non-ISPs]
- Experts in IP addressing (from our training activities)
- Trusted/ Authoritative/ Reputable
- Value our services
- Charges too high
- Just a utility\*\* (see attached diagram)
- Getting too large/ Scope creep
- Internet governance/ RPKI

# How do we address the perception issues?

- Better communicate our vision and mission
- Work better with NIRs (that is, have more visibility)
- More need and dependency in developing economies
- More advanced training topics
- Better engagement with South Asia

# **Annual Financial Report (in AUD)**

2012

APNIC



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#### Statement of Financial Position

	Year-End 2012	% of Total	Year-End 2011	% change from 31/12/2011
CURRENT ASSETS				
Cash/ Term deposits	14,496,780	58%	9,048,267	60%
Receivables	933,777	4%	1,077,330	-13%
Others	536,268	2%	604,933	-11%
TOTAL CURRENT ASSETS	15,966,824	63%	10,730,530	49%
NON-CURRENT ASSETS				
Other financial assets	1,150,123	5%	986,920	17%
Property, plant and equipment	8,012,422	32%	8,436,968	-5%
Deferred tax assets/ liabilities	78,492	0%	60,985	29%
TOTAL NON-CURRENT ASSETS	9,241,036	37%	9,484,874	-3%
TOTAL ASSETS	25,207,861	100%	20,215,404	25%
CURRENT LIABILITIES				
Payables	1,685,736	7%	445,677	278%
Provisions	1,145,960	5%	1,190,748	-4%
Unearned revenue	7,567,408	30%	7,171,080	6%
TOTAL LIABILITIES	10,399,104	41%	8,807,506	18%
EQUITY				
Share capital	1.00	0%	1.00	0%
Reserves other financial assets investment *	107,535	0%	(43,085)	350%
Retained earnings	14,701,221	58%	11,450,982	28%
TOTAL EQUITY	14,808,757	59%	11,407,898	30%
TOTAL LIABILITIES & EQUITY	25,207,861	100%	20,215,404	25%

#### Note:

#### Notes to the 2012 Balance Sheet

The total asset position for APNIC as at the end of December 2012 has increased by 25% when compared to the position at the end of 2011. The major factors causing the variance are:

- Cash the increase is due to the continued growth in revenue and the ongoing expense savings
  resulting from the building acquisition. Cash includes amounts held in the operating account and
  short-term deposits of up to 12 months.
- Payables the increase is due to the receipt of the grant funds related to the Seed Alliance Project that are yet to be paid out to grant recipients.

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<sup>\*</sup> Reserves on other financial assets investment – This balance is due to the revaluation of our investment in unit trusts and is based on the market valuation as at the end of December 2012. These investments are re-valued on a quarterly basis.

#### **Statement of Income**

#### **Expenses**

These reports include the final audited accounts for the year ended December 2012. The full year 2012 figures are compared to the figures for the same period for 2011 and the approved budget for 2012.

EXPENSES (AUD)	2012	2011	Variance %	Budget 2012	Budget Variation	Budget Variation %
Bank charges	132,080	102,974	28%	116,000	16,080	14%
Communication expenses	440,762	385,819	14%	444,768	(4,006)	-1%
Computer expenses *	551,362	397,535	39%	573,812	(22,450)	-4%
Depreciation expense *	816,998	875,273	-7%	900,000	(83,002)	-9%
Doubtful debt expenses	27,099	12,808	112%	25,000	2,099	8%
ICANN contract fee	321,655	284,889	13%	310,000	11,655	4%
Income tax expense *	(17,506)	(74,074)	-76%	150,000	(167,506)	-112%
Insurance expense	126,673	120,236	5%	128,600	(1,927)	-1%
Meeting and training expenses*	191,561	398,014	-52%	490,400	(298,839)	-61%
Membership fees	68,392	54,261	26%	70,400	(2,008)	-3%
Miscellaneous expenses	3	1,695	-100%	1,000	(997)	-100%
Office operating expenses *	249,930	275,653	-9%	239,445	10,485	4%
Postage & delivery	28,493	32,842	-13%	34,500	(6,007)	-17%
Printing & photocopy *	38,115	37,515	2%	67,600	(29,485)	-44%
Professional fees *	939,882	605,124	55%	900,350	39,532	4%
Recruitment expense	99,574	123,485	-19%	101,000	(1,426)	-1%
Rent and Outgoings *	(12,562)	28,133	-145%		(12,562)	0%
Salaries and personnel expenses *	8,145,433	7,203,720	13%	8,245,603	(100,170)	-1%
Sponsorship and Publicity expenses *	270,696	293,035	-8%	346,000	(75,304)	-22%
Staff training/conference expenses	151,386	107,752	40%	159,313	(7,927)	-5%
Translation expenses	11,928	10,297	16%	15,000	(3,072)	-20%
Travel expenses *	1,822,239	1,576,246	16%	2,412,358	(590,119)	-24%
TOTAL EXPENSES	14,404,193	12,853,232	12%	15,731,149	(1,326,956)	-8%

#### Revenue

REVENUE (AUD)	2012	2011	Variance %	Budget 2012	Budget Variation	Budget Variation %
IP Resource application fees *	2,232,250	1,530,500	46%	989,103	1,243,147	126%
Interest income *	583,052	395,591	47%	412,000	171,052	42%
Membership fees	14,361,213	12,968,291	11%	13,952,067	409,146	3%
Non-members fees	227,966	198,425	15%	219,069	8,896	4%
Reactivation and Transfer fees*	54,816	25,200	118%	27,390	27,426	100%
Sundry income *	199,063	298,657	-33%	858,907	(659,844)	-77%
Foreign exchange gain/(loss)	(3,929)	57	-6998%	0	(3,929)	0%
TOTAL REVENUE	17,654,431	15,416,721	15%	16,458,536	1,195,895	7%

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#### **Operating Surplus/ Deficit**

REVENUE and EXPENSES (AUD)	2012	2011	Variance %	Budget 2012	Budget Variation	Budget Variation %
Total Revenue	17,654,431	15,416,721	15%	16,458,536	1,195,895	7%
Total Expenses	14,404,193	12,853,232	12%	15,731,149	(1,326,956)	-8%
OPERATING SURPLUS/(DEFICIT)	3,250,239	2,563,490	27%	727,387	2,522,851	347%

#### Notes on the Statement of Income

The major factors causing the variance between the actual and budget are related to the increased growth in Member revenue, predominately increased activity in new membership and an increase in the revenue from initial resource application fees. The majority of planned initiatives for cost recovery training were not completed in 2012, so income and expenses related to this initiative is minimal in 2012. Further details on variations include:

#### (1) Expenses

- Computer Expenses There are a number of computer related expenses that were planned for 2012 that were not incurred due to deferral of some projects, and pausing other projects pending analysis of further options.
- Depreciation Expenses Due to the deferral of Capital Expenditure planned for 2012, the Depreciation expenses were less than budgeted.
- Income Tax Expenses APNIC received a deferred tax credit relating to the tax effect of the
  allocation of expenses between Member and Non Member based on the mutuality principle. Income
  tax expenses were forecast at around \$47k, but actuals ended up being a credit of \$18K
- Meeting & Training Expenses Meeting and training expenses are significantly below budget. The
  budget included an allowance for \$120k for catering and venue expenses for the planned increase in
  training activities that were largely unspent. Actual costs of catering, venue and equipment hire for
  the APNIC meetings were much lower than budgeted.
- Office Operating Expenses Expenditure on maintenance for the office planned for December was deferred until 2013.
- Printing and Photocopy Due to staffing changes in 2012 some costs originally associated with staff activity, including office signage, were contracted out, and the costs were accounted as Professional Fees.
- Professional Fees There have been a number of changes during 2012 relating to professional fees. We have engaged contracted services for communications and graphic design, components of which were not included in APNIC's Operational Plan at the start of the year. A revised event management system and a new office VOIP system have been deferred pending further analysis. The APNIC History Project and the CRM were not completed in 2012, as originally forecast. Planned expenditure for R&D initiatives in cooperation with the RIPE NCC, as reported in the November 2012 Financial Report, was unable to proceed in 2012.
- Rent and outgoings The lease commitment for the Milton office was finalised by end of 2012. The final costs to complete the lease surrender were less than the provision made in 2010.
- Salaries and personnel expenses Total expenditure on salary and wages was closely aligned to the 2012 budget forecast.

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- Sponsorship and Publicity Expenses Contribution for the IGF meeting was lower than budgeted. Other savings in Gifts/Promotional material for APNIC meetings and other events were realized through the year
- Travel Expenses in the budget included an annual amount of \$593k relating to cost recovery training; this initiative has not been significantly implemented in 2012. Final costs for 2012 were around \$100k below the revised forecast provided in the November 2012 Financial Report, as travel activity reduced sharply in December.

#### (2) Revenue

- **IP Resource application fees** Growth in new membership in 2012 has been strong, resulting in a variance of \$1.2M when compared to the budget.
- Interest Income The increased cash flow from the growth of Member Income and strong returns for cash investments has resulted in higher than anticipated Interest income.
- Membership Fees Increasing growth in membership has resulted in a positive variance to budget of around \$400k. During 2012, APNIC's membership growth exceeded the conservative estimates used in the budget submission.
- Reactivation and Transfer Fees Transfer fees for 2012 amounted to \$11.6k, while the original estimates for 2012 were approximately \$30k.
- **Sundry Income** in the budget included an amount of \$593k relating to cost recovery training income; very little income for this initiative has been incurred during 2012.

#### **APNIC Reserve**

#### Cash Flow Statement

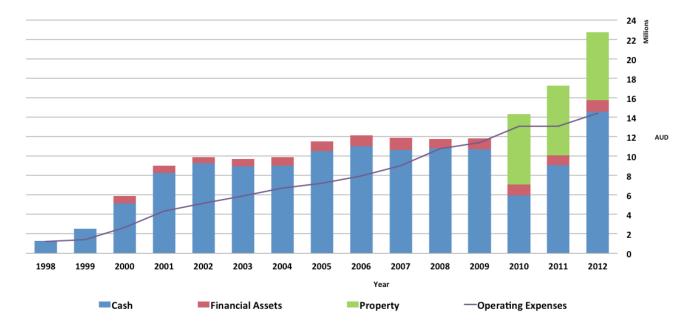
This report shows the draft cash flow status for the year as at the end of December.

Accounts	Amount
Operating Activities	
Net Income	3,250,239
Adjustments to Profit/(Loss)	
Accounts Receivable	130,383
Other Current Asset	57,638
Accounts Payable	(48,755)
Sales Tax Payable	(9,813)
Other Current Liabilities	1,635,147
Total Adjustments to Profit/(Loss)	1,764,599
Total Operating Activities	5,014,838
Investing Activities	
Fixed Asset	424,546
Other Asset	(163,202)
Total Investing Activities	261,344
Financing Activities	
Long Term Liabilities	21,706
Other Equity	150,620
Total Financing Activities	172,326
Net Change in Cash for Period	5,448,508
Cash at Beginning of Period	9,048,272
Cash at End of Period	14,496,780

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#### **APNIC Capital Reserve**

The APNIC Reserve is continuously diversified between Cash Investments, Managed Funds, and Property (APNIC Office). At the end of December, APNIC held \$14m in cash reserves, \$1m in managed fund investments, and \$7m was invested in the APNIC Property. The following chart tracks the value and the allocation of these reserves over time and also tracks the operating expenses for each year for comparison:



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#### **Membership**

#### **Membership Statistics**

At the end of December 2012, APNIC had a total of 3,593 Members serving 52 economies.

