

eDAC response to *.au Licensing Rules and .au Namespace Implementation Policy Consultation - October 2019*

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1 Introduction

1.1 The Role of eDAC

The .edu.au Domain Administration Committee (eDAC) is the advisory body for the edu.au second level domain (2LD). It monitors developments, contributes to major policy, and provides advice on issues related to monitoring and regulating the edu.au domain space.

eDAC comprises representatives from the:

- State and Territory Government schools sector
- National Catholic Education Commission
- Independent Schools Council of Australia
- Vocational Education and Training (VET) sector
- Higher Education sector.

eDAC is a representative body encompassing all education sectors within Australia. It provides policy direction for the closed edu.au 2LD. eDAC is supported by the Registrar for edu.au, Education Services Australia (ESA), and meets quarterly. eDAC is in turn accountable to .au Domain Administration Ltd (auDA). The complexity of the education sector in Australia, which runs across nine jurisdictions, means that a consultative body like eDAC is best able to speak for the sector on domain name issues.

eDAC's role is set out in [auDA policy 2015-02 - Governance Arrangements for the edu.au 2LD](#). Additional information is available at the eDAC website maintained by the Registrar, located at <https://www.domainname.edu.au>.

See <https://www.domainname.edu.au/policy.htm> for the current policies relating to edu.au. These were revised and promulgated in 2015 after extensive consultation with the education sector and more widely. In the view of eDAC, they do not require further revision at this time.

The process for policy revision in edu.au is set out in [edu.au Policy 2015-03: Change Process Policy](#). It provides for a process of consultation intended to ensure that the policy represents the views of the sector, and any policy revision process must, in terms of the existing policy, follow this process.

The broad objective of eDAC is to ensure a stable managed domain space in a closed second level domain (edu.au) for the Australian education sector. Use of the edu.au second level domain by education organisations has a very high acceptance and take-up by the sector. We believe that had the work on consumer perceptions undertaken by OmniPoll for the Policy Review Panel (PRP) - *Consumer perceptions of domain name extensions January 2019* - included edu.au, it would have demonstrated this. We believe that it would have shown a high level of awareness of and trust in the domain, comparable to that shown for gov.au. This support from education is shown in the excellent coverage of the industry by the edu.au 2LD. There are over 16,000 domain names in the edu.au 2LD, the majority of Australian education bodies.

2 High level feedback

eDAC makes the following points in relation to the proposed Licencing Rules.

1. While having reviewed and proposed minor amendments to **Schedule A** as they relate to the eligibility and allocation criteria for the edu.au space, eDAC notes that the existing policies for edu.au were recently revised as a result of public consultation and exist in a clear, usable form. eDAC does not believe that they require further revision at this stage. If they did, there is a policy relating to the process of revision which should be followed.
2. The relationship of the closed second level domains to the Licensing Rules should be made clear. If there are significant changes proposed, they should be the subject of consultation, since the closed domains (gov.au, edu.au and csiro.au) were not within the scope of the Policy Review Panel (PRP). Unless it is proposed that the concept of open and closed 2LDs should be abolished, these terms 'open domain' and 'closed domain' need to be defined. If it is intended to abolish these categories of domains, then this should be as a result of a consultation process.
3. Section 4.2.2 includes the terms 'appropriate education authorities' which is not defined, and should be changed to become a reference to the edu.au Domain Administration Committee (eDAC). eDAC is itself representative of the Australian education sector, comprised of representatives of each part of that sector, and was established both for this purpose and in the absence of a single education authority that could perform this function.
4. Section 4.2.2 refers only to amendments to **Schedule A**, and not other sections and clauses that apply to the edu.au namespace and the edu.au child zones (e.g. sections 2.4.10, 2.4.11, 2.4.12, 2.4.13, and 2.13.10). This could imply that the exemptions or prohibitions associated with these sections could be changed without consultation with eDAC and the education sector.
5. The method of reserving names for potential use as new second level domains should be clarified.
6. eDAC proposes that specified names should be reserved on the grounds that they are potential second level domains, and that they pose a risk to the integrity and stability of the Australian DNS.
7. eDAC proposes that the public interest test and criteria be applied to direct registrations to limit the use of generic names in the education area as is done in edu.au, and that the advice of eDAC be sought in applying this.
8. **Part 4** includes provisions for making amendments to the Licensing Rules. Changes to auDA policies have, historically, followed a highly consultative process involving two stages of public consultation, transparency in processes, openly available documentation, and engagement with stakeholders. This section appears to replace or abolish that process. eDAC does not support this.
9. The process for resolving direct registration issues where there are multiple claimants should be indefinite.

10. The cut-off date specified (4 February 2018) is too early. If this is used, there should be exemptions for names in closed domains registered before the commencement of the priority allocation period specifically to accommodate domain names which were managed outside the Registry Data or central .au registry. There should be an opportunity for these to be transferred into the .au registry prior to the start of direct registration.
11. eDAC suggests that there is a need to clarify likely fees regarding the priority registration application and renewal processes, to assist registrants in planning strategies, and to create realistic expectations.

3 Feedback on key consultation issues

3.1 Section 2.4.4: Allocation rules for com.au and net.au names

eDAC notes that it is currently possible for registrants in the edu.au domain to register domain names in a number of open 2LD domains, including com.au and net.au name. eDAC observes that the benefits of a closed domain like edu.au to its registrants are related to the integrity of its eligibility rules. In this respect, the eligibility rules of the open 2LDs are not a particular concern to eDAC.

However, with regards to the allocation criteria the edu.au domain currently applies similar rules as part of its current allocation criteria. Indeed, it is also an integral component in ensuring the integrity of the edu.au domain with the most recent public review of the domain's eligibility and allocation policies recommended that there be no change.

eDAC agrees that there should be a requirement for com.au and net.au names that there be a connection between the corporate entity put forward as the registrant and their domain name. Having such criteria protects against business and industry practices that may adversely reflect on or impact the education and training sector, and reduces the ability for entities to trade on the reputation and goodwill of others.

3.2 Section 2.17: The 'public interest test'

In its previous submissions to both the 2015 Names Policy Panel and 2017 Policy Review Panel, eDAC set out a strong case for certain names to be reserved in the public interest.

In these submissions, eDAC objected to the granting of any direct registration that involved the use of generic words relating to education and training. This was done on the basis that the registration of such names in a space that did not have tight eligibility and allocation criteria, would likely to pose a threat to the edu.au domain and ultimately its long-term sustainability, particularly if they are used as a vehicle for fraudulent or sharp business practices that adversely reflect on the education and training sector.

The submissions also highlighted the risk, in education and training as well as in other spheres, of the emergence of de facto (private or unofficial) registries based on such domains.

eDAC proposed that policy for .au direct registration prohibit the registration of such domain names in the public interest, and that it includes a list of generic education and training words covered with a mechanism for eDAC to advise auDA of other generic words that should be added to the list.

As such, eDAC also proposes that the following names should be reserved as second level domains, and also reserved by auDA on the grounds that the names pose a risk to the integrity and stability of the DNS as set out in 2.6.4(1) and 2.17.3(9) of the draft Licensing Rules.

- school.au
- tafe.au
- education.au
- rto.au
- training.au
- college.au
- university.au

Public interest is defined in 2.17.3 and in addition to reasons of law, the concept of public interest includes a range of other factors including proper administration of government, consumer protection, the economic wellbeing of Australia, and the integrity, stability and security of the Domain Name System. These are all factors that apply to the use of generic terms in education contexts, and they are the reasons for excluding generic terms from edu.au names.

eDAC suggests that this should also apply to direct registrations. eDAC proposes that this section should be used to limit the application of generic names in the education area, as is done in edu.au. In cases where particular issues are raised, the advice of eDAC and education stakeholders including government education and training authorities should be sought by auDA.

3.3 Section 2.11.9: Use of sub-domains

eDAC believes that the terms and conditions regarding the use of a domain name licence includes the use of sub-domains of that domain, and supports auDA both stating this directly in the proposed Licensing Rules and having the power to act as the result of activity on a sub-domain.

eDAC notes that auDA has exercised a similar power previously in relation to the edu.au domain as part under the initial governance arrangements with the Australian Information and Communications Technology in Education Committee (AICTEC) that resulted in the sub-domains under the domain names eq.edu.au, catholic.edu.au and schools.nsw.edu.au being migrated into the central .au registry.

However, 2.11.9(1) appears to imply that a third party or a party other than the registrant may make use of a sub-domain. This would be incompatible with the current [edu.au Policy 2015-05: Unauthorised Registries Policy](#) and could potentially limit the action auDA could take in the event of a de facto (private or unofficial) registry being created. As previously stated, as the eligibility and allocation rules are integral components in ensuring the integrity of the edu.au domain, allowing a party to operate within the space without having been assessed against these rules and approved by the edu.au registrar would undermine this integrity.

With direct registration in particular, the potential for the creation of de facto registries was identified by both the 2015 Names Policy Panel and 2017 Policy Review Panel, and throughout its submissions eDAC has highlighted the risks this poses to the edu.au domain space, the education and training sector as well as in other spheres should such registries be allowed.

eDAC believe that 2.11.9(1) should be amended in line with the principles of the edu.au Policy 2015-05: Unauthorised Registries Policy, as ratified by auDA in 2015.

3.4 Section 2.11.11: Sub-leasing/sub-licencing of .au domains

eDAC supports the prohibition on sub-leasing for both domain names and sub-domains, provided that 2.2.12 - that the related body corporate exception does not apply to the edu.au namespace and the edu.au child zones - applies.

eDAC has previously considered such arrangements for related body corporates in the edu.au domain and determined that the entity or Person that is applying must meet the eligibility criteria for one of the eligibility categories under the current [edu.au Policy 2016-02: Registration Policy](#) directly, and that the characteristics of or connection to a related body corporate are not relevant to the granting of a licence.

Similarly, with regards to meeting the allocation criteria within the same policy. With the allocation criteria being concerned with the words used in the proposed name closely resembling the name of the applicant or the name of a project or program the applicant owns or administers - so that it is recognisable as referring to the applicant - the name of a related body corporate would not have this quality.

3.5 Section 2.8: Internationalised domain names

eDAC supports the introduction of and initial scripts for internationalised domain names at the second level. eDAC believes however, that if the scripts selected are based on Australian community groups and trading partners, including international student engagement, then it should also include the Devanagari script in which Hindi and some other languages of the Indian subcontinent are written.

3.6 Section 1.6.1: The cut-off date determining .au priority category

As the cut-off date will determine the categorisation of names as priority 1 and priority 2, it is important to the edu.au 2LD that this be known as soon as possible, so that registrants may determine a strategy in relation to direct registration. Given the time that has passed eDAC believes that proposed cut-off date may be too early, and suggests that they would have excluded a significant number of registrants with claims to a directly registered domain. We propose an exemption from the cut-off date for all edu.au domains (and other closed name spaces) registered between the cut-off date and the commencement of the priority allocation period.

eDAC also notes that DTA made this comment in its submission to the PRP Final Report:

"There should be an opportunity for domain names that are currently managed outside of the central .au registry ... to be transferred into the .au registry prior to the start of direct registration. The creation date should reflect the date the domains were first registered in their respective systems, and therefore be entitled to participate in the priority allocation and conflict resolution process for direct registration."

eDAC strongly supports this viewpoint.

Anomalies are likely to be caused through non-inclusion of domain names in the Registry Data, and this is likely to be the case where there is management outside the Registry Data by another entity.

The consequence of external management, outside Registry Data, is that entities will not be eligible to apply for direct registration. However, in the case of the example given, justice.nt.gov.au would be able to register a name within the Registry Data and apply in either Category 1 or Category 2 for a directly registered name. Registry Data is important because the data is the sole criterion for determining priority status (1.8.2).

A further issue relates to the case of domain names managed outside the central .au registry. In particular, this applies to education.tas.edu.au. The creation of the new child zone was deliberately delayed to coincide with the transition to the new registry operator in July 2018, and it would be unfair to penalise the Tasmanian Department of Education for this. The creation of education.tas.edu.au was approved by eDAC in November 2017, prior to the proposed cut-off date.

3.7 Sections 1.9.5 to 1.9.13: The .au 'lockdown' model

eDAC supports the proposed 'lockdown model' on that basis that where there are multiple eligible claimants and no agreement has been reached that the lockdown be indefinite, and that as noted above, that domain names that are currently managed outside of the central .au registry be given the opportunity to be transferred into it prior to the start of direct registration with the creation date reflecting the date the domains were first registered in their respective systems to allow their participation in the priority allocation and conflict resolution processes.

Regarding the renewal, eDAC notes that there are two categories of fees mentioned, including a fee for application for priority status (1.8.1) and an annual application renewal fee if there is no agreement on who will be the Designated Person. The fees appear to be set by auDA (1.9.13). eDAC suggests that there is a need to clarify likely fees, to assist registrants in planning strategies, and to create realistic expectations.