Open Source Industry Australia Ltd
A.C.N. 109 097 234

Minutes of the special general meeting

held on Thursday 25 January 2018
at Room 405, Building CB11, University of Technology Sydney,
15 Broadway, Ultimo NSW 2007.

The Chairman, Mr Ron Skeoch, opened the meeting at 5:45 p.m..

1   Attendance

The following members were present in person or by authorised representative:

- Muli Management Pty Ltd (NSW) – Ron Skeoch, OSIA Chairman;
- Saosce Pty Ltd (SA) – Jack Burton, OSIA Director & Company Secretary, also authorised representative for: Holden Dynamics Pty Ltd (NSW);
- Alexar Pendhashteh, OSIA Director;
- Calyx Group Pty Ltd (NSW) – Bob Birchall;
- Coherent Software Pty Ltd (Vic.) – Paul Foxworthy;

Mr Burton advised that he held proxies in his favour from:

- Adaxa Pty Ltd (Vic.) – Steven Sackett; and
- Grant Petch T/A GP Computer Services (SA).

Mr Birchall advised that he held a proxy in his favour from:

- Catalyst IT (Aust.) Pty Ltd (NSW) – Don Christie.

The following observers were also in attendance: David Bell; Sae Ra Germaine; Joshua Hesketh; Dave Kempe; Mark Phillips; James Polley; Kathy Reid; Cameron Shorter; Josh Stewart; Russell Stuart; and Cameron Tudball.

2   Apologies

The company secretary noted that apologies had been received from:

- Catalyst IT (Aust.) Pty Ltd (NSW) – Don Christie.

3   Minutes of the Annual General Meeting held on 27 November 2017 in Melbourne, Vic.

The draft minutes of the last AGM as circulated with the agenda were considered. It was **resolved** to adopt the minutes without change.

4 Minutes of the Special General Meeting held on 14 December 2017 in Adelaide, SA

The draft minutes of the last SGM as circulated with the agenda were considered. It was **resolved** to adopt the minutes without change.

5 Chairman's address

The Chairman reported that he had joined the board of OSIA following the failure of the 2017 AGM to elect any directors. He thanked Mr Burton for all the hard work he had put in as interim Company Secretary on reconstructing the missing accounts, sorting everything else out, attempting to attract renewed interest in OSIA, etc. and as the sole steward of the Company between the 2017 AGM and the December 2017 SGM. He also thanked Mr Pendashteh for stepping up to join the board from the December 2017 SGM—Mr Pendashteh's presence a third director helped OSIA to satisfy the requirements of the Act and he was instrumental in convening the present SGM.

The Chairman noted that the experience had been "interesting". The board's focus during its short term to date has been: to reconstruct a set of accounts that reflect reality; to notify our members and the industry at large of the situation facing OSIA; and to try to obtain interest from others in serving on the board.

Apropos that last point, he noted that there did not presently appear to be sufficient interest to ensure OSIA's ongoing operations and he outlined two potential options for the future:

1. To wind up OSIA and nominate a beneficiary to receive its residual assets (most likely Linux Australia), noting that the Company remains solvent.

2. To "hibernate" OSIA for a period of 8 months, in the hope that sufficient candidates to serve on the 2018/19 board emerge in advance of the 2018 AGM (which he noted could be held no earlier than September).

Nevertheless there was, in the Chairman's view, a clear need for OSIA to continue providing guidance to Australia's governments (including such key agencies as ATO & DTA, who he noted are in the process of developing new operating frameworks which may substantially hamper our industry's ability to utilise unencumbered open standards)—as well as to the driving forces behind Australia's "information economy"—on matters relevant to the Australian FOSS sector. Therefore, he saw OSIA's continued existence as necessary for substantial further uptake of FOSS solutions in government, particularly in relation to online government/citizen & government/business interface initiatives.

Having listened to the comments made by Linux Australia over the past few days, he thought it was fairly clear that Linux Australia did not have sufficient capacity to "pick up the slack" if OSIA were to disappear. Having the benefit of Linux Australia's President attending the meeting in person, the Chairman asked her if his was a fair assessment and she confirmed that it was.