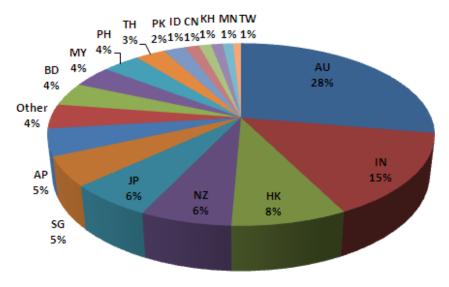
#### Membership by Category

The table below provides progressive membership data and the percentage in each membership category for the total membership from the year 2006 to 2012. This table shows that strong membership growth has continued in 2012, averaging 54 new members each month.

Membership	2006	2007	2008	2009	2010	2011	2012
Extra Large	9	9	12	13	16	21	20
Very Large	21	27	30	31	33	41	45
Large	70	77	92	106	141	145	144
Medium	210	231	251	276	324	378	402
Small	658	765	813	823	867	970	1114
Very Small	261	304	345	472	637	817	1021
Associate	133	171	312	449	503	575	847
TOTAL	1362	1584	1855	2170	2521	2947	3593
New	298	349	443	478	507	615	891
Close	93	127	172	163	156	189	245
Net Gain	205	222	271	315	351	426	646
Average Monthly Net Gain	17	19	23	26	29	36	54

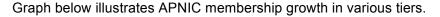
#### Membership by Economy

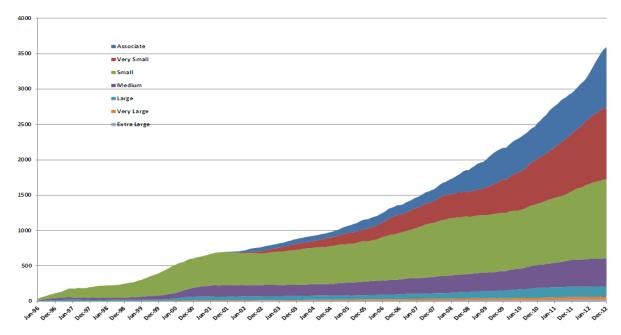
The following chart illustrates the APNIC membership distribution by economy.



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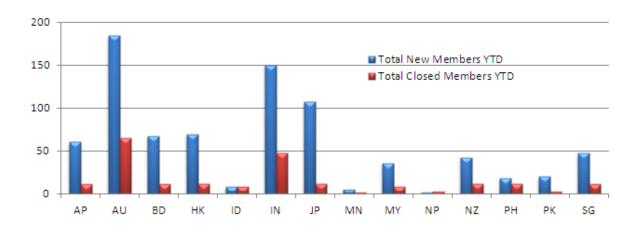
#### Membership Growth





#### Year-to-Date Membership Movement by Economy

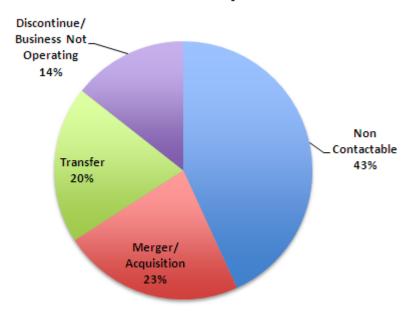
The graph below illustrates new and closed membership movement by economy in 2012. Australia has the highest in new and closed Members.



The chart below gives analysis for the accounts closure. The majority of the closures are due to non-contactable overdue accounts. 57% of the accounts closures are where resource holding are returned to APNIC.

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## **Closure Analysis**



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## **APNIC Pty Ltd**

ABN: 42 081 528 010

## Special Purpose Financial Report 31 December 2012

#### **DIRECTOR'S REPORT**

Your director presents his report on the Company for the year ended 31 December 2012.

#### Director

The following person was a director of APNIC Pty Ltd during the whole of the financial year and up to the date of this report:

Paul Byron Wilson

#### Principal activities

The Company's principal activity during the year was to act as a non-profit internet registry organisation for the Asia-Pacific region.

There were no significant changes in the nature of the activities of the Company during the year.

#### **Dividends - APNIC Pty Ltd**

The Company does not pay or declare dividends due to its non-profit status as determined by its constituent documents.

#### Review of operations

The operating profit after income tax amounted to \$3,250,240 (2011: \$2,563,488).

#### Significant changes in the state of affairs

There were no significant changes in the state of affairs of the Company during the financial year ended 31 December 2012.

#### Matters subsequent to the end of the financial year

There have been no matters of significance subsequent to the end of the year.

#### Likely developments and expected results of operations

Information on likely developments in the company's operations and the expected results of operations have not been included in this report because the director believes it would be likely to result in unreasonable prejudice to the company.

#### Environmental regulation

The Company is not subject to significant environmental regulation.

#### Shares under option

No shares of APNIC Pty Ltd were issued under option at the date of this report.

#### Insurance of officers

During the financial year, the Company paid a premium of \$23,800 (2011: \$23,800) to insure the director, officeholders (including executive council) and staff of the Company.

The liabilities insured are costs and expenses that may be incurred in defending civil or criminal proceedings that may be brought against the officers in their capacity as officers of the Company.

#### Proceedings on behalf of the company

No person has applied to the Court under section 237 of the Corporations Act 2001 for leave to bring proceedings on behalf of the Company, or to intervene in any proceedings to which the Company is a party, for the purpose of taking responsibility on behalf of the Company for all or part of those proceedings.

No proceedings have been brought or intervened in on behalf of the company with leave of the Court under section 237 of the Corporations Act 2001.

#### Auditor's independence declaration

A copy of the auditor's independence declaration as required under section 307C of the Corporations Act 2001 is set out on page 3.

Paul Byron Wilson

Director

8 February 2013



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#### Auditor's Independence Declaration to the Director of APNIC Pty Ltd

In relation to our audit of the financial report of APNIC Pty Ltd for the financial year ended 31 December 2012 to the best of my knowledge and belief, there have been no contraventions of the auditor independence requirements of the *Corporations Act 2001* or any applicable code of professional conduct.

Ernst & Young

Ric Roach Partner

8 February 2013

#### **APNIC Pty Ltd**

# Statement of Comprehensive Income FOR THE YEAR ENDED 31 DECEMBER 2012

	Notes	2012 \$	2011 \$
Revenue from continuing operations	2	17,134,213	15,142,717
Other income	3	595,635	416,085
Expenses			
Net foreign exchange (loss)/gain Communications and meeting expenses Computer expenses Contributions to ICANN Depreciation expense Employee benefits expense Insurance (Loss)/gain on disposal of fixed assets Membership fees Occupancy expenses Professional fees Travel expenses Other expenses Profit before income tax		(3,929) (591,889) (551,362) (321,655) (816,998) (8,296,820) (126,673) (3,258) (67,357) (303,197) (939,882) (1,822,239) (651,855) 3,232,734	57 (739,960) (397,535) (284,889) (875,274) (7,434,958) (120,236) 1,087 (54,261) (250,351) (605,124) (1,576,246) (731,698) 2,489,414
Income tax benefit		17,506	74,074
Profit from continuing operations	15(b)	3,250,240	2,563,488
Other comprehensive income  Net fair value gain/(loss) on available for sale financial assets  Other comprehensive income for the year, net of tax	15(a)	150,620 150,620	(171,088) (171,088)
Total comprehensive income for the year	_	3,400,860	2,392,400
Total comprehensive income attributed to APNIC Pty Ltd		3,400,860	2,392,400

The above statement of comprehensive income should be read in conjunction with the accompanying notes.

APNIC Pty Ltd

Statement of Financial Position
AS AT 31 DECEMBER 2012

	Notes	2012	2011
ASSETS		<u> </u>	
Current assets			
Cash and cash equivalents	4(a)	614,385	677,044
Short-term deposits	4(b)	12,978,745	8,371,223
Restricted cash	5	903,650	0,371,223
Trade and other receivables	6	933,777	1,077,330
Current tax receivables		48,892	112,811
Other current assets	7	536,267	604,932
Total current assets	· -	16,015,716	10,843,340
Non-current assets			
Property, plant and equipment	9	8,012,422	8,436,968
Deferred tax assets		128,071	103,877
Available-for-sale financial assets	8	1,150,123	986,920
Total non-current assets	-	9,290,616	9,527, <b>76</b> 5
Total assets	-	25,306,332	20,371,105
LIABILITIES			
Current liabilities			
Trade and other payables	10	1,456,080	333,850
Unearned income	12	7,652,440	7,171,037
Provisions	11	1,1 <b>57</b> ,245	1,200,280
Total current liabilities	-	10,265, <b>765</b>	8,705, <b>167</b>
Non-current liabilities			
Provisions	13	182,231	215 140
Deferred tax liabilities	13		215,149
Total non-current liabilities	-	49,579	42,892
Total non-current nabilities	-	231,810	258,041
Total liabilities	-	10,497,575	8,963,208
Net Assets	=	14,808,757	11,407,897
Equity			
Contributed equity	14	1	1
Reserves	15(a)	107,535	(43,085)
Retained profits	15(b)	14,701,221	11,450,981
Total equity	_	14,808,757	11,407,897

The above statement of financial position should be read in conjunction with the accompanying notes.

# APNIC Pty Ltd Statement of Changes in Equity FOR THE YEAR ENDED 31 DECEMBER 2012

	2012 \$	2011 \$
Total equity at the beginning of the financial year	11,407,897	9,015,497
Changes in the fair value of available-for-sale financial assets, net of tax	150,620	(171,088)
Profit for the year	3,250,240	2,563,488
Total recognised income and expense for the year	3,400,860	2,392,400_
Total equity at the end of the financial year	14,808,757	11,407,897

The above statement of changes in equity should be read in conjunction with the accompanying notes.

# APNIC Pty Ltd Cash Flow Statement FOR THE YEAR ENDED 31 DECEMBER 2012

	Notes	2012 \$	2011 \$
Cash flows from operating activities			
Receipts from customers		19,366,814	16,282,229
Payments to suppliers and employees		(15,051,949)	(12,738,321)
Interest received		560,701	324,020
Income tax received		64,006	213,744
Net cash inflow from operating activities	18	4,939,572	4,081,672
Cash flows from investing activities			
Placements of short-term deposits		(4,607,522)	(3,332,341)
Payments for property, plant and equipment		(398,143)	(921,439)
Proceeds from sale of property, plant and equipment		2,434	940
Net cash outflow from investing activities		(5,003,231)	(4,252,840)
Net decrease in cash and cash equivalents		4.5.	
		(63,659)	(171,168)
Cash and cash equivalents at beginning of year		677,044	848,076
Effects of exchange rate changes on cash and cash equivalents		1,000	136
Cash and cash equivalents at end of year	4(a)	614,385	677,044

The above cash flow statement should be read in conjunction with the accompanying notes.

#### 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The principal accounting policies adopted in the preparation of the financial report are set out below. These policies have been consistently applied to all the years presented, unless otherwise stated. The financial report was authorised for issue by a director's resolution dated 8 February 2013.

#### (a) Basis of preparation

In the director's opinion, the Company is not a reporting entity because there are no users dependent on general purpose financial reports.

This is a special purpose financial report that has been prepared at the request of the Executive Council for the interest of APNIC members and to comply with the *Corporations Act 2001* requirements to prepare and distribute a financial report to the members and must not be used for any other purpose. The director has determined that the accounting policies adopted are appropriate to meet the needs of the members.

The requirements of Accounting Standards and other financial reporting requirements in Australia do not have mandatory applicability to APNIC Pty Ltd because it is not a "reporting entity". However, the director has determined that in order for the financial report to give a true and fair view of the company's performance, cash flows and financial position, the requirements of Accounting Standards and other professional reporting requirements relating in Australia to the measurement and recognition of assets, liabilities, revenues, expenses and equity should be complied with.

Accordingly, the director has prepared the financial report in accordance with Accounting Standards and other professional reporting requirements in Australia with the following exceptions in relation to disclosures:

AASB 7	Financial Instruments: Disclosures;
AASB 112	Income Taxes;
AASB 116	Property, Plant and Equipment;
AASB 124	Related Party Disclosures;
AASB 132	Financial Instruments: Presentation;
AASB 136	Impairment of Assets; and
AASB 137	Provisions, Contingent Liabilities and Contingent Assets.

The financial report is prepared on a going concern basis in accordance with the historical cost convention, except for certain assets which, as noted, are at valuation. Unless otherwise stated, the accounting policies adopted are consistent with those of the previous year. Comparative information is reclassified where appropriate to enhance comparability.

#### (b) Foreign currency translation

#### (i) Functional and presentation currency

The financial statements are presented in Australian dollars, which is APNIC Pty Ltd's functional and presentation currency.

#### (ii) Transactions and balances

Foreign currency transactions are translated into the functional currency using the exchange rates prevailing at the dates of the transactions. Foreign exchange gains and losses resulting from the settlement of such transactions and from the translation at year end exchange rates of monetary assets and liabilities denominated in foreign currencies are recognised in the statement of comprehensive income, except when they are deferred in equity as qualifying cash flow hedges and qualifying net investment hedges or are attributable to part of the net investment in a foreign operation.

#### 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

#### (c) Revenue recognition

Revenue is measured at the fair value of the consideration received or receivable. Amounts disclosed as revenue are net of returns, trade allowances, rebates and amounts collected on behalf of third parties.

Revenue is recognised for the major business activities as follows:

#### (i) Member fees

Member fees are recognised on an accrual basis over the period of membership.

#### (ii) Interest Income

Interest income is recognised as control of a right to receive consideration for the provision of, or investment in, assets has been attained.

#### (d) Income tax

The income tax expense or benefit for the period is the tax payable on the current period's taxable income based on the national income tax rate adjusted by changes in deferred tax assets and liabilities attributable to temporary differences between the tax bases of assets and liabilities and their carrying amounts in the financial statements, and to unused tax losses.

Deferred income tax is provided in full, using the liability method, on temporary differences arising between the tax bases of assets and liabilities and their carrying amounts in the consolidated financial statements. However, the deferred income tax is not accounted for if it arises from initial recognition of an asset or liability in a transaction other than a business combination that at the time of the transaction affects neither accounting nor taxable profit or loss. Deferred income tax is determined using tax rates (and laws) that have been enacted or substantially enacted by the reporting date and are expected to apply when the related deferred income tax asset is recognised or the deferred income tax liability is settled.

Deferred tax assets are recognised for deductible temporary differences and unused tax losses only if it is probable that future taxable amounts will be available to recognise those temporary differences and losses.

Deferred tax assets and liabilities are offset when there is a legally enforceable right to offset current tax assets and liabilities and when the deferred tax balances relate to the same taxation authority. Current tax assets and tax liabilities are offset where the entity has a legally enforceable right to offset and intends either to settle on a net basis, or to recognised the asset and settle the liability simultaneously.

#### (e) Cash and cash equivalents

For cash flow statement presentation purposes, cash and cash equivalents includes cash on hand, deposits held at call with financial institutions, other short-term, highly liquid investments with original maturities of three months or less that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value, and bank overdrafts. Bank overdrafts are shown within borrowings in current liabilities on the statement of financial position.

#### (f) Trade receivables

Trade receivables are recognised initially at fair value and subsequently measured at amortised cost, less provision for doubtful debts.

Collectability of trade receivables is reviewed on an ongoing basis. Debts which are known to be uncollectible are written off. A provision for impairment of trade receivables is established when there is objective evidence that the company will not be able to collect all amounts due according to the original terms of the receivables. Significant financial difficulties of the debtor, probability that the debtor will enter bankruptcy or financial recognised, and default or delinquency in payments (more than 60 days overdue) are considered indicators that the trade receivable is impaired. The amount of the provision is the difference between the asset's carrying amount and the present value of estimated future cash flows, discounted at the original effective interest rate. Cash flows relating to short-term receivables are not discounted if the effect of discounting is immaterial. The amount of the provision is recognised in the statement of comprehensive income in other expenses.

#### (g) Impairment of assets

Assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. An impairment loss is recognised for the amount by which the asset's carrying amount exceeds its recoverable amount. The recoverable amount is the higher of an asset's fair value less costs to sell and value in use.

#### 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

#### (h) Investments and other financial assets

The Company classifies its investments in the following categories: financial assets at fair value through profit or loss, loans and receivables, held-to-maturity investments and available-for-sale financial assets. The classification depends on the purpose for which the investments were acquired. Management determines the classification of its investments at initial recognition and, in the case of assets classified as held-to-maturity, re-evaluates this designation at each reporting date.

The units in the managed investment funds are classified as "available-for-sale" financial assets and are subsequently carried at fair value. Unrealised gains and losses arising from changes in the fair value of non monetary securities classified as available-for-sale are recognised in equity in the available-for-sale investments revaluation reserve. When securities classified as available-for-sale are sold or impaired, the accumulated fair value adjustments are included in the statement of comprehensive income as gains and losses from investment securities.

#### Fair value

The fair values of quoted investments are based on current bid prices. If the market for a financial asset is not active (and for unlisted securities), the Company establishes fair value by using valuation techniques. These include the use of recent arm's length transactions, reference to other instruments that are substantially the same, discounted cash flow analysis, and option pricing models making maximum use of market inputs and relying as little as possible on entity-specific inputs.

#### Impairment

The Company assesses at each balance date whether there is objective evidence that a financial asset or group of financial assets is impaired. In the case of equity securities classified as available-for-sale, a significant or prolonged decline in the fair value of a security below its cost is considered as an indicator that the securities are impaired. If any such evidence exists for available-for-sale financial assets, the cumulative loss – measured as the difference between the acquisition cost and the current fair value, less any impairment loss on that financial asset previously recognised in profit or loss – is removed from equity and recognised in the statement of comprehensive income. Impairment losses recognised in the statement of comprehensive income on equity instruments classified as available-for-sale are not reversed through the statement of comprehensive income.

#### (i) Property, plant and equipment

#### Acquisition

Items of property, plant and equipment are recorded at cost.

Property related assets include land, buildings, fixtures & fittings, furniture and office equipment.

#### Depreciation

Items of property, plant and equipment acquired prior to 1 January 2000 are depreciated over their estimated useful lives.

Plant and equipment	20 – 40%	reducing balance
Office furniture and fittings	20 – 50%	reducing balance
Computer equipment	20 – 40%	reducing balance

APNIC assets acquired after 1 January 2000 are depreciated on a straight line basis over their expected useful life, as follows:

Plant and equipment	5-40%
Office furniture and fittings	5-20%
Buildings	2.5%
Computer equipment	5 – 40%

Gains and losses on disposals are determined by comparing proceeds with carrying amount. These are included in the statement of comprehensive income. When revalued assets are sold, it is company policy to transfer the amounts included in other reserves in respect of those assets to retained earnings.

#### (j) Trade and other payables

These amounts represent liabilities for goods and services provided to the company prior to the end of financial year which are unpaid. The amounts are unsecured and are usually paid within 30 days of recognition.

#### (k) Employee benefits

(i) Wages and salaries, annual leave and sick leave

Liabilities for wages and salaries, including non-monetary benefits, bonus, annual leave, time of in lieu and accumulating sick leave expected to be settled within 12 months of the reporting date are recognised in other payables in respect of employees' services up to the reporting date and are measured at the amounts expected to be paid when the liabilities are settled.

(ii) Long service leave

The liability for long service leave is recognised in the provision for employee benefits and measured as the present value of expected future payments to be made in respect of services provided by employees up to the reporting date using the projected unit credit method. Consideration is given to expected future wage and salary levels, experience of employee departures and periods of service. Expected future payments are discounted using market yields at the reporting date on national government bonds with terms to maturity and currency that match, as closely as possible, the estimated future cash outflows.

		2012 \$	2011 \$		
2	REVENUE				
	Membership fees	14,361,213	12,968,291		
	Non-membership fees	227,966	198,425		
	IP resource application fees	2,232,250	1,530,500		
	Member reactivation fees	43,200	16,200		
	Non-member reactivation fees	-	9,000		
	Other revenue	269,584	420,301		
		17,134,213	15,142,717		
3	OTHER INCOME				
	Interest	583,053	395,591		
	Investment distribution income	12,582	20,494		
		595,635	416,085		
4	CURRENT ASSETS – CASH AND SHORT TERM DEPOSITS		•		
(a)	Cash and cash equivalents				
	Petty cash	400	400		
	Cash in bank	<b>6</b> 13,985	676,644		
	Total	614,385	<b>677</b> ,044		
(b)	Short-term deposits	12,978, <b>745</b>	8,371,223		
	Cash and cash equivalents have a term of three months or less, while sh ranging from 6 months to a year.	ort-term deposits hav	e maturities		
5	CURRENT ASSETS – RESTRICTED CASH				
	Restricted cash in bank	903,650			
	Restricted cash in bank represents grant monies that the company is exp Seed Alliance program (refer also to Note 10).	ected to award to gra	ntees under the		
6	CURRENT ASSETS - TRADE AND OTHER RECEIVABLES				
	Trade receivables	959,617	1,090,000		
	Provision for doubtful receivables	(25,840)	(12,670)		
		933,777	1,077,330		
7	CURRENT ASSETS - OTHER CURRENT ASSETS				
	Prepayments	351,199	316,832		
	Interest receivable	164,848	142,496		
	Prepaid taxes	18,343	18,430		
	Deposits	1,872	42,985		
	Sundry receivables	-	84,184		
	Other assets	5	5		
		536,267	604,932		
			501,752		