The Chairman observed that many people in the FOSS community don't seem to understand the breadth & depth of the continued need for Australian FOSS industry to advocate for open source & opens standards in government.

The Chairman pointed to the government's implementation of AS4 as a case in point. ATO reportedly paid AU\$6M to a large multinational to provide *only large software houses* access to AS4 communication software. That he described as sheer stupidity, especially given a group of concerned Australian software developers had proposed an alternative, open source implementation of AS4 at a cost of only AU\$1M (including 3 years of maintenance), which he saw as a far more appropriate solution, but alas ATO did not agree.

That and many other such examples have caused the Chairman to come to the conlusion that there remains a need for OSIA to be an active influencer in Australia's corridors of power. Such an outcome requires more people to step up to the task of managing the business of OSIA.

The Chairman asserted that Commonwealth Government matters, such as AS4, digital invoicing, so-called "free trade" agreements, etc. all still needed OSIA's input.

It was **resolved** (Mr Birchall moved; Mr Burton seconded) that the Chairman's address be accepted.

6 Secretary's address

The Company Secretary stated his intention to be brief, as matters of far greater import were to be discussed under general business. He thanked OSIA's sponsors—Open Source Law, Redback Conferencing, iSeek Communications, Anchor Systems, Joviam and Panubo—whose generous support of OSIA was much appreciated.

He reported that although he had been appointed to the board in most unusual circumstances (see minutes of 2017 AGM), he had expected that governing OSIA during the interregnum would be a fairly straightforward

process. His plan had been to receive a formal handover (including the details that were missing from the 2016/17 financial reports) from his predecessor within the first few days, address that and the other six defects in the 2016/17 annual report himself over the following week, then convene an SGM (with the able assistance of Mr Pendashteh) on plenty of notice, issue a fresh call for nominations then spend the remaining six weeks or so recruiting his own successors.

Unfortunately, reality presented a far less rosy picture. He reported that, soon after taking office he became aware of several grave governance & compliance matters at OSIA, all of which needed urgent attention. This state of affairs had been further complicated by the recalcitrance of his predecessor, who he reported had only been willing to respond to approximately ten percent of the handover tasks requested of him.

Mr Burton reported that he had convened an extra SGM on short notice in mid December for the purposes of electing directors to serve during he interregnum. He thanked Mr Skeoch and Mr Pendashteh (both of whom were elected at the December SGM) for their extensive help over the last six weeks, without which we could not have been ready to hand over to the new board this week.

He also thanked a number of other OSIA members and former directors whose informal assistance or advice during the interregnum had been invaluable, including Brendan Scott, Bob Birchall, Steven Sackett, Paul Foxworthy & Andrew Cutler.

Mr Burton was pleased to report that the interim board had addressed in full most, if not quite all, of the outstanding governance & compliance issues and that the remainder would be addressed in the coming weeks, so that the new board could focus instead on what he saw as OSIA's core mission: public policy.

He noted however that as the outstanding governance & compliance matters had consumed the entire seven weeks of the interregnum, no time had been left to spend on actively recruiting directors for the new board. As a direct consequence of that, the results of the call for expressions of interest had been poor in terms of quantity (although he stressed that he was pleased with the quality of the one candidate who lodged an EoI).

7 Annual accounts & Directors' report

The revised 2016/17 annual report (including the company accounts and the Directors' report), as circulated with the agenda, was considered for approval.

It was **resolved** (Mr Birchall moved; Mr Foxworthy seconded) to accept the revised Directors' report and financial statements as tabled.

8 General business

The Chairman drew the meeting's attention to the call for expressions on interest in serving on the board, to which only one EoI had been received (from Mr Phillips). He pointed out that as both the Chairman and the Company Secretary were planning to step down at the next board meeting (on 27 Jan), even after appointing Mr Phillips to the board OSIA would still remain short of directors. He therefore called for further expressions of interest from the floor. None were forthcoming.

A long discussion ensued about the future of OSIA, whether or not there remained a need for the Australian FOSS industry to maintain an independent voice of its own on public policy matters, whether or not there remained a need for OSIA to undertake any other activities such as member services, what role if any Linux Australia might play in all this, and even whether or not there remained a need for the FOSS industry to be seen as such (as opposed to being considered no different to the broader computing industry).

Mr Kempe asserted that OSIA had outlived its utility and reminded us that the original intention was not to create a permanent entity: as OSIA founding director Con Zymaris (Cybersource Pty Ltd, Vic.) had said at the time, *OSIA should only need to exist for 10 years: by then open source should have "won"*. Fourteen years on, Mr Kempe believes that OSS *has* already won. In support of that view he reminded us that "Android" (Dalvik/Linux) had secured the lion's share of the global mobile device market and that even Microsoft—traditionally one of the biggest critics of OSS—was a major sponsor of LCA2018.

Mr Burton conceded that FOSS has indeed "won" in a few specific, highly visible fields, such as Mr Kempe's example of mobile device operating systems and cited "the web" in general as another such exmaple, but asserted that as a rule of thumb the further down the stack you go, the fewer inroads FOSS has made. Quite apart from the age-old call for "Linux on the desktop", one only had to look at enterprise mail or ERP systems for example to see that there was still a long way to go before being able to call it as FOSS having "won". Leaving aside market penetration statistics, Mr Burton saw OSIA's central purpose as influencing public policy and in that field he saw enormous scope for further action.

Mr Kempe pointed out that the average Australian SME in the FOSS sector could obtain far better return on investment by, for example, sponsoring LCA, than it could by joining or sponsoring OSIA, or by backing a member of staff to serve on the OSIA board.

Mr Shorter felt that the work of OSIA was well worth continuing, but he did not support maintaining the existing corporate structure. Instead he would rather see OSIA either reconstituted as an unincorporated association or subsumed into an incorporated association (ideally Linux Australia). He cited the Open Source Geospatial Foundation as an example of such a body that represented both the industry and the community successfully.

Miss Reid pointed out that Linux Australia only accepted individuals, not companies, as members and suggested that whilst there was a lot of commonality of vision and values as between Linux Australia and OSIA, the two organisations had clearly different audiences and purposes, so it probably made more sense for Linux Australia and OSIA to collaborate on specific intiatives rather than consider a merger.

Mr Burton agreed with Miss Reid, echoing her call for close collaboration whilst remaining separate entities. He raised the importance of demonstrating appropriate standing to government stakeholders: governments want to know who they're dealing with and they tend to treat arguments raised by industry & community bodies differently. He saw substantial value in having independent strong voices to government both for the Australian FOSS community and for the Australian FOSS industry. He noted that everything else that OSIA does (or should do) could easily be undertaken as a subcommittee of Linux Australia, but that OSIA's public policy work could not: he did not see how a community body could ever claim credibly to represent industry (nor vice-versa).

Mr Pendashteh felt that doing public policy work alone could not justify keeping OSIA alive as he believed it could be done in alternative ways—either as a sub-committee of LA or in the form of group submissions as Mr Shorter had suggested. He added however that a healthy and powerful OSIA, if achieved, would be the best entity to lead such public policy work.

He spoke briefly to OSIA's recent history, seeing no point in maintaining an organisation that did nothing (as OSIA had in 2017), but saw great value in having an OSIA that did achieve substantive results on a regular basis, although he questioned whether the OSIA of today could achieve such results.

Mr Pendashteh also highlighted the significance of each of the four letters O-S-I-A. In his view the O & S—what our members share—is already covered well by community initiatives and organisations such as LA, but what's missing is support for the I & A. He saw a need for an industry body to recognise and attend to the *business* needs of its member organisations and also to support local SMEs to expand their share of the Australia OSS market in competition with international brands as well as extending the accessible market overseas. For those reasons, he saw value in maintaining OSIA as an incorporated entity and a voice for the industry.