		2012 \$	2011 \$
NON-CURRENT ASSETS - AVAILABLE-F	OR-SALE FINANC	IAL ASSETS	
Units in managed investment funds - at fair value	-	1,150,123	986,92
NON-CURRENT ASSETS - PROPERTY, PI	ANT AND EQUIP	MENT	
	Computer equipment \$	Property Related Assets \$	Total
Year ended 31 December 2011			
Opening net book amount	1 162 651	7.007.004	
Additions	1,163,651 641,541	7,227,005	8,390,65
Disposals	(2,071)	282,718	924,25
Depreciation	(633,682)	(602)	(2,673
Closing net book amount	1,169,439	(241,592) 7,267,529	(875,274 8,436,96
At 31 December 2011			
Cost	4 4 4 4 4 4 4 4		
Accumulated depreciation	4,441,114	7,670,418	12,111,53
Net book amount	(3,271,675)	(402,889)	(3,674,564
The book difficult	1,169,439	7,267,529	8,436,96
Year Ended 31 December 2012			
Opening net book amount	1,169,439	7,267,529	8,436,96
Additions	337,479	60,664	398,14
Disposals	(1,703)	(3,988)	(5,691
Depreciation	(588,921)	(228,077)	(816,998
Closing net book amount	<b>9</b> 16,294	7,096,128	8,012,422
At 31 December 2012			
Cost	4,396,771	7,715,511	12,112,28
Accumulated depreciation	(3,480,477)	(619,383)	(4,099,860
Net book amount	916,294	7,096,128	8,012,42

			2012 \$	2011 \$
10	CURRENT LIABILITIES - TRADE AND OTH	ER PAYABLES		
	Grants payable		903,650	
	Trade payables		214,944	165,808
	Accrued expenses		322,209	142,952
	Goods and services tax (GST) payable - net		15,277	25,090
		-	1,456,080	333,850
	Grants payable pertains to grant monies that the con Alliance program (refer also to Note 5).	npany is expected t	o award to grantees un	der the Seed
11	CURRENT LIABILITIES – PROVISIONS			
	Employee benefits - annual leave		540,989	424 701
	Employee benefits - long service leave		430,862	424,791 366,982
	Employee benefits - Bonus provision		144,624	111,870
	Employee benefits - Time in lieu leave		40,770	35,719
	Onerous lease		-	198,886
	Make good provision	_		62,032
		_	1,1 <b>57</b> ,245	1,200,280
12	CURRENT LIABILITIES – UNEARNED INCO	ME		
	Unearned membership fees		7 567 407	7 171 090
	Unearned membership fees Deferred grant revenue		7,567,407 85,033	7,171,080
	•	_	7,567,407 85,033 7,652,440	7,171,080 (43) 7,171,037
13	Deferred grant revenue	_ _	85,033	(43)
	Deferred grant revenue  NON-CURRENT LIABILITIES – PROVISIONS	- -	85,033	(43)
	Deferred grant revenue	_ _	85,033 7,652,440	7,171,037
	Deferred grant revenue  NON-CURRENT LIABILITIES – PROVISIONS	- -	85,033	7,171,037 160,525
	Deferred grant revenue  NON-CURRENT LIABILITIES – PROVISIONS  Employee benefits – long service leave	- -	85,033 7,652,440	(43) 7,171,037 160,525 54,624
	Deferred grant revenue  NON-CURRENT LIABILITIES – PROVISIONS  Employee benefits – long service leave	- -	85,033 7,652,440	7,171,037 160,525
	NON-CURRENT LIABILITIES – PROVISIONS  Employee benefits – long service leave Onerous lease		85,033 7,652,440 	160,525 54,624 215,149
	NON-CURRENT LIABILITIES – PROVISIONS  Employee benefits – long service leave Onerous lease	72 2011	85,033 7,652,440 	160,525 54,624 215,149
	NON-CURRENT LIABILITIES – PROVISIONS  Employee benefits – long service leave Onerous lease		85,033 7,652,440 	160,525 54,624 215,149

		2012 \$	2011 \$
15	RESERVES AND RETAINED PROFITS		
(a)	Reserves		
	Available-for-sale financial asset revaluation reserve	107,535	(43,085)
	Movements in available-for-sale financial asset revaluation reserve were as follows::		
	Balance 1 January	(43,085)	128,003
	Fair value gain/(loss), net of tax	150,620	(171,088)
	Balance 31 December	<b>107</b> ,535	(43,085)
(b)	Retained profits		
	Movements in retained profits were as follows:		
	Balance at 1 January	11,450,981	8,887,493
	Net profit for the year	3,250,240	2,563,488
	Balance at 31 December	14, <b>70</b> 1,221	11,450,981
16	REMUNERATION OF AUDITORS		
	Amounts received or due and receivable by Ernst & Young		
	Audit of financial reports and other audit work under the Corporations Act 2001 Other services	32,500	31,500
	Total remuneration for assurance services	32,500	31,500
17	COMMITMENTS AND CONTINGENCIES		
(a)	Operating leases		
	Commitments for minimum lease payments in relation to non- cancellable operating leases are payable as follows:		
	Within one year	-	198,886
	Later than one year but not later than five years		54,624
		_	253,510

The operating lease commitment covering the previous office space has been recognised as an onerous contract in the prior year (refer note 11 and 13). The lease agreement was discharged in 2012.

2012	2011
S	ę

## 18 RECONCILIATION OF PROFIT AFTER INCOME TAX TO NET CASH INFLOWS FROM OPERATING ACTIVITIES

Profit after tax for the year	3,250,240	2,563,488
Depreciation and amortisation	816,998	875,274
Loss (gain) on disposal of property, plant and equipment	3,258	
Investment distribution income	(12,582)	(1,087)
Net exchange differences affecting cash and cash equivalents	(1,000)	(20,494)
Change in operating assets and liabilities:	(1,000)	(136)
(Increase)/Decrease in restricted cash	(903,650)	66,891
(Increase)/Decrease in trade and other debtors	143,553	* *
(Increase)/Decrease in interest receivables	(22,352)	(11,436)
(Increase)/Decrease in deposits and prepayments		(71,571)
Increase/(Decrease) in trade and other creditors	90,930	(106,213)
Increase/(Decrease) in provision for onerous contract	1,266,896	(82,456)
Increase/Decrease) in provision for olicious contract	(253,510)	(476,375)
Increase/(Decrease) in unearned income	481,359	1,096,866
Increase/(Decrease) in provision for employee entitlements	32,933	109,251
(Increase)/Decrease in deferred tax assets	(24,194)	(95,609)
(Increase)/Decrease in prepaid taxes	87	224,565
Increase/(Decrease) in income tax payable	63,919	(10,821)
Increase/(Decrease) in deferred tax liabilities	6,687	21,535
Net cash inflows from operating activities		
- The state of the	4,939,572	4,081,672

#### 19 SUBSEQUENT EVENTS

There were no subsequent events that occurred after 31 December 2012 up to the date of this report.

## **Director's Declaration**

In accordance with a resolution of the director of APNIC Pty Ltd, I state that:

In the opinion of the director:

- (a) the financial statements and notes of the company are in accordance with the *Corporations Act 2001*, including:
  - (i) giving a true and fair view of the company's financial position as at 31 December 2012 and of its performance for the year ended on that date; and
  - (ii) complying with Accounting Standards to the extent set out in Note 1 and Corporations Regulations 2001; and
- (b) there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable.

Paul Byron Wilson Director

Brisbane 8 February 2013



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#### Independent auditor's report to the members of APNIC Pty Ltd

We have audited the accompanying financial report, being a special purpose financial report of APNIC Pty Ltd, which comprises the statement of financial position as at 31 December 2012, the statement of comprehensive income, statement of changes in equity and cash flows statement for the year then ended, notes comprising a summary of significant accounting policies and other explanatory information, and the directors' declaration.

#### Director's responsibility for the financial report

The director of the company is responsible for the preparation of the financial report and has determined that the basis of preparation described in Note 1 to the financial report is appropriate to meet the requirements of the *Corporations Act 2001* and is appropriate to meet the needs of the members.

The director's responsibility also includes such internal controls as the director determines are necessary to enable the preparation of a financial report that is free from material misstatement, whether due to fraud or error.

#### Auditor's responsibility

Our responsibility is to express an opinion on the financial report based on our audit. We have conducted our audit in accordance with Australian Auditing Standards. Those standards require that we comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial report is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor considers internal controls relevant to the entity's preparation of the financial report that gives a true and fair view in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the director, as well as evaluating the overall presentation of the financial report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

#### Independence

In conducting our audit we have complied with the independence requirements of the *Corporations Act 2001*. We have given to the director of the company a written Auditor's Independence Declaration, a copy of which is included in the director's report.



### Opinion

In our opinion the financial report of APNIC Pty Ltd is in accordance with the *Corporations Act 2001*, including:

- a. giving a true and fair view of the company's financial position as at 31 December 2012 and of its performance for the year ended on that date; and
- b. complying with Australian Accounting Standards to the extent described in Note 1, and the *Corporations Regulations 2001*.

### Basis of accounting

Without modifying our opinion, we draw attention to Note 1 to the financial report, which describes the basis of accounting. The financial report has been prepared for the purpose of fulfilling the director's financial reporting responsibilities under the *Corporations Act 2001*. As a result, the financial report may not be suitable for another purpose.

Ernst & Young

Ric Roach Partner Brisbane

8 February 2013



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### Disclaimer on additional financial information

The additional financial information, being the attached Operating Statement, has been compiled by the management of APNIC Pty Ltd.

No audit or review has been performed by us and accordingly no assurance is expressed.

To the extent permitted by law, we do not accept liability for any loss or damage which any person, other than APNIC Pty Ltd may suffer arising from any negligence on our part. No person should rely on the additional financial information without having an audit or review conducted.

Ernst & Young Brisbane

8 February 2013

### **APNIC Pty Ltd**

# Operating Statement FOR THE YEAR ENDED 31 DECEMBER

	2012 \$	2011 \$
INCOME		
Membership fees Non-membership fees IP resource application fees Interest income ISIF grant received Reactivation fees Other revenue	14,361,213 227,966 2,232,250 583,053 71,487 43,200 210,679	12,968,291 198,425 1,530,500 395,591 142,138 16,200 307,657
Total	17,729,848	15,558,802
Less Expenses Administration expenses (refer schedule)	14,497,114	13,069,388
Total expenses	14,497,114	13,069,388
Net Trading Income	3,232, <b>734</b>	2,489,414
INCOME FROM ORDINARY ACTIVITIES BEFORE INCOME TAX	3,232, <b>73</b> 4	2,489,414

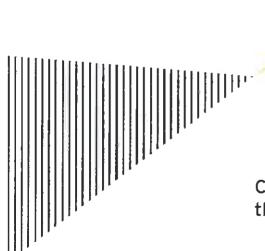
This operating statement does not form part of the audited financial report.

**APNIC Pty Ltd** 

# Operating Statement FOR THE YEAR ENDED 31 DECEMBER

SCHEDULE OF ADMINISTRATION EXPENSES Salaries and wages	<u>\$</u>	\$
Salaries and wages		
Travel	6,475,343	5,606,39
Depreciation	1,822,239	1,576,24
Superannuation contributions – employees	816,998	875,27
Employees' entitlements	612,597	543,54
Computer costs – other	591,674	622,07
Professional fees – consulting	551,362	397,53
Communication expenses	444,339	333,18
Payroll tax	440,762	385,81
ICANN	356,367	325,15
Professional fees – R&D	321,655	284,88
Staff training	249,447	111,75
Meeting expenses	151,386	107,75
Professional fees – legal	151,127	354,14
Bank charges – general	140,707	92,31
Insurance – other	132,080	102,97
Donations	126,673	120,23
Office expenses	118,217	138,45
Recruitment	110,572	151,99
Gifts and promotions	99,574	123,48
Sponsorship fees	78,475	69,13
Professional fees – accountancy/management	74,005	85,449
ISIF grant expense	72,889	28,36
Membership fees	71,487	142,13
Staff amenities	67,357	54,26
Electricity	63,112	56,99
Printing and stationery	52,608	60,18
Cleaning	49,112	37,51:
Fringe benefits tax	39,876	33,18
Deductible entertainment	36,689	36,86
Auditor's remuneration fees	35,522	29,92
Postage	32,500	31,500
Doubtful debts	28,493	32,842
Repairs and maintenance	27,099	12,80
Rent and make good	22,536	14,515
Translation expenses	(12,562)	28,134
Books and periodicals	11,928	10,297
Worker's compensation	10,083	17,335
Equipment hire	9,652	12,697
	4,909	13,945
Foreign exchange loss/gain	3,929	(57)
Loss (gain) on sale of fixed assets Administration fees	3,258	(1,087)
	1,035	1,173
Professional fees – project management Miscellaneous expenses	-	7,994
viiscenaneous expenses	3	49
Total expenses	14,497.114	13,069,388

This operating statement does not form part of the audited financial report.



Closing Report to the Executive Council for the Year Ended 31 December 2012

APNIC Pty Ltd



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6 February 2013

The Executive Council
APNIC Pty Ltd
6 Cordelia Street
South Brisbane QLD 4001

ATTN: Paul Wilson

Private and confidential

Dear Paul

We have completed our audit of APNIC Pty Ltd ("APNIC" or "the Company") for the year ended 31 December 2012.

Subject to the resolution of the outstanding matters outlined in Section 4, we confirm that we are in a position to issue an unqualified audit opinion on the financial statements in the form that appears in Appendix A.

This report is intended solely for the use of the Executive Council and senior management, and should not be used for any other purpose nor given to any other party without our prior written consent.

We would like to thank your staff for the assistance provided to us during the engagement.

I look forward to the opportunity of discussing with you any aspects of this report or any others issues arising from our work.

Yours faithfully

Ric Roach Partner

### Overview

### Status of the audit

We have completed the audit of the special purpose financial report of APNIC Pty Ltd ("APNIC" or "the Company") for the financial year ended 31 December 2012.

- Our audit was performed in accordance with Australian Auditing Standards in order to provide reasonable assurance that the financial report is free of material misstatement.
- Subject to the resolution of the outstanding matters outlined at Section 4 of this report, we anticipate issuing an unqualified audit opinion (refer Appendix A).
- ► Materiality was assessed at \$170,000, representing approximately 1% of APNIC's revenue for the 2012 financial year.
- ► Listed in Section 2 are the adjusted audit differences noted during the course of the audit. All differences identified that were assessed as material, have been adjusted by management.
- ► Ernst & Young's independence has been confirmed by all team members and a draft Auditor's Independence Declaration has been included in this report (refer Appendix B).

# Significant accounting and auditing matters

We have identified the following matters for consideration by the Board of Directors prior to adopting the financial report:

- Accounting for revenue recognition;
- Valuation of investment in managed funds;
- Impairment of land and buildings;
- Accounting for taxes; and
- Provision for long service leave.

Please refer to the detailed discussion at Section 1 on each of these matters. We request you review these and other audit and accounting matters set out in this report to ensure:

- ► There are no residual further considerations or matters that could impact these issues:
- You concur with the resolution of the issues: and
- ► There are no further significant issues you are aware of to be considered before the financial report is finalised.

# Internal control environment

Our review of the company's system of internal controls is carried out to assist us in expressing an opinion on the accounts of APNIC as a whole. This work is not primarily directed towards the discovery of weaknesses or the detection of fraud or other irregularities (other than those which would influence us in forming that opinion) and should not therefore be relied upon to show that no other weaknesses exist.

We note that no issues in relation to the internal control environment have come to our attention to report to you.

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## Significant areas of audit focus

Our role as auditor requires a thorough assessment of audit risk across APNIC's business. This includes discussion with management, an assessment of prior year issues, remaining abreast of your business and continuously looking forward at changes on the horizon and their impact on the business.

### Revenue Recognition



### Risks:

 Inappropriate recognition of revenue given fees are generally received from members in advance of the membership period or services being provided.

### Summary of Matter:

- ▶ APNIC management tracks revenue by member and the period of membership and brings revenue to account over that period. We noted no errors with revenue recognition.
- ▶ We have reviewed debtor receipts subsequent to year end and overdue debtors against which management has made provision of \$25,840 for non-recovery. We accept management's position that the level of provision appears adequate.

Valuation of Investment in Managed Funds



#### Risks:

 Inappropriate valuation of investments in accordance with accounting standards.

### Summary of Matter:

- ► APNIC held investments in managed funds aggregating approximately \$1.15m as at 31 December 2012. These equity instruments have been classified as available for sale securities in accordance with AASB 139, Financial Instruments Recognition and Measurement.
- ➤ The market value of these investments increased by \$151k in the current year. The change in market value has been recorded as an increase in the investments account with a corresponding increase to the available for sale investment revaluation reserve account.

### EY's Perspective:

- ► As part of our audit procedures, we confirmed the balances directly with the fund managers who provide the fair value of the investments as at year-end. We relied on the valuation as determined by the fund managers.
- Management has recognised the increase in market value of the available for sale investments in equity. We concur with this treatment.
- We noted that no deferred taxes have been calculated on the revaluation reserve, which had a balance of \$107,535 (cr) at year-end. We proposed an adjusting entry to recognise the corresponding deferred tax liability of \$32,261.

Impairment of Land and Buildings



### Risk:

A decline in property market conditions could result in the carrying value of land and buildings being in excess of the market value.

### Summary of matter:

➤ Though APNIC management has not obtained any formal valuation of the South Brisbane property, it does not consider there to be any indicators of impairment based on recent sales activity in the surrounding area not indicating any decline in value, various development activity in the surrounding area possibly contributing to increased demand and market value, the land value having increased from \$2.1m to \$3.0m in the latest Brisbane City Council rates notice, and appropriate depreciation charges having been levied on the building carrying value. Management advises there are no plans to indicate APNIC will not remain in and continue to operate from the premises. We accept management's position that there are no indicators of impairment.

### Accounting for Taxes



### Risk:

APNIC applies the mutuality principle in calculating income taxes which effectively results in the majority of APNIC's income and expenditure not being assessable/deductible for income tax. This is a self-assessment process. There is a risk this principle does not continue to apply to APNIC beyond 30 June 2012 and hence the company should account for increased levels of income tax payable.

### Summary of matter:

- ► APNIC received a Private Binding Ruling ("PBR") issued by the ATO confirming that the mutuality principle applied to APNIC for the years ended 30 June 2011 and 2012. KPMG, APNIC's tax advisers, have advised in a letter dated 7 January 2013 "...the PBR only covered the period to 30 June 2012 due to the ATO undertaking a review of the application of the mutuality principle, with the outcome of that review potentially impacting on whether, in the ATO's view, the mutuality principle correctly applied to entities such as APNIC. .. In discussions with the ATO since 30 June 2012, the ATO has confirmed the position that until a new interpretation is issued by the ATO on the application of the mutuality principle, APNIC will have a reasonably arguable position to continue to apply the mutuality principle provided the current factual basis is not materially different to the factual basis on which the earlier PBRs were issued."
- ► KPMG further states in its letter "...Having regard to the above comments, in our view, it is appropriate for APNIC to apply the mutuality principle, on a self-assessment basis, in calculating its Australian tax obligations in the period post 30 June 2012."
- ► We are not aware of any changes in factual basis of the APNIC entity or its business.
- We accept management's position to apply the mutuality principle for the period to 31 December 2012 as being a reasonable position based on known facts at this time.

### Provision for Employee Long Service Leave



### Risk:

 Inappropriate current/non-current classification of long service leave provision.

### Summary of matter:

- ► As at 31 December 2012, APNIC's long service leave provision had a balance of \$613k. The current and noncurrent portion of this provision totalled \$465k and \$148k, respectively.
- AASB 119 Employee Benefits states that an entity is required to recognise a liability when an employee has provided service in exchange for employee benefits to be paid in the future, such as long service leave. Long service leave may fall in one of the following categories:
  - An 'unconditional' legal entitlement to payment arises after a qualifying period of service (i.e., 10 years); accumulation of long service leave entitlement continues after this point, until the leave is taken.
  - A 'conditional' entitlement exists in certain circumstances and a legal entitlement to pro rata payment in lieu of long service leave arises (sometimes only after a qualifying period of service); and,
  - ► Under a 'pre-conditional' entitlement, no legal entitlement to any payment or leave exists before the accumulation of the period of service necessary to qualify for the entitlement described above.
- ► For purposes of financial statement presentation, the portion of the long service leave that is unconditional should be presented as current, with the residual balance being presented as non-current.

### Audit findings:

We noted that management calculates the current portion of its long service leave as the total entitlement of all employees with service terms of 9 years and above. Using the convention above, we noted an overstatement in the current portion of long-service leave of around \$33k, which is equal to the entitlement of employees who have served between 9 and 10 years. We proposed a reclassification entry to reflect the appropriate amount of current and non-current long service leave provision in the accounts. This balance sheet re-classification has been made by APNIC management.

# 2. Audit Adjustments

## 2.1 Summary of adjusted differences

Account	Balance sheet Impact DR/CR \$	Income statement Impact DR (CR) S
DR Provision for long service leave - current	33,953	
CR Provision for long service leave - non-current	(33,953)	
To adjust current portion of long service leave provision		

### 2.2 Summary of unadjusted differences

Account	Balance sheet Impact DR/CR S	Income statement impact DR (CR) \$
DR Asset revaluation reserve	32,261	
CR Deferred tax liability	(32,261)	
To recognise deferred taxes on the revaluation reserve		

## 3. Independence

We confirm that we have complied with the *Corporations Act 2001*, and in our professional judgment, the engagement team and the Firm are independent.

We consider that our independence in this context is a matter that should be reviewed by both you and ourselves. It is therefore important that you and your Executive Council consider the facts of which you are aware and come to a view. Should you have any specific matters that you wish to discuss, please contact us.

# 4. Outstanding Items

The following items relating to the completion of our audit procedures are outstanding at the date of the release of this report:

- ▶ Update of subsequent events to the date of signing our audit report;
- ▶ Board of Directors adoption and signing of the financial statements;
- Receipt of signed management representation letter (due at time of signing the financial statements).

# **Appendices**

Appendix A: Draft Audit Report

Appendix B: Draft Auditor's Independence Declaration

## Appendix A Draft Audit Report

### Independent auditor's report to the members of APNIC Pty Ltd

We have audited the accompanying financial report, being a special purpose financial report of APNIC Pty Ltd, which comprises the statement of financial position as at 31 December 2012, the statement of comprehensive income, statement of changes in equity and cash flows statement for the year then ended, notes comprising a summary of significant accounting policies and other explanatory information, and the directors' declaration.

### Director's responsibility for the financial report

The director of the company is responsible for the preparation of the financial report and has determined that the basis of preparation described in Note 1 to the financial report is appropriate to meet the requirements of the *Corporations Act 2001* and is appropriate to meet the needs of the members.

The director's responsibility also includes such internal controls as the director determines are necessary to enable the preparation of a financial report that is free from material misstatement, whether due to fraud or error.

### Auditor's responsibility

Our responsibility is to express an opinion on the financial report based on our audit. We have conducted our audit in accordance with Australian Auditing Standards. Those standards require that we comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial report is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor considers internal controls relevant to the entity's preparation of the financial report that gives a true and fair view in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the directors, as well as evaluating the overall presentation of the financial report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Independence

In conducting our audit we have complied with the independence requirements of the *Corporations Act 2001*. We have given to the director of the company a written Auditor's Independence Declaration, a copy of which is included in the director's report.

### Opinion

In our opinion the financial report of APNIC Pty Ltd is in accordance with the *Corporations Act 2001*, including:

- a. giving a true and fair view of the company's financial position as at 31 December 2012 and of its performance for the year ended on that date; and
- b. complying with Australian Accounting Standards to the extent described in Note 1, and the Corporations Regulations 2001.

### Basis of accounting

Without modifying our opinion, we draw attention to Note 1 to the financial report, which describes the basis of accounting. The financial report has been prepared for the purpose of fulfilling the director's financial reporting responsibilities under the *Corporations Act 2001*. As a result, the financial report may not be suitable for another purpose.

Ernst & Young

Ric Roach Partner Brisbane 8 February 2013

# Appendix B Draft Auditor's Independence Declaration

# Auditor's Independence Declaration to the Director of APNIC Pty Ltd

In relation to our audit of the financial report of APNIC Pty Ltd for the financial year ended 31 December 2012 to the best of my knowledge and belief, there have been no contraventions of the auditor independence requirements of the *Corporations Act 2001* or any applicable code of professional conduct.

Ernst & Young

Ric Roach Partner 8 February 2013

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Ernst & Young is a registered trademark. Our report may be relied upon by APNIC Pty Ltd for the purpose of only pursuant to the terms of our engagement letter dated 22 November 2012. We disclaim all responsibility to any other party for any loss or liability that the other party may suffer or incur arising from or relating to or in any way connected with the contents of our report, the provision of our report to the other party or the reliance upon our report by the other party.

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# APNIC and NIR Member Relationship Agreement

[##DATE]

**PARTIES** 

**APNIC PTY LTD ACN 081 528 010** 

and

**[##]** 

# APNIC and NIR Member Relationship Agreement

# **NIR Member's details** Name of organization: <mark>[##]</mark> Address for notes and legal correspondence: a) Street or postal address: [##] b) Email address: [##] **Country or Economy: [##]** Following details to be inserted by APNIC Pty Ltd Account name (as assigned by APNIC Pty Ltd): **[##]** Membership date: [##] **Renewal dates:**

### **Recitals**

- A. APNIC is a non-profit proprietary limited company incorporated under Australian law.
- B. APNIC is committed to acting in accordance with the interests and wishes of its membership in pursuing the following objectives:
  - To support APNIC members in fulfilling their responsibilities as managers of Internet resources;
  - To promote the representation of the APNIC membership and the Internet community of the Asia Pacific region by ensuring open and transparent communications and consensus-driven decision-making processes;
  - To promote responsible management of Internet resources throughout the Asia Pacific region, as well as the responsible development and operation of Internet infrastructures;
  - To promote and advance technical policy development in relation to APNIC services, and to Internet resource management in general;
  - To provide high-quality Internet resource management services to APNIC Members, namely resource allocation services, registration and database services, and membership administration and support services;
  - To assist Internet development activities in the Asia Pacific region, relating to the above objectives.
- C. A category has been established within the APNIC membership for National Internet Registries, which serve organizations within their respective countries or economies. National Internet Registries provide procedures and services that take account of local cultural differences, while operating in a way that remains consistent with regional and global resource management policies.
- D. APNIC recognises the importance of National Internet Registries as APNIC's partners in contributing to the sustainable growth of the Internet in the APNIC service region, and fostering the interests of the global Internet community.
- E. APNIC recognises the NIR Member as a member of APNIC, as well as the National Internet Registry for the country or economy listed in this agreement. APNIC and the NIR Member enter into this agreement to record the co-operative nature of their relationship.

### 1. Definitions and Interpretation

### 1.1 Definitions

In this agreement, unless the context requires otherwise:

**APNIC** means APNIC Pty Ltd ACN 081 528 010, a non-profit company incorporated under Australian laws. A reference to membership of **APNIC** is a reference to membership of the special committee called "APNIC", which was established under the company's constitution.

**APNIC Definition Document** means the document titled "APNIC Definition Document", forming part of APNIC's corporate documents, which can be located at APNIC's website at <a href="http://www.apnic.net">http://www.apnic.net</a>.

**APNIC Address Management Policies** means APNIC's policies for the management of Internet address space and number resources in the Asia Pacific region, including the "Criteria for the recognition of NIRs in the APNIC region" and "Operational policies for National Internet Registries in the APNIC region", as amended from time to time.

Dispute Resolution Document has the meaning given in the APNIC Definition Document.

**Executive Council** means the executive council of APNIC, established under the constitution and by-laws of APNIC.

**Fee Schedule** has the meaning given in the APNIC Definition Document.

**Insolvency Event** has the meaning given in the APNIC Definition Document.

**Membership Agreement** has the meaning given in the APNIC Definition Document.

**National Internet Registries** has the meaning given in Recital C.

**NIR Member** means the party described on the cover page of this agreement as the NIR Member.

**RFC1591** means the request for comment numbered 1591, published by the Internet Engineering Task Force.

### 1.1 Interpretation

The interpretation provisions of the APNIC Definition Document apply to this agreement.

### 2. Term

### 2.1 Commencement & term

This agreement commences on the date of this agreement and is effective for one year. Upon the commencement of this agreement, and during the term of this agreement (including any renewed term), APNIC recognises the NIR Member as a member of APNIC, and as the National Internet Registry for the country or economy specified in this agreement.

### 2.2 Membership fees and renewals

- a. APNIC will invoice the NIR Member in accordance with the Fee Schedule upon signing this agreement, then annually thereafter. The NIR Member must pay the invoiced fee to APNIC, before the due date for payment.
- b. The NIR Member may renew its membership by paying APNIC the renewal fee by the due date. By renewing its membership, the NIR Member will be deemed to have agreed to the terms of the standard agreement governing the relationship between APNIC and National Internet Registry members as it exists at the time of renewal.

### 2.3 Termination

- a. APNIC may terminate this agreement in any of the following circumstances:
  - 1. The NIR Member fails to renew its membership within 45 days of the due date:
  - 2. The NIR Member experiences an Insolvency Event;
  - The NIR Member undertakes any change to its nature, constitution, or circumstances, which puts it in breach of this agreement or any APNIC Address Management Policy;
  - 4. The NIR Member commits a substantial breach of this agreement or any APNIC Address Management Policy;
  - 5. Significantly interested parties (within the meaning of paragraph 3(4) of RFC1591) in the country or economy of the NIR Member agree that another party should be the National Internet Registry for that country or economy, and APNIC proceeds to recognise that other party to be the National Internet Registry for that country of economy, according to APNIC's "Criteria for the recognition of NIRs in the APNIC region".
- b. In relation to circumstance described in clause 2.3(a)(2), APNIC may immediately terminate the agreement by written notice to the NIR Member, and revoke all of the NIR Member's rights under this agreement and/or under the APNIC Address Management Policies.
- In relation to circumstances described in clause 2.3(a)(1), 2.3(a)(3), 2.3(a)(4) or
   2.3(a)(5), the Notice, Response, and Appeal Provisions of clause 4 shall apply.
- d. Upon termination:
  - APNIC has the right to reinstate the membership of the members of the NIR Member, as members of APNIC, provided that such members enter into a Membership Agreement with APNIC; and
  - 2. At APNIC's request, the NIR Member must give all reasonable assistance (other than financial assistance) to APNIC to facilitate the efficient and effective transfer of the membership of the members of the NIR Member, to APNIC.

e. For clarity, the NIR Member's obligations in clause 2.3(d)(2) survive the termination of this agreement.

### 3. Obligations

### 3.1 APNIC's obligations

- a. APNIC must:
  - Establish and maintain mechanisms which support open communications
    within the Asia Pacific Internet community, for the development of policies
    and procedures relating to Internet resource management;
  - 2. Promote and support training and educational activities relating to the development of Internet services and responsible management of Internet resources;
  - 3. Undertake other activities as required by APNIC's members in support of Internet development within the Asia Pacific region;
  - 4. Consider all requests relating to the operations of APNIC that are made by APNIC's members, either directly or through the Executive Council;
  - 5. Ensure that the Executive Council considers all requests relating to the operations of APNIC that are referred to it either by APNIC's members directly or through APNIC;
  - 6. Provide rights and services (including delegated resources) to the NIR Member in accordance with the APNIC Address Management Policies;
  - 7. Not disclose to any person (except to its general secretariat, Internet administration authorities, staff, and contractors performing necessary work for APNIC who sign a non-disclosure agreement, or as legally required to do so) any confidential information which the NIR Member provides to APNIC;
  - 8. Maintain APNIC Address Management Policies in accordance with its policy development process, and make all reasonable efforts to keep current versions of those documents publicly available on APNIC's website;
  - Recognize and recommend the NIR Member as the chosen National Internet Registry for the country or economy concerned and as the registry of choice for ISPs, end users, and other customers in the NIR Member's country or economy.
- b. The NIR Member acknowledges that if, at any time, APNIC reasonably considers that the NIR Member's organizational or technical capacity is inadequate for it to thoroughly implement all aspects of APNIC's Address Management Policies, then APNIC may, after giving the NIR Member at least 14 days advance written notice (setting out in such notice, the basis of APNIC's consideration), temporarily suspend the provision of any registration or other services to the NIR Member whilst this situation remains.

### 3.2 NIR Member's obligations

The NIR Member must:

- a. Promptly pay all fees and charges due to APNIC in accordance with the Fee Schedule;
- b. Not provide any information to APNIC which is false or misleading;
- c. Inform APNIC as soon as possible of any changes in material information which the NIR Member has previously supplied to APNIC;

- d. Comply with this agreement and all APNIC Address Management Policies;
- e. Enter into a formal membership agreement or other suitable contractual arrangement with its own members or account holders who receive Internet resources from the NIR Member, requiring such members or account holders to comply with resource and address management policies which are consistent, and not in conflict, with APNIC Address Management Policies, and to take all reasonable steps to enforce compliance with such agreement or arrangement;
- f. Provide to APNIC upon a well-grounded request, material evidence of compliance with the terms of this agreement and all APNIC Address Management Policies as amended from time to time;
- g. To the extent permitted by the laws of the NIR Member's country or economy, guarantee the freedom of Local Internet Registries (LIRs), ISPs, and end users in their country or economy to choose between APNIC and the NIR Member as the registry from which they will receive Internet resources.

### 3.3 Liability and indemnity

- a. The NIR Member and APNIC acknowledge that the following clauses 3.3(b) and 3.3(c) are essential in order to protect the membership as a whole and APNIC's ability to pursue the aims expressed in Recital B.
- b. To the extent permitted by law, APNIC excludes all liability to the NIR Member arising out of or in connection with this agreement, the APNIC Address Management Policies, or delegated resources. This exclusion applies, without limitation, to all liability in contract or tort for actions or omissions of APNIC or its members, employees, agents, and contractors, but does not apply to liability arising directly from:
  - 1. Personal injury, including sickness and death;
  - 2. Loss of, or damage to, tangible property (including both the property of the NIR Member and third party property);
  - An unintentional infringement of intellectual property rights (other than any passing off, infringement of patent or trade secret, or legal proceedings in the United States and/or Canada in respect to the infringement of intellectual property rights);
  - 4. A breach of confidentiality or privacy,

to the extent caused or contributed to by any act or omission of APNIC or its employees, agents, and contractors.

- c. The NIR Member indemnifies APNIC against the full amount of all expenses, losses, damages, and costs that APNIC may reasonably incur as a result, whether directly or indirectly, of any breach of this agreement or any APNIC Address Management Policy by the NIR Member, its employees, contractors, or agents. In such cases, APNIC must, wherever practicable to do so, immediately notify the NIR Member in writing of such claim or potential claim. However, APNIC's failure to do so does not affect the NIR Member's obligations under this clause 3.3(c).
- d. For clarity, this clause 3.3 survives the termination of this agreement.

### 4. Notices, responses, and appeals

### 4.1 Notice

- a. If APNIC believes that there is a basis to terminate this agreement under clause 2.3, then before APNIC terminates this agreement, it must send a written notice ("Notice") to the NIR Member.
- b. The Notice must:
  - Describe the basis for termination under clause 2.3, and the course of action necessary to remedy the breach (if any), or alternatively, inviting the NIR Member to provide reasons why APNIC should not terminate this agreement;
  - 2. Specify a reasonable period of at least 45 days from the date of the Notice, for the NIR Member to provide a response to the Notice within the terms of clause 4.2, or to take the action necessary to remedy the breach (if any); and
  - 3. Advise the NIR Member of APNIC's intended action if the breach (if any) is not remedied, or alternatively, if the NIR Member is unable to provide sufficient reasons to persuade APNIC not to terminate this agreement.

### 4.2 Response to Notice

The NIR Member must, by the time specified in clause 4.1(b)(2), send APNIC a response to the Notice detailing either:

- a. The NIR Member has not committed the breach; or
- b. The NIR Member has remedied the breach in accordance with clause 4.1(b)(1); or
- c. Exceptional circumstances exist which justify APNIC retracting or revising the Notice.

### 4.3 Subsequent actions

If the period specified in clause 4.1(b)(2) expires and, taking full account of any responses received under clause 4.2, APNIC reasonably believes that either the breach (if any) has not been remedied, or that there is no exceptional circumstances which exist to justify APNIC retracting or revising the Notice, then APNIC may, in its discretion, either send the NIR Member:

- a. A subsequent Notice as described in clause 4.1(b); or
- A written notice immediately revoking some or all of the NIR Member's rights under this agreement and/or under the APNIC Address Management Policies (including, without limitation, delegated resources); and/or immediately terminating this agreement.

### 4.4 Appeal to Executive Council

If the NIR Member believes that APNIC has failed to adequately consider all relevant circumstances or has acted unreasonably in sending a revocation notice under clause 4.3(b), then the NIR Member may appeal APNIC's decision to the Executive Council within 30 days. If the Executive Council decides that the NIR Member's appeal is justified then APNIC will withdraw the revocation notice.

### 4.5 Acknowledgement by Member

The NIR Member acknowledges that:

- a. If the NIR Member receives a notice under clauses 2.3(b) or 4.3(b) then the NIR
   Member must immediately cease using the delegated resources specified in the notice; and
- b. If the NIR Member fails to comply with clause 4.5(a), then APNIC may apply to a Court seeking an injunction or similar remedy, restraining the NIR Member from using the relevant delegated resources.

### 5. General

### 5.1 APNIC Address Management Policies

The NIR Member agrees that:

- a. The APNIC Address Management Policies may be amended from time to time in accordance with APNIC's policy development process;
- b. Any such amendments are binding upon the NIR Member;
- c. APNIC Address Management Policies as they exist from time to time form an integral part of and apply fully to this agreement; and
- d. If this agreement is either terminated or not renewed, the NIR Member shall continue to be bound by the provisions of this agreement and other APNIC Address Management Policies to the extent that the provisions relate to the use of resources or disputes arising from this agreement or any other APNIC Address Management Policies.

### 5.2 Assignment and Sub-contracting

- a. The NIR Member must not, without the prior written consent of APNIC, sell, transfer or pledge any right under this agreement, or permit another body to assume or perform any obligation under this agreement.
- b. The NIR Member's obligations to APNIC under this agreement remains, and is not reduced, by the NIR Member doing any of the things described in clauses 5.2(a), even if APNIC gives its consent to the NIR Member under clause 5.2(a).

### 5.3 Dispute Resolution

- a. The parties agree to attempt to resolve any dispute arising out of or relating to this agreement by using the process described in the Dispute Resolution Document, before commencing any legal proceedings.
- b. This clause does not prevent a party from applying to a Court for interim injunctive relief.

### 5.4 Governing law

- a. This agreement is governed by the laws of Queensland, Australia.
- b. Subject to clause 5.3, the NIR Member and APNIC irrevocably submit to the exclusive jurisdiction of the Courts of Queensland, Australia.

### 5.5 To the extent not excluded by law

The rights, duties, and remedies granted or imposed under the provisions of this agreement operate to the extent not excluded by law.

### 5.6 Order of precedence

To the extent of any inconsistency, the terms and conditions contained within this agreement will prevail over any other agreement executed between the parties.

# **Execution Page**

### **Executed as an agreement**

Signed for ##]	
by its authorized representative	in the presence of:
(Signature of authorized representative)	(Signature of Witness)
Full name of authorized representative (please print)	Full name of Witness (please print)
Official company title of authorized represent	ative
Signed for APNIC PTY LTD	
by its authorized representative	in the presence of:
(Signature of authorized representative)	(Signature of Witness)
Full name of authorized representative (please print)	Full name of Witness (please print)
Official company title of authorized represent	ative



APNIC Document Identity			
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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 organisation may be elected to sit on the Executive Council. [APNIC By-Laws, Article 35]
- Casual vacancies on the Executive Council may be filled by individuals appointed by the Executive Council, who 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 2/3 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 organisation 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]

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- To be responsible to the Members to count member votes, and may for this purpose appoint 2 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 AGM 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 organisations' [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 the 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 the 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), Article49(b)]
- To be responsible to the members and the 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 3/5 majority vote remove the Director-General [APNIC By-Laws, Article 36]

### **Executive Council Decisions**

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- 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 3/5 majority vote of the Executive Council [APNIC By-Laws, Article 36]

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### 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/docs/corpdocs/Bylaws.pdf (also in Part 5 of this handbook)
- Articles of Association: http://www.apnic.net/docs/corpdocs/AoA.htm
- Memorandum of Association: http://www.apnic.net/docs/corpdocs/MoA.htm
- Membership agreement: http://www.apnic.net/docs/corpdocs/membership-agreement.html

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. The Director General is the sole shareholder 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, the APNIC Director General.

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 of 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.

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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 EC, and is eligible to attend all meetings of the EC and participate in all activities of the EC. As with all EC 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 EC by virtue of his ex-officio membership of this Council.

The EC 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, this delegation also has potential liabilities for members of the EC. Paragraphs 62 through 66 of the APNIC By-Laws indemnify members of the EC, as long as it is established that the EC member acted honestly and in good faith in serving the best interests of APNIC and had reasonable cause to believe that his 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 EC to act honestly in the best interests of APNIC and to avoid conflicts of interest.

The EC 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 EC meet in a manner that does not post due notice of the meeting, or excludes any member of the EC from participation in the meeting, whether face to face or by electronic means, then the actions of those EC 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 EC with valid outcomes. If any meeting of EC members is held outside of the provisions of the APNIC By-Laws, it is not a valid meeting of the EC, 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

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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 EC has to power to "to act on behalf of the Members in the interval between AGMs 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 EC 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 EC, whether made by the delegation of powers by the APNIC membership to the EC, or made by functions explicitly delegated to the EC (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 by the members and may be 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 EC 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, and this could only be undertaken by the membership through the affirmative vote of two thirds of the entire APNIC membership.

The members of the EC 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].

EC 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. EC members should note all expert advice that has been reasonably provided to APNIC concerning the best interests of APNIC, and ensure that no EC 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 EC to act in accordance with this membership directive could be interpreted as a failure of the APNIC EC to operate in accordance with the By-Laws

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# Part 3. Legal Obligations of EC 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 EC 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 the Directors and EC be made aware of the legal requirement that strict compliance with the process as defined in the By-Laws for calling, holding and recording EC meetings be met, failing which the defences against personal liability under Corporations Act 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 organisation, comprising:

- Members;
- EC; and
- APNIC Secretariat,

whose 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, pursuant to 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 Ptv Ltd (24 June 1998).

As APNIC Pty Ltd is a legal entity under the Corporations Act, 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 ByLaws for the purpose of establishing, governing, and prescribing the functions, powers and authority of such Special Committee. Every Special

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Committee so appointed by the Directors shall be governed by the same ByLaws 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 pursuant to 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 (AGM), where Officers who have held their position on the Executive Council for 2 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 as follows:

- 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.
- to 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 EC 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 Bylaws the Executive Council makes decisions that affect the while 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 EC Members to ensure compliance with their duties. Conflicts of interest should be disclosed by way of declaration and EC 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 EC being comprised of individuals from member organisations, there will be inherent conflicts of interest that arise due to the decision-making functions of the EC overlapping with EC

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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 EC. These conflicts arise for EC members solely as a result of being employees of member organisations and are uniform for all EC members. The nature and extent of these conflicts of interest will be held in common with all other members of the EC and will not be particular to the member organisation to which an individual belongs.

#### Specific Conflicts of Interest

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

General conflicts of interest arising due to membership of the EC

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

It would be best practice in these situations for each individual EC member to give 'standing notice' of the conflict at the beginning of their term on the EC. The procedure for giving 'standing notice' of a conflict (using the Corporations Act as guidance) would be for an individual EC member to give details of the nature and extent of the interest either orally or in writing. This should occur at an EC meeting or alternatively, should be given to the APNIC Secretary General. If the notice of the conflict of interest is given at an EC 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 EC meeting.

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

- The nature of the individual's member organisation and how its nature relates to the decisionmaking capacity of the EC; and
- The individual's role within their member organisation and any personal interest they have within the organisation.

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 EC, it would not constitute sufficient disclosure if the nature or extent of the interest changed.

## Specific conflicts of interest arising for EC members

As noted above, specific conflicts of interest will arise for EC members when a conflict does not arise solely due to their affiliation with a member organisation, which is a conflict that is held in common between all EC members. Examples of specific conflicts will include when an individual EC member has a personal business interest in a transaction affected by an EC decision or where their member organisation has an affiliation with an NIR.

Further relevant duties for APNIC EC members

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It is also pertinent to emphasise that in instances were APNIC EC members have conflicts of interest, these individuals must ensure they act in accordance with their other duties as officers of APNIC. EC 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 organisations.

With particular reference to instances were EC members have a conflict of interest, as officers of APNIC it will be critical that they evaluate EC 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 organisation.

# **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 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 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 which 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

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- 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 EC member organisational interests (e.g. lower member fees) above the best interests of APNIC and its membership.

(d) Section 189 of the Corporations Act 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. This defence may be relied on by Directors and Officers 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 organisation to which that individual belongs. Only one individual per Member organisation may be elected to sit on the Executive Council."

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

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

- 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 authorised representatives.
- Article 48 of the By-Laws provides for notice of meeting of Executive Council meetings as follows:
  - "An Executive Council member shall be given not less than 7 days notice of meeting of the Executive Council, but a meeting of the Executive Council held without 7 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
- (d) 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."

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Article 54 of the By-Laws provides that one of the functions of the Director-General is 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 EC meeting, should be present and participate and witness any resolutions passed by the Executive Council as a precondition to that EC decision being said to be valid.

If the correct process for holding meetings and passing resolutions at an EC 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 Bylaws provide indemnification and insurance against liability of the Directors, management and EC members above and beyond the defences against personal liability that are provided in the Corporations Act.

#### **Indemnification Provisions**

Article 62 of the By-Laws provides as follows:

"To the extent permitted by law, and subject to Bylaw 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 Bylaws and the Memorandum and Articles of Association."

#### Article 63 of the By-Laws provides:

"ByLaw 62 only applies to a person referred to in that bylaw 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 ByLaws unless a question of law is involved.

# Article 66 of the By-Laws provides:

"If a person referred to in Bylaw 62 has been successful in the defence of any proceedings referred to in that bylaw 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 EC 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 EC 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 Bylaw 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 EC member

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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 EC 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 EC 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 organisations who nominated individuals on the EC; and
- (c) Must be a decision made at a properly convened EC meeting at which correct notice of meeting has been given to all EC members and the Director General with proper records of minutes of meeting being taken and recorded to satisfy Articles 49 and 54 of the By-Laws

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

## Adopted by the EC as of 25 February 2013

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

Regular meetings of the Executive Council shall be scheduled by the Chair of the Executive Council with at least 2 weeks notice to all Executive Council members. Regular meetings shall occur four times a year.

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.

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# 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.

Agenda items, and documents for inclusion in those items, must be in the hands of the Executive Secretary of the Executive Council at least 3 working 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 3 working days 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
- Any Other Business

# 5. The Chair of the Meeting

The Chair of the meeting will be a member of the Council so designated by the Chair of the Executive Council. If no person has been designated by the Chair of the Executive Council, then the Chair of the meeting shall be the Chair of the Executive Council, or in his or her 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.

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 to ensure 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 minuted 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 after the meeting as possible. The minutes shall be circulated electronically to the Council members for review. The minutes will be approved at the subsequent Executive Council meeting, and published thereafter.

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# 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 EC 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 EC members being employees of APNIC Member organizations and other appointments or positions held by the EC member that may conflict with the role of an EC 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 EC 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 members of the Executive Council present at the meeting vote in favour of the motion. In the event of a tied vote the Chairman of the Meeting shall exercise the casting vote.

All majority votes shall be undertaken by affirmation. Any member may request the Chairman 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.

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# 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 dead-line 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 members of the Executive Council must be received by the dead-line for voting.

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

Any Executive Council member who 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 dead-line 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-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;
- 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.

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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 Chairman, 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 (AGM).

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 AGM until the Chairman is elected.

The Director-General asks for candidates to run for Chairman 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 then candidate with the least votes is removed from the slate and the voting procedure is repeated. The Chairman takes office immediately upon election.

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

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

## 16. SubCommittees of the Executive Council

All subcommittees formed by the Executive Council shall be constituted with a defined life time, 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 it's 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.

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# 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:
  - a. to 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. to 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. to provide educational opportunities to further Members' technical and policy understanding of the industry;
  - d. to 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. to 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 Sub-Committees 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 Organisation or Non-Governmental Organisation, engaged

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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:
  - 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 ("AGM") 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% of the votes entitled to vote on resolutions of Members to be considered at the meeting, or 20 Members, whichever is less.
- 9. A Member shall be deemed to be present at a meeting of Members if he 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

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meeting in person or by proxy not less than either 20% 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.

#### **Chairman of Meetings**

- 11. At every meeting of Members, the Chair of the Executive Council shall preside as chairman 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 chairman of the meeting, otherwise the Members present shall choose someone of their number to be the chairman. If the Members are unable to choose a chairman 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 chairman failing which the oldest individual Member (in terms of age) or representative of a Member present shall take the chair.
- 12. The chairman 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 of the 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 2 or more persons to serve as tellers.

#### **Authorised 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, which may include electronically verifiable signatures or identification codes, presented to the chairman which purport to authorise that individual to represent the Member. If the chairman 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 chairman and the chairman is satisfied that that individual has authority to represent the Member.
- 15. The chairman 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 authorise such persons as it thinks fit to act as its representative at any meeting, and the person so authorised shall be entitled to exercise the same powers on behalf of the Member which he 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 shall be 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.

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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 Member may be represented at any meeting of Members by a proxy who 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 chairman 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 ("e-mail") 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 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 (2/3) 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, in the event 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 authorise 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, return receipt requested.

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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:
  - a. to act on behalf of the Members in the interval between AGMs within the limits of the powers delegated to it by the Members;
  - b. to manage the activities, functions and affairs of APNIC and the corporation;
  - c. 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;
  - d. 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;
  - e. to consider broad Internet policy issues in order to ensure that APNIC's policies and strategies fully respond to the constantly changing Internet environment;
  - f. to ensure the efficient coordination of the work of APNIC:
  - 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 by-law 5(b) above, a ceiling for the expenditure of APNIC until the next AGM after considering all relevant aspects of the work of APNIC in that period;
  - h. to 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. to 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 AGM, the Executive Council shall be composed of seven members elected at AGMs in accordance with the provisions of these by-laws.
- 32. The first Executive Council shall hold office until the first AGM is convened, whereupon 2 of the 5 members of the first Executive Council shall relinquish office and the Members shall elect 4 succeeding Executive Council members (2 to replace the members relinquishing their office and a further 2 to bring the total of the Executive Council to 7) to office in accordance with these by-laws. The 2 members of the first Executive Council who shall relinquish office at the first AGM will be chosen by the Director General. Upon election, the 4 succeeding Executive Council members shall hold office for 2 years. The remaining 3 members of the first Executive Council shall continue in office until the second AGM whereupon their successors shall in like manner be elected and hold office for 2 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 recognised 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 AGM.

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- 34. Each Member voting at an AGM 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 2 weeks and no more than 8 weeks prior to the date of the AGM.
- 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 organisation to which that individual belongs. Only one individual per Member organisation 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 organisations 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, in 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 which 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 authorised. The Treasurer shall also perform such other duties as the Executive Council may from time to time prescribe.

# Secretary

41. The Executive Council shall by majority elect one of the members of the Executive Council as Secretary of the Executive Council which shall, with the assistance of the General Secretariat, issue all authorised 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 from time to time prescribe.

## **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 pursuant to these bylaws as the necessary quorum for a meeting of the Executive Council, the continuing Council members may act only for the purpose of appointing Council members to fill any vacancy that has arisen or summoning a meeting of Members. A Council member so appointed shall hold

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office until the next AGM, whereupon an election will take place in accordance with these by-

# 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 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 7 days' notice of meetings of the Executive Council, but a meeting of the Executive Council held without 7 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 be comprised of 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 first Director General shall be appointed by the directors of the corporation.

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- 54. The main functions of the Director General are:
  - a. to act as the chief executive officer of APNIC and the corporation;
  - b. to 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 shall 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. to execute all contracts, agreements and other instruments of the corporation which are authorised including affixing the Seal of the corporation;
  - d. to 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. to implement strategic policies, prepare plans for APNIC, and shall coordinate its activities, functions and affairs:
  - f. to report to the Executive Council and to put forward resolutions for the consideration of the Executive Council;
  - g. to 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. to act as the legal representative of APNIC and the corporation;
  - i. to 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 threefifths of the members of the Executive Council.

#### **PART VII - SUB-COMMITTEES**

- 56. The Executive Council may from time to time designate sub-committees of APNIC, with such lawfully delegatable 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 sub-committee 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 sub-committee.

# **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.

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## **PART IX - CONTRACTS WITH THIRD PARTIES**

59. All agreements, contracts and other authorised 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 through the mails 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:
  - 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 sub-committee 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.

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of 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 sub-committee 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 authorised 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 seal may be used by the Director General.

## 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 Center, Ltd (a company incorporated under the sovereign laws of the Seychelles) by resolution of the directors of the Asia Pacific Network Information Center, 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), sub-committee 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 7 days after a notice is given under by-law 74 each party to the Dispute ("Disputant") must nominate in writing a representative authorised to settle the Dispute on its behalf.

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- 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 by 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:
  - a. must be kept confidential; and
  - b. must 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 (2/3) of the votes of the entire membership.

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# **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 (<a href="http://www.apnic.net">http://www.apnic.net</a>).

1.	Perso	onal details				
	First ı	name:				
	Famil	y name:				
	Addre	ess:				
	Phon	e:				
	Facsi	mile:				
	E-ma	il:				
	Date	and place of birth:				
	All for	mer 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.	Gene	ral				
I agre	e to noti	ify the APNIC Pty Ltd of any change in these particulars as soon as possible after the change.				
Signa	ture:	Date:				

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# **Attachment B. Non Disclosure Agreement**



Non-Disclosure Statement				
I,				
of	<b>,</b>			
	condition of membership of the Executive Council of APNIC Pty Ltd ("APNIC"), make the ing statement relating to the non-disclosure of information.			
1.	I understand that in the normal course of its business, APNIC receives from organisations detailed information; for example, about the internal network infrastructure, customers, and development plans of those organisations. 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 organisation providing information to APNIC may consider much of that information to be of a confidential nature and that unauthorised disclosure of that confidential information to the public or its competitors could be harmful to the business of the organisation 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.	<ol> <li>Therefore, I agree that if, in the course of my membership of the Executive Council of APNIC,</li> <li>I receive information about an organisation using APNIC services, about a customer of an organisation using APNIC services, or about APNIC itself; and</li> <li>that information is specifically designated as confidential information, or may reasonably be considered to be confidential information,</li> <li>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.</li> </ol>			
5.	<ol> <li>This agreement will not apply to information that:</li> <li>is provided for the specific purpose of registration on a public database;</li> <li>is specifically authorised by the relevant organisation for disclosure;</li> <li>is disclosed by the relevant organisation to another party without restriction;</li> <li>enters the domain of common industry knowledge through other means beyond my control.</li> </ol>			
6.	Further, this agreement will not apply to a specific disclosure of information which is required by a court order.			
I this de	acknowledge that I have read and understood ocument and agree to its terms.			
Signe	d: Date:			

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