Mr Burton spoke to OSIA's results in the 2014/15 & 2015/16 terms, the latter of which he saw as the high point of OSIA's public policy activities to date—a time at which Commonwealth government departments (and even ministerial advisers) were starting to come proactively to OSIA to seek our advice and direct involvement in policy matters. He pointed out that this was not as hard to achieve as it sounds—all it required the first time around was two consecutive years of responding credibly and comprehensively to every relevant public policy issue at Commonwealth level. He agreed with Mr Pendashteh's remarks about OSIA's recent history. Mr Burton lamented OSIA's extreme inaction of 2017, but asserted that with the right people it is always possible to turn an organisation around and achieve high calibre results again.

Mr Birchall returned the conversation to the question of corporate structure and a very long discussion on that question ensued.

The general consensus seemed to be that the governance & compliance requirements of a company limited by guarantee were too onerous. Mr Burton dissented, assuring those present that while that had been the case during the interregnum, that was only because OSIA had to deal with 12 to 18 months worth of such matters in a mere seven weeks—he asserted that if attended to gradually throughout the year (as in any responsibly governed company), the overhead for such matters is really quite minimal.

At Mr Birchall's request, Mr Burton agreed to continue serving as company secretary for the remainder of the 2018 term, so long as others were willing to take on responsibility for OSIA's substantive initiatives.

The Chairman raised the need for OSIA to decide on its way forward. He proposed one option: to put the company "to sleep" until end of financial year, with the board then tabling its recommendations for OSIA's future at the 2018 AGM (to be held earlier than usual, in September), where the members would make the final decision.

The Company Secretary mooted an alternative option. OSIA had already undertaken a public call for expressions of interest, the response to which was poor in terms of quantity (but not in terms of quality). However OSIA has not yet spent any time on direct recruitment of new directors. This was not a deliberate omission—it occurred solely because the entire interregnum was consumed with addressing the inherited outstanding governance & compliance matters. Now that those had been attended to, Mr Burton proposed that OSIA spend a month on direct board recruitment, leveraging the substantial industry networks of all of those present. He felt that if such an approach could attract a sufficient number of new directors of high calibre, the question of legal structure would be rendered moot and OSIA could return to the central task of rebuilding its

operations and regaining its former status in the public policy realm.

It was noted that winding up the company was a third option.

Miss Reid noted that Linux Australia (LA) had also experienced a downturn in volunteer support. She mentioned that LA's subcommittees operate autonomously—LA just supplies the infrastructure. Thus it might be possible for OSIA to be reconstituted as a subcommittee of LA and OSIA's exposure to potential members might increase under LA's umbrella. However she admitted that the form of membership would be a significant issue, as LA only allows individual membership. Changing LA's Constitution to allow corporate membership was likely to be infeasible.

This became a sticking point, as an industry body represents companies, not individuals. While the debate was intense, no decision was made.

As no agreement had been reached on a preferred option and the Chairman noted we were almost out of time, the matter was deferred to be dealt with by the board at its 27 January meeting.

Mr Burton raised the need for OSIA to address the threat of CPTPP, which had been widely reported in the mainstream news the previous day. He saw this matter as far more urgent than any speculation about restructuring. He then outlined his preliminary assessment of the November 2017 ministerial statement on CPTPP against the 24 key issues that he & Mr Foxworthy had raised in OSIA's March 2016 submission to JSCOT on TPP: only 29% of those issues were resolved by the suspension provisions; a further 8% required further investigation; and the other 62% remained outstanding issues. He believed this illustrated very well his response to Mr Kempe's earlier comments: clearly FOSS has not yet "won"; there is still a lot to fight for. Mr Burton believed that such matters were well worth fighting for, stated that he intended to stand and fight for them and invited all assembled to join him in doing so.

The Chairman informed those present that we were almost out of time. Before closing the meeting, he invited the Linux Australia Council to send a representative to OSIA's 27 January board meeting. Miss Reid endorsed the proposal but declined to attend herself due to prior commitments. Mr Stewart agreed to attend instead.

There being no time remaining, the Chairman closed the meeting at 7:15 p.m..

Signed in accordance with a resolution of the Annual General Meeting as being a true and accurate record of the proceedings of the meeting.

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Chairman

Date: