

**.au** Policy  
Review Panel

**Registrant Policy: Enabling Australia's  
Digital Economy and Society**

Issues Paper

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## TERMS OF REFERENCE

The auDA Board has convened the Policy Review Panel to make recommendations on:

- (1) the development of an implementation policy for direct registration; and
- (2) policy reform, of the policies set out in Attachment "A".

The Panel in performing its functions must have regard to 2015 Names Policy Panel Final Report recommendations as well as the following matters:

- a) establishing mechanisms to ensure auDA is responsive and accountable to the supply and demand sides of the Australian Internet Community;
- b) promotion of fair trading;
- c) promotion of consumer protection; and
- d) adopting open and transparent procedures which are inclusive of all parties having an interest in use of the domain name system in Australia.<sup>1</sup>

### **Chair**

John Swinson, Partner King & Wood Mallesons as the Chair.

### **Members**

The Panel comprises the Chair and the following members:

Brett Fenton	Supply class
Luke Summers	Demand class
Professor Andrew Christie	Academic
Paul Zawa ACCC	Government Regulator
Narelle Clark ACCAN	Consumer protection

### **Consultation**

The Panel will undertake at least two public consultations on each stage of the policy reform process, and may use a range of consultation mechanisms, including working groups and online and face to face forums.

The Chair will provide regular progress reports to the auDA Board. auDA will provide secretariat and other operational support to the Panel.

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<sup>1</sup> Constitution of .au Domain Administration Ltd, cl 3.2

## QUESTIONS

### .au Structure

1. Should the .au Domain namespace be a 'general purpose' domain for all Australians allowing use for any purpose?
2. Should the net.au namespace be closed to new registrations? If so, should existing net.au registrants be permitted to continue to renew their domain name indefinitely?
3. What should happen to the asn.au namespace? Should it be closed to new registrations or retained as a dedicated namespace for associations?
4. Should the State and Territory namespaces be used for other purposes? If yes, why and what are the purposes for which domain names should be registered under these namespaces?

### Reserved Names

5. Should auDA continue to maintain a public reserved list? Should the public reserved list be published? What process or steps should auDA take before deleting a restricted or prohibited name?
6. Should auDA be able to reserve names in the public interest? How should the public interest be defined? What names should be reserved in the .au domain namespace? Should the public interest test replace the Prohibition on Misspellings Policy?
7. Should the names identified in the discussion paper be reserved as future 2LD namespaces? Are there other names that should be reserved for use as future 2LD namespaces and why?
8. Should there be a requirement for auDA to publish a list of names that are reserved for use by the registry and names that pose a risk to the operational stability and utility of the .au domain? Should there be any exceptions to the publication of names?

### Eligibility and allocation rules

9. How should the Australian presence requirements be defined? Should trademark applicants and registrants only be allowed to register a domain name that is an exact match to their Australian trademark application or registration when relying on the trademark application or registration to establish an Australian connection?
10. What eligibility and allocation rules should apply to the .au domain namespace (direct registration) and the open 2LD namespaces, and why? Should the close and substantial connection rule be retained and why? Should allocation criteria be removed, and the focus be on registrant eligibility? Should domain monetisation continue to be permitted in the com.au and net.au 2LD and at the second level? How should domain monetisers interests be balanced against the needs of the broader Australian Internet Community?
11. Should internationalised domain names be trialled at the second level, and under what conditions?

### Licence conditions

12. Should a registrant be able to sublease the domain name to an unrelated party? If yes, in what circumstances should this be permitted?

13. Where a domain name licence is transferred between registrants, should the transferee receive the benefit of the remainder of the licence period?
14. Should auDA be given the power to suspend a domain name licence? When should auDA suspend rather than cancel a domain name licence? What should be the maximum suspension period before a domain name licence is cancelled?
15. For what purposes should auDA be allowed to collect, use and disclose registrant data?
16. Are there any concerns with the current level of information included in the public WHOIS service? Should the technical contact field be utilised for agent and lessee details?

## INTRODUCTION

1. Why this review is important? Australia has a high internet penetration rate, with over 13.7 million Internet subscribers and 26.3 million mobile handset subscribers.<sup>2</sup> Every application running on a device connected to the Internet is likely to use a domain name to connect to other devices or services on the Internet, such as your home or work computer, mobile phone, smartwatch or car navigation system. The Domain Name System (DNS) is a key enabler of the Australian digital economy and society.
2. Globally, the Australian DNS is recognised as a secure and trusted domain with a strong brand connection with Australia. Businesses, consumers and the public trust the .au domain, as they know that they are dealing with an Australian entity or individual that is accountable under Australian law. The opening of the .au domain namespace to registrations provides an ideal opportunity to review the policies that govern the registration of a .au domain name to ensure that they continue to meet the needs of the Australian community and digital economy.
3. The Policy Review Panel under its Terms of Reference is examining and developing policies for the registration of domain names in the .au domain namespace (direct registration) and existing .au namespaces (com.au, net.au, org.au, asn.au and id.au) (Phase 2). This is the most significant review and the first major structural change to the .au domain in 30 years.
4. The Panel has already undertaken community consultation on the development of an implementation policy for the .au domain namespace (direct registrations) (Phase 1). The submissions in response to the *Implementation of Second Level Domain Name Registrations (Direct Registration) Issues Paper* (October 2017) will be used to develop the implementation policy for the .au domain namespace.

### Purpose

5. The Policy Review Panel is consulting stakeholders on reforms to the policies governing the registration of domain names in the existing 2LD namespaces, as well as in the .au domain namespace (direct registration). In reviewing the existing suite of policies, the Panel has identified key areas for reform to accommodate the opening of the .au domain namespace (direct registration) and to ensure that the .au domain is responsive to the needs of the Australian community.
6. The Panel is inviting stakeholder feedback on the following key issues:
  - a) reforms to the .au DNS structure to open the .au domain namespace to registrations (direct registration) and to ensure the continuing utility of the .au DNS;
  - b) withholding or reserving names from registration as domain names, except in certain circumstances;

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<sup>2</sup> Australian Bureau of Statistics, Internet Activity, Australia, June 2017 (Issued 11.30 am 29/09/2017)  
<http://www.abs.gov.au/ausstats/abs@.nsf/mf/8153.0>

- c) registration rules for domain names in the .au domain namespace and within the open and restrictive 2LD namespaces;
  - d) licence conditions attaching to the use of a domain name; and
  - e) circumstances in which a domain name should be suspended or cancelled.
7. The Panel acknowledges that there may be other issues that require reform, especially relating to technical or operational matters. The Panel encourages stakeholders to raise these issues in their submission.

### Making a submission

8. The Panel invites written submissions by close of business on 4 March 2018. Submissions can be emailed to [policy.review@auda.org.au](mailto:policy.review@auda.org.au) or by post to:
- Policy Review Panel  
c/o .au Domain Administration Ltd  
PO Box 18315  
MELBOURNE VIC 3001
9. All submissions will be made publicly available on the auDA website <[www.auda.org.au/policies/panels-and-committees/2017-policy-review-panel](http://www.auda.org.au/policies/panels-and-committees/2017-policy-review-panel)>, unless marked confidential. In the absence of a clear indication that the submission is confidential, the Policy Review Panel will treat the submission as public. The Policy Review Panel will not consider nor publish anonymous submissions.

## BACKGROUND

### .au Domain Name Administration

10. auDA is the administrator of, and self-regulatory policy body for the .au country code Top Level Domain (.au ccTLD) and its associated second level domains (com.au, org.au, net.au, asn.au, gov.au, edu.au and id.au). auDA administers the .au domain under agreements with the Australian Government and the Internet Corporation for Assigned Names and Numbers (ICANN) for the benefit of the Australian Community.
11. The core functions of auDA include:
  - managing and promoting the operational stability and utility of the .au ccTLD;
  - establishing the policy framework for the development and administration of the .au ccTLD;
  - creation of 2LDs;
  - establishing the rules for the registration of domain names; and
  - rules for access to the registry.
12. auDA must discharge its functions for the benefit of the Australian community.

### Advisory Panels

13. The auDA Board uses advisory panels to provide independent and objective advice on developing and implementing policies to regulate .au. Advisory panels have no binding decision making authority. The auDA Board may accept and implement the recommendations of an advisory panel, in whole or part. Advisory panels comprise representatives from the supply and demand class, consumer protection agencies, government and academics.
14. The auDA Board has convened the Policy Review Panel to examine and develop (1) an implementation policy for second level domain name registrations, and (2) to reform the current suite of auDA Published Policies to ensure that they are fit for purpose and responsive to emerging issues. Information about the Policy Review Panel and its work program can be found at <https://www.ada.org.au/policies/panels-and-committees/2017-policy-review-panel>.

### .au Domain Name System

#### General principles

15. There are three fundamental principles that underpin the .au domain name registration system: (1) no proprietary rights in a domain name, (2) no hierarchy of rights, and (3) first come, first served.
  - (1) No propriety rights in a domain name. A registrant does not 'own' a domain name but has a licence to use and dispose of the domain name for a specified period and subject to

certain terms and conditions.<sup>3</sup> A registrant may dispose of the domain name by transferring the licence to a third party, cancelling the licence or failing to renew the licence.

A licence to use and dispose of a domain name gives a registrant exclusive use of the domain name in the 2LD in which it is registered. The same name may be registered by another registrant in a different 2LD.

- (2) No hierarchy of rights. A trademark owner has no better entitlement to a domain name than a business name owner. A registrant of a domain name in one 2LD has no greater entitlement to the same name in another 2LD than a third party or another 2LD registrant.
- (3) First come, first served. The first person that applies to register a domain name will be entitled to register the domain name, subject to the availability of the domain name, and meeting the eligibility criteria. A registrant must agree to the Mandatory Terms and Conditions for a domain name licence to be issued.<sup>4</sup>

#### .au Structure

16. Currently, all domain names in .au are registered at the third and fourth levels (Fig 1). The Panel is also examining the implementation of second level domain name registration (Phase 1). Further information on the implementation of second level domain name registrations can be found at <https://www.auda.org.au/policies/panels-and-committees/2017-policy-review-panel>



Fig 1: Levels of Domains in .au.

17. Currently, domain names must be registered in a 2LD namespace. There are nine 2LD namespaces that are organised into six special purpose categories with distinct eligibility requirements (Table 1).

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<sup>3</sup> auDA Published Policies set out the current terms and conditions of the licence to use and dispose of a domain name. A copy of the current Published Policies is listed in Annexure "A" and can be found at < <https://www.auda.org.au/policies/>>

<sup>4</sup> Mandatory Terms and Conditions Applying to .au Domain Name Licences 2008-07 (1 June 2008)

<b>2LD namespace</b>		<b>Purpose</b>
Open	asn.au	For Australian non-profit organisations, associations, clubs and special interest groups
	com.au	For Australian commercial entities and traders
	id.au	For Australian individuals
	net.au	For Australian commercial entities and traders
	org.au	For Australian non-profit organisations, associations, clubs and special interest groups
Closed	csiro.au	For the Commonwealth Scientific and Industrial Research Organisation (CSIRO)
	edu.au	For Australian educational entities
	gov.au	For Australian government departments and agencies
Legacy	conf.au	For national conferences. Closed to new registrations
Restricted	act.au, qld.au, nsw.au, nt.au, sa.au, tas.au, vic.au, wa.au	For Australian local community groups. Only Australian place names may be registered – eg. ballarat.vic.au and wollongong.nsw.au

Table 1: 2LDs in the .au domain

18. The 2LD namespaces are also structured into open, restrictive and closed domains. The open domains are 'open' to the public to register a domain name, subject to meeting the relevant eligibility criteria. The open domains are com.au, net.au, org.au, asn.au, and id.au.
19. The restricted domains are the State and Territory 2LD namespaces, also known as Community Geographic Domain Names. These domains are reserved for use by geographically defined communities to create community websites. They can only be registered on behalf of the local community by a not for profit or a special committee of the local council. For example, the Carlton Neighbourhood Learning Centre has registered the domain name [carlton.vic.au](http://carlton.vic.au) and created a website to provide information and news to the local community.
20. The closed 2LD namespaces are csiro.au, gov.au and edu.au. These domains are closed communities of interest, whose membership is managed by the Australian, State and Territory Governments under agreements with auDA.<sup>5</sup> The government and education 2LDs are divided into sub-domains, which reflect the federal system of government. For example, Australian Government entities register domain names at the third level (pmc.gov.au), while State and Territory Government entities must register domain names at the fourth level after the third level State or Territory signifier ([dpc.vic.gov.au](http://dpc.vic.gov.au)).
21. The conf.au 2LD is a legacy 2LD used by Linux to advertise national conferences. This 2LD is closed to new registrations.

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<sup>5</sup> auDA Published Policies, Governance Arrangements for the edu.au 2LD (01/07/2015); csiro.au is a legacy 2LD that is not subject to an auDA agreement.

## Published Policies

22. The auDA Published Policies ('policies') regulate all stages of the .au domain name lifecycle in the open 2LD namespaces and State and Territory 2LD namespaces (Fig 1). auDA does not regulate the aftermarket, where domain name licences are transferred for an agreed price between parties and drop list auctions. This brief overview summarises current policies, but does not deal with the auDA complaints policies as these will be reviewed by the Panel at a later stage.

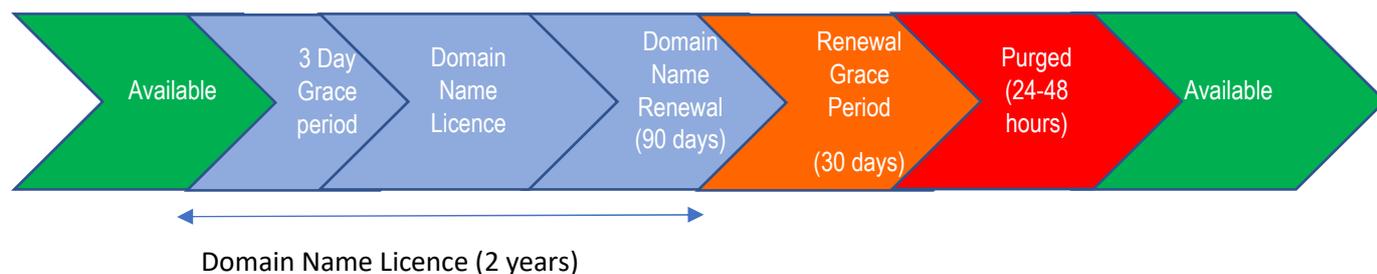


Fig.1 Domain Name Lifecycle

### *Available*

23. Domain names are registered on a first come, first served basis in the open 2LDs and State and Territory 2LDs. The first person to make an application to register a domain name may register that domain name, subject to the following requirements:
- the domain name is available;<sup>6</sup>
  - the person is eligible to hold the 2LD domain name licence;<sup>7</sup>
  - the 2LD domain name licence can be allocated to the person;<sup>8</sup> and
  - the licence fee is paid.

### *Licence*

24. A person or entity must apply for a domain name licence from an auDA accredited registrar. A registrant is issued a licence to use a domain name for two years, subject to the following terms and conditions:
- registrant information is true, complete and correct at time of making the application;
  - the application to register the domain name is made in good faith;
  - the registrant meets and continues to meet the eligibility requirements for the 2LD domain name;
  - registrant has not previously had an application for the same 2LD domain name rejected by another registrar; and
  - the registrant notifies the registrar of any changes to any information in the registrant data relating to the domain name licence.

<sup>6</sup> Reserved List Policy (June 2014)

<sup>7</sup> Guidelines on the Interpretation of Policy Rules for Open 2LDs (May 2012) [4]

<sup>8</sup> Ibid [2]

25. A registrant at the time of making an application for a domain name licence consents to the collection, use and disclosure of their information in the public WHOIS service, and for the purpose of providing registry services, and monitoring compliance with auDA Published Policies. The registrant expressly consents to auDA disclosing registrant information to third parties, subject to privacy laws.<sup>9</sup>
26. A registrant may cancel a domain name licence within 3 calendar days of the date of issue, and the registration fee will be refunded to the registrar of record. The registration fee will not be refunded if the registrant cancels a domain name after this period.
27. A domain name licence may be cancelled by auDA:
  - a) where the registrant breaches a term or condition of the licence or an auDA Published Policy;
  - b) to comply with a court order, legislative provision or instrument;
  - c) to carry out a decision under the .au Dispute Resolution Process (auDRP); or
  - d) protect the integrity and stability of the DNS or the .au registry.
28. A registrant may transfer a domain name licence to a third party.<sup>10</sup> The third party will be issued a new domain name licence for 2 years. A registrant may also transfer the domain name licence between accredited registrars.<sup>11</sup>

#### *Renewal and Expiry*

29. A registrant may renew a domain name licence no more than 90 days before or 30 days after the expiry date. A registrant will be issued a new licence from the previous licence expiry date.<sup>12</sup> For example, if the expiry date of a domain name is 1 January 2018 and the registrant renews the licence on 1 December 2017, the new expiry date is 1 January 2020.

#### *Purged*

30. If a registrant decides or fails to renew the domain name licence after the 30 day grace period, the domain name licence will be purged from the registry within 24-48 hours. The purged domain name licence will be published on the Official Drop List.

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<sup>9</sup> Mandatory Terms and Conditions Applying to .au Domain Name Licences 2008-07 (1 June 2008) [2]; WHOIS Policy 2014-07 (19 October 2014) [3]-[5]

<sup>10</sup> Transfers (Change of Registrant) Policy 2011 -11 (10 November 2011) [3]

<sup>11</sup> Transfers (Change of Registrar of Record) Policy 2013-2 (31 May 2013) [3]

<sup>12</sup> Domain Renewal, Expiry and Deletion Policy 2010-01 (18 April 2014) [5]

## ISSUES AND OPTIONS

### .au Structure

31. auDA is responsible for developing the utility of the .au domain space to meet the needs of, and to enhance the benefits of the Internet in the Australian community. The opening of a .au domain namespace at the second level is the most significant change to the .au DNS structure in 30 years. It provides an opportunity not only to define the ‘purpose’ of the .au domain namespace but to re-evaluate the usefulness of the existing 2LD namespaces. The Panel agrees with the 2015 Names Policy Panel Final Report that any change to the “system should generate new value” and not simply replicate “existing functionality.”

### .au domain namespace (direct registration)

32. The Panel believes that the utility of a .au domain namespace requires it to provide ‘something more’ than the existing 2LD namespaces. The 2015 Names Policy Panel Final Report recommended that the .au domain namespace be for “all Australians,” subject to meeting the eligibility and allocation criteria for an existing 2LD namespace. It dismissed arguments that the .au domain namespace should be reserved for use by Australian businesses on the basis that this replicated ‘existing functionality.’ There are already two commercial purpose 2LD namespaces: com.au and net.au.
33. ccTLDs in other jurisdictions that have introduced direct registration have categorised the second level domain namespace as a ‘general purpose’ or ‘mixed use’ space.<sup>13</sup> This means that an eligible entity or person may register any domain name for any purpose, subject to naming restrictions. The benefit of this approach is that an entity has the choice of registering a wider range of names for a variety of purposes in the second level namespace than may be permitted under a 2LD namespace. For example, a company incorporated in the United Kingdom may only register a domain name that is an exact match or derivation of the company name in the ltd.uk namespace, while the same company may register any name in the second level namespace.<sup>14</sup>
34. One issue that requires consideration is whether to differentiate the .au domain namespace from the existing 2LD namespaces to maximise utility and to preserve and strengthen the integrity of, and trust in the 2LD namespaces. For example, differentiation could be achieved by having looser eligibility and allocation rules for the .au domain namespace than the eligibility and allocation rules for a 2LD domain name. The minimal eligibility and allocation rules for the .au domain namespace could be:
  - the registrant has an Australian presence
  - where the registrant has an Australian presence, but is not an Australian citizen, an Australian permanent resident, an Australian legal entity or registered to carry on business in Australia, the registrant can only register a domain name in that it is an exact match of their legal name or Australian trade mark.

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<sup>13</sup> Examples include Canada, New Zealand, United Kingdom, Mexico and Europe.

<sup>14</sup> Nominet UK, Rules of Registration (June 2014) [https://nominet-prod.s3.amazonaws.com/wp-content/uploads/2015/10/Rules\\_June\\_2014.pdf](https://nominet-prod.s3.amazonaws.com/wp-content/uploads/2015/10/Rules_June_2014.pdf).

## Questions

Should the .au domain namespace be a 'general purpose' domain for all Australians allowing use for any purpose?

## 2LD namespaces

35. The 2LD namespaces have been in use for over 30 years. Initially, each 2LD namespace had distinct purpose and eligibility criteria (Table 2). However, the distinction between the com.au and net.au, and org.au and asn.au namespaces has been eroded. The Panel is examining the utility of retaining the net.au and asn.au namespaces.

<b>2LD</b>	<b>Purpose</b>
com.au	For 'commercial purposes'. Includes commercial entities currently registered and trading in Australia, as well as commercial products and services.
net.au	For 'Internet-related commercial purposes'. Includes commercial entities currently registered and trading in Australia, as well as commercial products and services.
org.au	For 'organisations'. Companies, statutory authorities, partnerships etc, are all acceptable, as is almost anything else that can reasonably be considered an organisation
asn.au	For 'associations'. Includes associations incorporated under specific state legislation, some incorporated bodies, political parties, trade unions, sporting and special interest clubs and partnerships between disparate organisations.
ld.au	For 'individuals'
conf.au	For short duration conferences and exhibitions
Info.au	For major information resources.

Table 2: Original .au structure based on special purpose 2LDs

36. The conf.au and info.au 2LDs are closed to new registrations due to underutilisation.

## com.au and net.au

37. The net.au namespace was initially created for use by internet related businesses, such as Internet Service Providers. For example, Telstra registered bigpond.net.au for its broadband service. The com.au namespace was for commercial entities. In May 2002, auDA removed the policy requirement for net.au namespace to be used for internet related commercial purposes. The rationale was the low uptake of net.au names and expanding the pool of

domain names available to commercial entities, especially where the desired com.au name was unavailable.

38. The Panel notes that this strategy may no longer be effective in driving greater utilisation of the net.au namespace. As of November 2017, domain name registrations in net.au accounted for only nine percent of domain name registrations across both namespaces. Registrations of net.au domain names have been declining since 2014.<sup>15</sup> The Panel is aware that there is a public perception that net.au has less market value and recognition than a com.au or .com.
39. The Panel is also aware that there are a significant number of defensive registrations across both the com.au and net.au namespaces. It is estimated that there are 77,136 identical names registered by the same registrants in com.au and net.au.<sup>16</sup> For example, the Australian Broadcasting Corporation has registered abc.com.au and abc.net.au. However, it is not possible from the data to determine whether a registrant is using the com.au or net.au domain name.
40. The Panel is inviting stakeholder feedback on closing the .net.au namespace to new registrations, especially given the opening of the .au domain namespace. Existing registrants would be able continue to renew their net.au domain name registrations indefinitely. In some cases, registrants may decide not to renew their net.au domain name licence where it was registered for defensive purposes.

#### Questions

Should net.au be closed to new registrations? If so, should existing net.au registrants be permitted to continue to renew their domain name indefinitely?

#### org.au and asn.au

41. The asn.au namespace was created for associations and org.au for non-commercial entities. The 2004 Names Policy Panel recommended that the eligibility criteria for org.au and asn.au should be combined and applied to both 2LDs as (1) there was limited market demand for asn.au, and (2) org.au and .org gTLD domain names were perceived as more attractive to this cohort. As of December 2017, asn.au domain name represented 4.6 percent of domain names registered across both the asn.au and org.au namespaces.
42. The Panel notes that while there are similarities with net.au, there may be sound policy arguments for retaining and strengthening the asn.au namespace. A key element of consumer trust in .au namespaces is that it does 'what it says on the tin.' *asn.au* clearly signifies to the user that the registrant is an incorporated association or unincorporated association. The Panel is aware that there are a number of peak professional associations, which have chosen to register and use asn.au domain names, such as the Australian Bankers'

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<sup>15</sup> AusRegistry EOM Report for General Release High-Level Scorecard (October 2017); AusRegistry EOM Report for General Release High-Level Scorecard (October 2014)

<sup>16</sup> Conflicted Names Data provided by AusRegistry on 7 September 2017.

Associations (aba.asn.au), Law Institute of Victoria (liv.asn.au), and Australian Association of Social Workers (aasw.asn.au).

43. The Panel is proposing that the asn.au namespace be retained and strengthened for use by incorporated associations and unincorporated associations. It would be a dedicated namespace for associations, such as sporting clubs, special interest clubs, and peak professional bodies. The Panel is not proposing any changes to the org.au namespace, and associations will continue to have the option of registering a name in org.au or asn.au, or both.

Question

What should happen to the asn.au namespace? Should it be closed to new registrations or retained as a dedicated namespace for associations?

State and Territory 2LDs

44. The State and Territory 2LD namespaces or Geographic Community Domain Names (CGDNs) are reserved for use by geographically defined communities to create community websites. As of December 2017, there were 235 domain names registered across these 2LD namespaces. Given the low uptake of CGDNs, the Panel is interested in exploring other potential uses.
45. There is some interest in the creation of new 2LD namespaces for use by the courts or judiciary, Parliament and State and Territory Governors. The Panel acknowledges that there is a persuasive argument for the courts, parliament and governors not to be registered in the gov.au namespace due to the separation of powers doctrine and the royal prerogative. However, it may be more practical and useful for parliament, courts and governors to be registered under the State and Territory namespaces (rather than have new 2LD namespaces created specifically for their use). For example:
- a) governor.vic.au
  - b) parliament.qld.au
  - c) supremecourt.sa.au
46. The use of the State and Territory namespaces provide more choice for the State and Territories to determine their own nomenclature, are more intuitive for the user who can easily identify the jurisdiction in which the entity or individual falls; and reduces the need to create additional 2LD namespaces, potentially adding to consumer confusion and increased regulation.
47. The Panel recognises that this proposal would not apply to Commonwealth entities or persons, such as the High Court of Australia, Australian Parliament or Governor-General. However, these entities or persons may be better served by registering domain names in the .au domain namespace: gg.au, parliament.au or highcourt.au.

Question

Should the State and Territory namespaces be used for other purposes? If yes, why and what are the purposes for which domain names should be registered under these namespaces?

## Reserved Names

48. The Panel is examining words, phrases, acronyms or abbreviations which should be unavailable for registration as domain names on the following grounds:
- a) use is restricted under an Australian law;
  - b) use is not in the public interest;
  - c) use as potential future 2LD namespaces; or
  - d) use poses a risk to the operational stability and utility of the .au domain.
49. The Panel notes that some words, phrases, abbreviations or acronyms may be unavailable for registration as domain names in the .au domain namespace only, such as names reserved for use as future 2LD namespaces.

### *Prohibited under Australian law*

50. The Reserved List Policy contains a non-exhaustive list of words and phrases whose use is restricted under Commonwealth legislation.<sup>17</sup> The reserved list is held in the Registry database, and all applications for domain name registrations are cross-matched against the list. A domain name that exactly matches a name on the reserved list will be blocked from registration in all .au namespaces.
51. There are several challenges in maintaining a reserved list and blocking the registration at the Registry, including:
- a. Scope: The current reserved list contains words or phrases whose use is restricted under Commonwealth legislation but not other legislation. State and Territory legislation may also prohibit the use of words, abbreviations, acronyms, or phrases in certain circumstances or in certain parts of Australia. For example, the *Australian Grand Prix Act 1994* (Vic) prohibits the use of words, such as "grand prix", "formula one", "formula 1", and "albert park circuit" in the course of trade or business, except with the consent of the Grand Prix Corporation.
  - b. Comprehensiveness: The Reserved List Policy contains a list of 35 words whose use is restricted under Commonwealth legislation. A search of the Australian Legal Information Institute database identified hundreds of words, phrases, acronyms and abbreviations whose use is restricted, and such restrictions may apply to the registration or use of the restricted term in a domain name. The Panel has provided a non-exhaustive list of the research results at Attachment B.
  - c. Currency: The Commonwealth, State and Territory Parliaments and instrumentalities pass a significant volume of legislation, legislative instruments, regulations and Ministerial directions each year making it difficult to ensure that the Reserved List is up to date and accurate.
  - d. Application: The reserved list is a blunt instrument that is unable to accommodate the nuances of the legislation. For example, the *Defence Regulations 2015* prohibit the use of AMF as a standalone word or as a composite word (amfexample.net.au)

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<sup>17</sup> Reserved List Policy 2014-05 (15 August 2014) Schedule A

in connection with a trade, business, calling or profession, except with Ministerial consent. Only “AMF” (and not “amfexample”) would be blocked at the Registry.

- e. Reliance: auDA publishing a reserved list may create a reasonable impression that it is an exhaustive list of names and that a user may rely on the list when applying to register a domain name.

52. The Panel notes that it is the registrant’s responsibility to ensure that the use of the name is not prohibited or restricted under Australian law. The Australian Investment and Securities Commission notes that applicants wanting to register a business name should be aware that there are other laws that limit or prohibit the use of certain words other than those expressly prohibited under the *Business Names Regulation Act 2011*.<sup>18</sup> Given that ASIC, an Australian Government regulator, does not maintain or publish a list of words prohibited or restricted under Commonwealth law, it may be unreasonable to expect auDA (given its size and resourcing) to do so.

53. auDA has advised that it will continue to block names at the registry, when it becomes aware that use of the name is prohibited or restricted under any applicable Australian law. The name would only be available for registration where the registrant has obtained the requisite consent or can demonstrate that the use of the domain name does not attract the prohibition or restriction. The Panel acknowledges that auDA has an obligation to delete any registered domain name, where it becomes aware that use of the name is restricted or prohibited under any applicable Australian law, and the registrant has not obtained the requisite consent. The Panel is aware that obtaining Ministerial consent may be a lengthy process, and is examining whether or not a domain name may be provisionally registered (not used) while consent is sought.

54. The Panel is cognizant that there may be some registrants that may have registered a domain name containing a word, phrase, acronym or abbreviation whose use is currently prohibited under Australian law (and that appears on the list at Attachment B). These registrants should take the necessary action to ensure that the registration and use of the domain name complies with Australian law, such as seeking Ministerial consent.

Question

Should auDA continue to maintain a public reserved list?

Should the public reserved list be published?

What process or steps should auDA take before deleting a restricted or prohibited domain name registration?

*Use is not in the public interest*

55. The Panel is examining whether auDA should be given the power to reserve and/or delete domain names where it is in the public interest to do so. The public interest would include:

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<sup>18</sup> Australian Securities and Investment Commission, Business Name Availability < <http://asic.gov.au/for-business/registering-a-business-name/before-you-start/business-name-availability/#>>

- a) names that may be potentially misleading or confusing and deliberate misspellings of the 2LD categories when registered in the .au domain namespace, such as comm.au, nett.au or govv.au

or that relate to:

- b) the proper administration of government (e.g., Government, Governor General, Parliament, Senate, ATO)
- c) the judicial system (e.g., Courts, Judge, DPP, Prosecution)
- d) public health and safety (e.g., police, health, SES, Ambulance, BOM)
- e) national security (e.g., ASIO, National Security Hotline, Terrorist Alert)
- f) prevention and detection of crime and fraud (e.g., lottery)
- g) consumer protection (nettbank.com.au)
- h) economic wellbeing of the country (e.g., ASX, swift)

56. A public interest test could replace the [Prohibition on Misspellings Policy](#), which only requires that a misspelling of a personal or brand name be registered for the purposes of trading on a person's or brand owner's reputation. The Panel notes that previous policy review panels have recommended that the Prohibition on Misspellings Policy be retained. However, the Panel is cognizant that the misspellings policy is applied arbitrarily and as a result many other brand owners, individuals or entities are not given the benefit of protection under the policy and are forced to seek redress through other avenues. The Panel notes that unless there is a 'public interest' element that misspellings should be a private matter between the registrant and the aggrieved party.
57. The Panel believes that it may be necessary to reserve some if, not all, of the country code TLDs and original eleven gTLDs (.com, .edu, .gov, .net, .int, .mil, .org, .biz, .info, .name, .pro, .aero, .coop, and .museum) to reduce the risk of confusion as to the origins of the domain name. A list of the ccTLDs and gTLDs can be found at <https://www.iana.org/domains/root/db>. The Panel notes that it may be necessary to reserve some non-ASCII gTLD names to facilitate a trial of Internationalised Domain Names at the second level.
58. The Panel does not propose any changes to the reservation of the names and abbreviations of Australian States and Territories, and 'Australia' across all Australian namespaces. The Panel notes that there may be other names, which are culturally significant, which should be reserved, such as Indigenous places or terms.

Question

Should auDA be able to reserve names in the public interest? How should the public interest be defined? What names should be reserved in the .au domain namespace?

Should a public interest test replace the Prohibition on Misspellings Policy?

## Future 2LDs

59. The Panel recognises that to continue to develop the utility of the .au domain, it may be necessary to reserve certain names for future use as 2LD namespaces, such as courts and parliament. These names would not be available for registration in the .au domain namespace (direct registration). The Panel had previously canvassed this issue in the *Implementation of Second Level Domain Name Registrations (Direct Registrations) Discussion Paper* and received the following suggestions:

- parliament.au
- parl.au
- court.au
- courts.au
- royalcommission.au
- police.au
- mil.au
- military.au
- ltd.au
- pty.au
- ptyltd.au
- nfp.au
- charities.au
- club.au
- health.au
- hospital.au

60. The Panel believes that there may also be merit in reserving *embassy* and *consulate* for use as future 2LD namespaces. Currently, foreign embassies and consulates are registered in the com.au, net.au and org.au namespaces, making it difficult for users to be confident that they are dealing with an official country representative.

61. The Panel stresses that it is only considering the reservation of names for use as future 2LD namespaces and any consideration of the merits of introducing new 2LD namespaces is outside the scope of its Terms of Reference. Any proposal to introduce a new 2LD namespace would need to comply with the process as set out by the [2009 New 2LDs Advisory Panel](#).

### Questions

Should the names identified above be reserved as future 2LDs? Are there other names that should be reserved for use as future 2LDs and why?

## Integrity and Stability of .au

62. auDA has the right to reserve names for use by the registry and names that may pose a risk to the operational stability and utility of the .au domain.<sup>19</sup> auDA is proposing to reserve the following names:

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<sup>19</sup> Reserved List Policy 2014-06 (15 August 2014) [2]

- example.au
- whois.au
- RDDs.au
- www.au
- au.au
- australia.au
- nic.au
- registry.au
- auDA.au
- auctLD.au
- auTLD.au
- 2LD.au
- auDRP.au
- wpad.au

There may be other names, in addition to the above list proposed by auDA that should be reserved, such as TLD.au and ccTLD.au.

63. auDA may reserve at any time names that are added by ICANN to Specification 5 of the Registry Agreement. A copy of the Registry Agreement and Specification 5 is at <https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-09jan14-en.htm>

#### Questions

Should there be a requirement for auDA to publish a list of names that are reserved for use by the registry and names that pose a risk to the operational stability and utility of the .au domain? Should there be any exceptions to the publication of names?

### Eligibility and allocation rules

#### Australian presence

64. A legal entity or person wishing to register a domain name must have an Australian presence. The Panel believes that it is important to reiterate that the Australian connection requires that the registrant is based in Australia. This is derived from the definition of the Australian Internet Community in the auDA Constitution<sup>20</sup> and agreements with the Australian Government and ICANN for the administration of the .au ccTLD.
65. While the Australian presence requirement is a firm requirement, the policy can define what is meant by an Australian presence. The current eligibility and allocation rules set out the Australian presence requirement for each 2LD namespace.<sup>21</sup> The Panel believes that the current approach is unwieldy and that the opening of the .au domain namespace provides an opportunity to consolidate and redefine the Australian presence requirement for all .au namespaces. The Panel draws stakeholders' attention to the [Canadian Presence](#)

<sup>20</sup> Constitution of .au Domain Administration Ltd, cl 1.2

<sup>21</sup> Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs 2012-04 (17 December 2012)

[Requirements for Registrants](#), which may provide a suitable model for .au.<sup>22</sup> This simplified approach would enable entities or persons to easily determine whether they are eligible to register a .au domain name. A potential registrant would still need to satisfy any other eligibility requirements to register a domain name in a 2LD namespace. For example, a potential registrant who satisfies the Australian presence requirement may also need to satisfy the not-for profit requirement to register a domain name in the org.au namespace.

66. The current eligibility and allocation rules provide an exception to the Australian presence requirement for holders of Australian registered trademarks and pending trademark applications.<sup>23</sup> This allows a foreign entity or national that holds an Australian trademark registration or has a pending Australian trademark application to register *any* domain name in the com.au and net.au namespaces. For example, the holder of Australian trademark 1430888 may registered multiple domain names, such as xyz.com.au, that are unrelated to Australian trademark or its corporate name.
67. The Panel is concerned that the trademark exception undermines consumer confidence in .au due to an expectation that the domain name registrant (1) has an Australian presence, and (2) is regulated by Australian law, such as consumer protection laws. The Panel is attracted to the Canadian approach where a foreign trademark owner relying on a trademark registration or application to establish an Australian connection can only register a domain name that consists of or includes the exact word component of the trademark registration.<sup>24</sup> For example, the holder of trademark 1430888 would only be eligible to register 1430888.com.au, unless it could establish an Australian presence in another way.

#### Question

How should the Australian presence requirements be defined?

Should trademark applicants and registrants only be allowed to register a domain name that is an exact match to their Australian trademark application or registration when relying on the trademark application or registration to establish an Australian connection?

#### Namespace rules

68. The Panel is conscious that the eligibility and allocation rules for the new and existing namespaces is dependent on the structural issues identified earlier in this discussion paper. However, the Panel has identified three models as a tool for generating discussion on key eligibility and allocation issues. Of course, there are other models and variations on these models. Stakeholders are encouraged to propose alternative models that take into consideration the following:

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<sup>22</sup> Cira, Canadian Presence Requirements for Registrants Version 1.3 << <https://cira.ca/canadian-presence-requirements-registrants>>>

<sup>23</sup> Ibid [1]

<sup>24</sup> Cira, Canadian Presence Requirements for Registrants Version 1.3, 2q << <https://cira.ca/canadian-presence-requirements-registrants>>>

- .au is a public asset that must be managed for the benefit of the Australian community; and
- policies must promote consumer protection, fair trading, and be responsive to the needs of the Australian Internet Community.

69. The Panel reiterates that the Australian Internet Community means those users and suppliers of services via the Internet, based in Australia. This definition encompasses government, businesses, educational institutions, not for profits, businesses and the broader community.

#### Model A

70. The [2015 Names Policy Panel Final Report](#) Model proposed that the existing 2LD namespace eligibility and allocation rules should remain unchanged, and that these rules should apply to the registration of a domain name at the second level (direct registration). The eligibility and allocation rules for registration of a domain name in the .au domain namespace would be an amalgamation of all the existing 2LD namespace rules. The rationale for this approach is that the rules for the .au domain namespace should not be any more restrictive or exclusive than the rules for the open 2LD namespaces. The benefit of this approach is it causes little disruption to the .au domain, registrants, registrars and registry as it is “business as usual.”

71. The Panel notes that this proposal simply replicates the existing functionality of the 2LD namespaces in a ‘mixed use’ namespace. It appears to generate no additional value to the .au domain or the Australian community as registrants will simply be able to register the same 2LD domain name at the second level. The only benefit is that the full domain name is three letters shorter.

72. This model also retains the domain monetisation policy and close and substantial connection test, which will be addressed later in the paper.

#### Model B

73. This model is based on eligibility rules only. There would be no mandated relationship between the registrant and the domain name. The existing eligibility rules would continue to apply to the respective 2LD namespaces and to the .au domain namespace. For example, an association incorporated in any State or Territory would be eligible to register any domain name in asn.au (example.asn.au) and the .au domain namespace (example.au). Registrants would have the freedom to register any domain name in the namespaces for which they are eligible. For example, an Australian citizen could register afp.id.au and afp.au.

74. The Panel notes that while this proposal potentially generates growth in the registration of domain names across all namespaces, it may also undermine the utility of and trust in the .au domain. The Australian Communications Consumer Action Network (ACCAN) recently noted that “there is a broad perception within the community that a domain name should closely resemble the organisation that registers them.”<sup>25</sup> The Panel notes that trust in the .au is because “it does what it says on the box.” For example, the domain name auDA.org.au provides the consumer with the following information (1) the domain name is registered by the .au Domain Administration Limited, and (2) auDA is a not for profit organisation. The abolition of allocation rules may result in consumer confusion and loss of confidence in the .au

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<sup>25</sup> Australian Communications Consumer Action Network, ACCAN submission to the Review of Australia’s .au domain management (18 December 2017) 10.

namespaces, which would ultimately undermine the usefulness of the .au domain for the Australian community.

75. The abolition of allocation rules makes the domain monetisation policy and close and substantial connection test redundant. (As discussed below, the close and substantial connection test is difficult to administer, and may be considered by some to be subjective.) However, the abolition of allocation rules may result in a significant number of parked websites or domain names that are registered but not used, and so not available to other registrants. This makes .au less attractive to new entrants, who may choose to register their preferred name in another gTLD. It also potentially reduces the usefulness of the .au namespaces to the Australian community, and may undermine trust and confidence in the .au domain as there is no longer a mandated relationship between the registrant and the domain name.
76. The Panel notes that this model would be easy to implement as there would be no change to registrant eligibility to register a domain name in any of the namespaces.

#### Model C

77. This model is a hybrid approach which aims to maximise the differences between the namespaces to improve usefulness of the .au domain for all Australians (Table 3). It proposes a general set of eligibility criteria that must be satisfied by all potential registrants, irrespective of the namespace in which they want to register. The general eligibility criteria would be the Australian presence requirements discussed earlier in this paper. The benefit of the Australian presence requirements is that it can accommodate government instrumentalities. Potential registrants that satisfied the Australian presence requirements would be eligible to register any available name in the .au domain namespace.

Rules	.au	com.au/net.au	org.au	asn.au	id.au
Australian Presence Requirement	√	√	√	√	√
Additional eligibility criteria	×	√ (must be a commercial entity)	√ (Must be a not for profit)	√ (Must be an incorporated or unincorporated association)	√ (Must be a natural person)
Allocation criteria	×	√ Name must be an exact match or abbreviation of the company name, business name or trademark	√ Name must be an exact match or abbreviation of the company name, business name or trademark	√ Name must be an exact match or abbreviation of the associations name or business name or trademark	√ Name must be the part of the person's legal name or a nickname.

Table 3: Eligibility and allocation rules for .au namespaces.

78. Potential registrants wishing to register a name in a 2LD namespace would also need to be a type of entity eligible to register in that namespace. For example, a registrant that wished to register in the com.au namespace would need to be a commercial entity. A registrant would need to provide information that demonstrates that they are a commercial entity, similar to the verification of identity processes set out in the *Guidelines on the Interpretation of Policy Rules for Open 2LDs*.
79. Strict allocation rules would apply to the registration of a domain name in a 2LD namespace. For example, a registrant would only be able to register a name that is an exact match or abbreviation of its company or business name or trademark in the com.au namespace. The rationale for this approach is two-fold: (1) it increases consumer confidence that the domain name is related to an entity of the same or similar name, and (2) it ensures that more domain names are available to potential registrants. The Panel recognises that a general principle underlying consumer protection is to 'know who you are dealing with' online.
80. ACCAN recently noted that there appears to be a scarcity of .au domain names due to significant numbers of parked sites, domainer activity and the limited number of .au namespaces.<sup>26</sup> Strict allocation rules may reduce the volume of domain names held by domainers for monetisation purposes. A domainer would still be eligible to register a domain name that matched the domainer's company or business name.
81. In this model, the allocation criteria is extremely important, and Table 3 sets out one example of allocation criteria. There could be additional allocation criteria included for some namespaces.
82. The Panel notes that this model proposes substantial changes to the existing eligibility and allocation rules. Existing domain name holders could be grandfathered, or alternatively, transitional arrangements may be necessary to enable existing registrants that are no longer eligible under the new rules to acquire a new domain name. It is appreciated that registrants have often made a significant investment in online branding, search engine listings and other directory services. Domain names are an essential part of a registrant's business goodwill and reputation.

#### Specific allocation rules

83. The Panel acknowledges that any discussion of the close and substantial connection and domain monetisation rules is dependent on the model chosen for the .au namespaces. The Panel has identified some issues with the current rules and invites stakeholders to consider these issues when evaluating the models.

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<sup>26</sup> Australian Communications Consumer Action Network, ACCAN submission to the Review of Australia's .au domain management (18 December 2017) 10.

### *Close and substantial connection rules*

84. The existing eligibility and allocation policy for the open 2LDs permits a registrant to register a domain name under the close and substantial connection test. The policy defines the close and substantial connection test that applies to each 2LD namespace.<sup>27</sup>
85. The close and substantial connection test was designed to give registrants more flexibility to register domain names that reflect their current core business activities, service delivery, or an abbreviation or nickname of a registrant's personal name. auDA has advised the Panel that the close and substantial connection test is difficult to administer as it is (1) based on the registrant's own assessment of their eligibility to hold the domain name, and (2) monitoring compliance with the policy requires auDA to review the content of the website associated with the domain name or to identify through other means the registrant's business activities to determine whether the test is satisfied.
86. auDA has informed the Panel that approximately 75 percent of complaints received by auDA relate to a registrant's entitlement to a domain name under the close and substantial connection test. A significant number of complaints relate to registrants that have registered domain names under the close and substantial connection test for future use. Although there is an explicit requirement in the existing Policy that a registrant must be eligible at the time of registration, not at some time in the future, not all registrants comply with this rule. The problem with this practice is that it prevents another person registering and using the domain name. This is particularly frustrating to the second person where the domain name is an exact match to that person's business or company name, and cannot be registered by that person. The Panel questions whether such practices create a barrier to entry for new players in Australia's digital economy.
87. The Panel also notes that a registrant is not required to warrant that the domain name application complies with the allocation rules for the 2LD. auDA may cancel a domain name licence for breach of any auDA Published Policies, including the eligibility and allocation rules.

### *Domain monetisation*

88. In general terms, domain monetisation is the business of registering or otherwise acquiring a domain name, with the purpose of making money from the domain name, by selling or leasing the domain name or creating a website that generates traffic (and therefore income) because of the domain name. Revenue can be generated from pay-per-click links, affiliate programs or general advertising for example.
89. Domain monetisation is permitted in the com.au and net.au 2LD namespaces, and is subject to the following conditions:
  - a) the content on the website to which the domain name resolves must be related specifically and predominantly to the subject matter denoted by the domain name;  
and

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<sup>27</sup> Guidelines on the Interpretation of Policy rules for Open 2LDs 2012-05 (17 December 2012) [10]

- b) the domain name must not be, or incorporate, an entity name, personal name or brand name in existence at the time the domain name is registered.

If these conditions are met, the registrant is deemed to have complied with the close and substantial connection test.

90. The Panel notes that domain monetisation has become increasingly complex and sophisticated making it difficult to for auDA to enforce compliance with the policy, especially where a domain name is monetised under the close and substantial connection test. auDA has advised the Panel that the following issues arise:
- a) it is difficult to determine if a domain name has been registered for monetisation purposes, especially where a domain name has been parked;
  - b) there is no time requirement in which a registrant must put up a monetised site resulting in a significant number of monetized registrations not resolving to a web site at all;
  - c) sometimes links on a monetised website do not go anywhere beyond the website, they just spawn another page with a lot of related or unrelated links that behave in the same way;
  - d) the types of domain names registered has grown beyond generic and searchable terms to include personal names, non-generic and non-English terms and acronyms;
  - e) some domain names are monetized via means other than websites, for example, the leasing of email addresses; and
  - f) it is difficult to enforce the rule against domain names being registered for the sole purpose of resale.
91. On a more macro level, one may ask whether, in the current internet environment, the domain monetisation policy is consistent with .au being a public asset that must be managed for the benefit of the Australian community. Permitting one person or entity to register large volumes of domain names for monetisation purposes potentially limits the names available to new businesses, which drive the growth of Australia's digital economy. The Panel believes that .au is an integral part of Australia's growing digital economy. One may ask whether domain monetisation is the best utilisation of the .au domain space when considered in the context of the broader Australian Internet Community.

#### Questions

What eligibility and allocation rules should apply to .au and the open 2LD namespaces, and why?

Should allocation criteria be removed, and the focus be on registrant eligibility?

Should the close and substantial connection rule be retained and why?

Should domain monetisation continue to be permitted in the com.au and net.au 2LD and at the second level? How should interests of those involved in domain monetisation be balanced against the needs of the broader Australian Internet Community?

### *Internationalised Domain Names*

92. The current syntax rules for domain names do not permit the use of non-ASCII characters, such as Arabic, Cyrillic or Chinese language characters. The Panel is interested in exploring whether non-ASCII character domain names should be trialled at the second level.
93. The Panel believes that there may be an unmet demand or untapped market for internationalised domain names given Australia's multi-cultural community and the increasing demand for Australian products and services overseas. The Age now publishes a Chinese language newspaper. The Australian Food and Grocery Council State of the Industry Report 2017 revealed a growing demand for Australian manufactured brands internationally, which generated \$67.9 billion in export revenue in the 2016/17 financial year.<sup>28</sup>
94. The Panel recognises that a trial of internationalised domain names is only viable if there are minimal, if any, allocation rules in .au, and the registrant provides an English translation at the time of registering the domain name.

#### Question

Should internationalised domain names be trialled at the second level, and under what conditions?

#### Licence Conditions

##### *Sub-leasing of domain names*

95. The auDA policies do not explicitly prohibit a registrant from assigning the right to use the domain name to another party. The Panel is aware registrants are engaging in the business of sub-leasing the use of a domain name to a third party. The Panel recognises that there are legitimate commercial reasons for sub-licencing of domain names between corporate bodies as part of intellectual property management. However, the Panel is concerned about the leasing of domain names between unrelated entities, especially where the registrant registered the domain name under the close and substantial connection rule. The Panel has identified the following issues:
  - a) close and substantial connection test: There must be a connection between the registrant and the domain name under the close and substantial connection test, and the connection must exist at the time of registration. Sub-leasing of a domain name acquired under the close and substantial connection test raises the issue of whether the registrant had a legitimate connection to the domain name.
  - b) Australian presence: All domain names registered in the .au domain require a registrant to have an Australian presence. Sub-leasing may be used by foreign nationals or entities to circumvent this requirement. This may undermine consumer and business trust in .au as they cannot be confident that they are dealing with an Australian entity subject to Australian laws.

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<sup>28</sup> Australian Food and Grocery Council, State of the Industry Report 2017 << <https://www.afgc.org.au/wp-content/uploads/AFGC-2017-State-of-the-Industry-Report.pdf>>>

- c) Eligibility and Allocation rules: There is a risk that sub-leasing will undermine the integrity of and trust in the .au 2LD namespaces. An entity or person not eligible to register a domain name in a specific 2LD namespace may be able to gain access to the 2LD by leasing a domain name. This may increase the risk of fraudulent activity in these 2LDs, especially the org.au and com.au namespaces.
- d) WHOIS service: The WHOIS service is a public service where a person can confirm the status of a domain name registration and registrant details. The accuracy of the WHOIS service plays an important consumer protection role as it enables law enforcement, consumers and legal practitioners to identify the user of the domain name. Sub-leasing makes the domain name user anonymous, and may result in increased costs to law enforcement, courts and individuals in identifying and serving the domain name user.

96. The Panel notes that some of these issues may be addressed by simple policy changes, such as prohibiting the sub-leasing of domain names, except where the other party satisfies the Australian presence and eligibility and allocation criteria for the domain name, and the parties details are entered into the WHOIS service as the technical contact.

Question

Should a registrant be able to sublease the domain name to an unrelated party? If yes, in what circumstances should this be permitted, and what conditions should apply?

*Licence transfer*

97. The existing registrant transfer policy provides that when a registrant transfers their domain name licence to another party (transferee), that party is issued with a new domain name licence.<sup>29</sup> This policy creates an impression that it is the domain name, as property, that is being transferred and not the licence, and appears to be inconsistent with the fundamental principle that there are no proprietary rights in a domain name. This policy also generates revenue for registrars, registry and auDA as the transferee is required to pay for a new domain name licence rather than getting the benefit of the remainder of the licence period.
98. The Panel believes that with variable licence periods that any transfer of a domain name licence between registrants should result in the transferee getting the benefit of the remainder of the licence period. For example, if the domain name licence is for 5 years, and the registrant after one year transfers it another registrant, that registrant would have the benefit of the remaining 4 years. This approach is consistent with international practice and ensures that only one fee is paid for the duration of the licence period. The Panel notes that the potential cost to registrars is offset by the registrants paying a transfer fee.

Question

Where a domain name licence is transferred between registrants, should the transferee receive the benefit of the remainder of the licence period?

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<sup>29</sup> Transfers (Change of Registrant) Policy 2011-03 (10 November 2011) [4]

### *Licence suspension and cancellation*

99. auDA may cancel a domain name in the following circumstances:

- (1) registrant breaches any auDA Published Policy;
- (2) in order to comply with a request of a law enforcement agency, or an order of a court or under any applicable law, government rule or requirement, or under any dispute resolution process; or
- (3) to protect the integrity and stability of the domain name system or the .au registry.<sup>30</sup>

100. The Panel considers that the auDA CEO should be able to suspend a domain name (prevent it from resolving to the DNS) rather than delete a domain name for breach of policy. Some examples are:

- a) where a registrant fails to provide complete registrant information or fails to update the registrant information, the domain name should be suspended until it is rectified; and
- b) where the auDA CEO is satisfied that there are reasonable grounds to suspend a domain name licence where it is alleged that the domain name is being used to facilitate or engage in criminal activity, such as phishing sites.

101. The Panel is aware that criminals, state and non-state actors are constantly developing new methods to exploit the vulnerabilities of the DNS. Given the interconnectedness of the DNS system and its importance in modern society, the Panel believes that there may be merit in having an explicit policy that gives the auDA CEO the power to assist another jurisdiction with cross-border enforcement.

102. auDA may cancel a domain name to comply with a request of a law enforcement agency or government requirement. The Panel notes that the auDA Published Policies do not define 'law enforcement agency' and that there is no requirement for the request to be lawful. The Panel also notes that the term 'government requirement' is vague and could refer to a policy requirement as determined by a department. The Panel proposes to clarify these issues in the revised policy.

#### Question

Should auDA be given the power to suspend a domain name licence? When should auDA suspend rather than cancel a domain name licence? What should be the maximum suspension period before a domain name licence is cancelled?

#### WHOIS service

103. The WHOIS service enables users to query a domain name to find out the identity and contact details of the registrant.<sup>31</sup> The WHOIS service is populated from data provided by the registrant at the time of applying for the domain name licence. A registrant has an ongoing

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<sup>30</sup> Mandatory Terms and Conditions Applying to .au Domain Name Licences 2008-7 (1 June 2008) [6]

<sup>31</sup> WHOIS Policy 2014-07 (19 October 2014)

obligation to advise the registrar of any change to any information in the registrant's data relating to the domain name.<sup>32</sup>

104. auDA has advised the Panel that there are data quality issues with the WHOIS service due to registrants or their agents, deliberately or otherwise, providing incomplete, incorrect or false registrant information. auDA receives a significant number of complaints from organisations, and businesses that have used a third party to register their domain name. The third party has entered their own details as the registrant, including the registrant contact details. In these circumstances, auDA can only do a warranty check or ask the complainant to provide evidence that the domain name was registered on their behalf. auDA may change the registrant contact details if satisfied that the domain name was registered on behalf of the complainant.
105. The Panel notes that the WHOIS policy could be clarified to expressly state that the technical contact details are to be used to record the details of the agent that registered the domain name on behalf of the eligible organisation and the details of the entity or person using the domain name under a sub-leasing arrangement. The Panel believes that enforcing compliance with these requirements is another matter.

Question

Are there any concerns with the current level of information included in the public WHOIS service?  
Should the technical contact field be utilised for agent and lessee details?

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<sup>32</sup> Mandatory Terms and Conditions Applying to .au Domain Name Licences 2008-07 (1 June 2008) [3]

## Schedule – Policies for review

No.	Title
2015-01	Complaints Policy
2014-09	Reseller ID Application Form
2014-08	DNSSEC Policy and Practice Statement (DPS) for the .au Domain
2014-07	WHOIS Policy
2014-06	Reserved List Policy
2013-05	Registrar Accreditation Application Form
2013-04	Registrar Accreditation Criteria
2013-03	auDA Information Security Standard (ISS) for Accredited Registrars
2013-02	Transfers (Change of Registrar of Record) Policy
2012-04	Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs
2012-01	Registrant Review Panel Rules List of auDA Review Panelists
2011-03	Transfers (Change of Registrant) Policy
2010-07	Registrant Contact Information Policy
2010-03	Registrar Review Panel Rules List of auDA Review Panelists
2010-01	Domain Renewal, Expiry and Deletion Policy
2008-09	Prohibition on Misspellings Policy
2008-07	Mandatory Terms and Conditions Applying to .au Domain Name Licences
2008-04	Policy Rules and Guidelines for Community Geographic Domain Names (CGDNs)
2007-02	Interim Policy on Use of Wildcard DNS Records in .au
2004-04	.au Domain Name Suppliers' Code of Practice
2004-01	Complaints (Registrant Eligibility) Policy
2002-29	Domain Name Password Policy
2013-01	Clarification of Auto-Renewal Services under the Code of Practice
2012-05	Guidelines on the Interpretation of Policy Rules for the Open 2LDs
2008-11	Clarification of Permissible Own Use Registration by Registrars
2002-16	Registrar Agreement - Meaning of Reseller
2002-15	Registrar Agreement - Clarification of Clause 14.1.7

**Attachment B**

<b>Legislation</b>	<b>Restricted words, letters, abbreviations and acronyms</b>
<i>Agricultural and Veterinary Chemicals Code Act 1994</i>	APVMA Australian Pesticides and Veterinary Medicines Authority
<i>ANL Act 1956</i>	ANL Australian National Line Maritime Agencies of Australia; Searoad
<i>Australian Communications and Media Authority Act 2005</i>	ACMA Australian Communications and Media Authority
<i>Australian Grand Prix Act 1994 (Vic)</i>	Grand Prix Formula One Formula 1 Albert Park Circuit Grand Prix Rally What a Great Place for the Race What a Great Place for the Great Race What a Great Race Australian Motorcycle Grand Prix
<i>Australian Hearing Services Act 1991</i>	NAL National Acoustic Laboratories Australian Hearing Services
<i>Banking Act 1959</i>	Bank Banker Banking Building Society Credit union Credit society authorised deposit-taking institution ADI Credit co-operative Purchased payment facility provider PPF provider Specialist credit card institution SCCI banc banque

Legislation	Restricted words, letters, abbreviations and acronyms
<p><i>Commonwealth Games Arrangements Act 2011 (QLD)</i></p>	<p>ACGA  Australian Commonwealth Games Association  CGF  Commonwealth Games Federation  Australian Commonwealth Games  Coast 2018 Games  Coast Games  Comm Games  GC18  GC2018  Gold Coast 2018 Commonwealth Games  Gold Coast 2018 Cultural Program  Gold Coast 2018 Games  Gold Coast Game  GOLDOC  Queen’s Baton Relay  2018 or 21<sup>st</sup> with Commonwealth Games or Games  Commonwealth Games or Commonwealth Games athlete  with gold or silver or bronze  Australian Commonwealth Games Team with Gold Coast or  Gold Coast 2018 or GC2018  Games or Commonwealth Games or Australian  Commonwealth Games Team with partner or sponsor or  provider or supplier.</p>

Legislation	Restricted words, letters, abbreviations and acronyms
<i>Defence Regulation 2016</i>	Active Reserve Air Force Air Force Reserve Army Reserve Australian Air Force Australian Air Force Reserve Australian Army Australian Army Reserve Australian Defence Force Australian Defence Force Reserves Australian Flying Corps Australian Imperial forces Australian Military Forces Australian Navy Australian Regular Army Defence Force Defence Force Reserves Defence Reserves; Her Majesty's Australian Ship; High Readiness Reserve; HMA Ship; Naval Reserve; Permanent Air Force; Permanent Military Forces; Regular Army Royal Australian Air Force; Royal Australian Naval Reserve; Royal Australian Navy; Specialist Reserve; Standby Reserve ADF; AFC; AIF; AMF; ARA; HMAS; RAAF; RAN; RANR.

Legislation	Restricted words, letters, abbreviations and acronyms
<i>Family Law Regulations 1984</i>	<p>Family Relationship Centre  Family Relationship Advice Line  Family Relationships Online  familyrelationshipsadvice.com  familyrelationshipadvice.com.au  familyrelationshipadvice.net  familyrelationshipadvice.net.au  familyrelationshipadvice.org  familyrelationshipadvice.org.au  familyrelationshipcentre.com  familyrelationshipcentre.com.au  familyrelationshipcentre.net  familyrelationshipcentre.net.au  familyrelationshipcentre.org  familyrelationshipcentre.org.au  familyrelationshipcentres.com  familyrelationshipcentres.com.au  familyrelationshipcentres.net  familyrelationshipcentres.net.au  familyrelationshipcentres.org  familyrelationshipcentres.org.au  familyrelationshipsadvice.com  familyrelationshipsadvice.com.au  familyrelationshipsadvice.net  familyrelationshipsadvice.net.au  familyrelationshipsadvice.org  familyrelationshipsadvice.org.au  familyrelationshipscentre.com  familyrelationshipscentre.com.au  familyrelationshipscentre.net  familyrelationshipscentre.net.au  familyrelationshipscentre.org  familyrelationshipscentre.org.au  familyrelationshipscentres.com  familyrelationshipscentres.com.au  familyrelationshipscentres.net  familyrelationshipscentres.net.au  familyrelationshipscentres.org  familyrelationshipscentres.org.au  fral.com.au  fral.com.au  frc.org.au  familyrelationshipadvice.gov.au  familyrelationshipcentre.gov.au  familyrelationships.gov.au  familyrelationship.com  familyrelationship.com.au  familyrelationship.net  familyrelationship.net.au  familyrelationship.org</p>

<b>Legislation</b>	<b>Restricted words, letters, abbreviations and acronyms</b>
<i>Family Law Regulations 1984</i>	<p>familyrelationship.net  familyrelationship.net.au  familyrelationship.org  familyrelationship.org.au  familyrelationships.com  familyrelationships.com.au  familyrelationships.net  familyrelationships.net.au  familyrelationships.org  familyrelationships.org.au  fracms.gov.au  fracms.com  fracms.com.au  fracms.net  fracms.net.au  fracms.org  fracms.org.au  fral.org.au  fral.gov.au  frc.com.au  frc.net.au  frc.org  frc.com  frc.net  familyrelationshipsadviceline.gov.au  familyrelationshipcentres.gov.au  familyrelationshipscentre.gov.au  familyrelationshipscentres.gov.au  familyrelationshiponline.com  familyrelationshiponline.com.au  familyrelationshiponline.net  familyrelationshiponline.net.au  familyrelationshiponline.org  familyrelationshiponline.org.au  familyrelationshipsonline.com  familyrelationshipsonline.com.au  familyrelationshipsonline.net  familyrelationshipsonline.net.au  familyrelationshipsonline.org  familyrelationshipsonline.org.au  familyrelationshipsonline.gov.au  familyrelationshipsonline.gov.au</p>

<b>Legislation</b>	<b>Restricted words, letters, abbreviations and acronyms</b>
Geneva Convention Act 1957 (Cth)	Red Cross Geneva Cross Red Crescent Red Lion and Sun Red Crystal
<i>Human Services (Centrelink) Act 1997</i> <i>Human Services (Centrelink) Regulations 2011 (reg 6)</i>	Commonwealth Services Delivery Agency Centrelink CRS Australia myGov
<i>Human Services (Medicare) Act 1973</i>	Medicare Medicare Australia
<i>International Organizations (Privileges and Immunities) Act 1963</i>	Asia-Pacific Telecommunity; Asian-Pacific Development Centre CAB international; Commission for the Conservation of Antarctic Marine Living Resources; Commission for the Conservation of Southern BlueFin Tuna; Commonwealth of Nations; Customs Cooperation Council; Asian Development Bank; Association of Iron-ore Exporting Countries; Bank for International Settlements; Energy Charter Conference; European Bank for Reconstruction and Development; European Economic Community; INTELSAT; International Atomic Energy Agency; International Centre for Settlement of Investment Disputes; International Development Law Organisation; International Exhibitions Bureau; International Hydrographic Organization; International Lead and Zinc Study Group; International Mobile Satellite Organisation Asian Infrastructure Investment Bank Nauru Trust Fund Organisation for the Prohibition of Chemical Weapons International Organisation for Migration; International Sea-bed authority; International Sugar Organisation; International Tropical Timber Organisation; International Wheat Council; Multilateral Investment Guarantee Agency; Organisation for the Network of Aquaculture Centres in Asia and the Pacific;

Legislation	Restricted words, letters, abbreviations and acronyms
<p><i>International Organizations (Privileges and Immunities) Act 1963</i></p>	<p><i>Organisation for Economic Co-operation and Development;</i>  PrepCom  Preparatory Commission for the Organization on the Prohibition of Chemical Weapons;  <i>Meeting of the Parties to the Agreement on the Conservation of Albatrosses and Petrels</i>  SITA  <i>South Pacific Commission</i>  <i>South Pacific Forum Fisheries Agency</i>  South Pacific Forum Secretariat  South Pacific Nuclear Free Zone Consultative Committee  South Pacific Regional Environmental Programme  Tuvalu Trust Fund  United Nations  World Trade Organisation (WTO)</p>
<p><i>Major Sporting Events (Indicia and Images) Protection Act 2014</i></p>	<p>Australian Commonwealth Games;  Australian Commonwealth Games Association;  Coast 2018 Games;  Commonwealth Games;  Commonwealth Games Federation;  GC18;  GC2018;  Gold Coast 2018 Commonwealth Games;  Gold Coast 2018 Games;  Gold Coast Commonwealth Games;  GOLDOC;  Queen’s Baton Relay  21<sup>st</sup> Comm Games  21<sup>st</sup> Commonwealth Games  2018 Comm Games  2018 Commonwealth Games  Commonwealth games Bronze  Commonwealth Games Silver  Commonwealth Games Gold  Australian Commonwealth Games Team GC2018  Australian Commonwealth Games Team Gold Coast  Australian Commonwealth Games Team Gold Coast 2018  Australian Commonwealth Games Team Celebrating 2018</p>

<b>Legislation</b>	<b>Restricted words, letters, abbreviations and acronyms</b>
<i>Major Sporting Events (Indicia and Images) Protection Act 2014</i>	Coast Games Delivering 2018 Embracing 2018 Gold Coast 2018 Arts and Community Festival Program Gold Coast 2018 Cultural Program Commonwealth Games partner Commonwealth Games provider Commonwealth Games sponsor Commonwealth Games supplier Commonwealth Games venue
<i>Olympic Insignia Protection Act 1987</i>	Olympic Olympics Olympic Games Olympiad Olympiads
<i>Protection of the Word 'ANZAC' Regulations</i>	ANZAC
<i>Scout Association Act 1924 (Cth)</i>	Scout Association
<i>Snowy mountains Engineering Corporation (Conversion into Public Company) Act 1989</i>	Snowy Mountains Engineering Corporation Limited SMEC Snowy Mountains Engineering Corporation
<i>Wet Tropics World Heritage Protection and Management Act 1993 (Qld)</i>	Wet Tropics of Queensland World Heritage Wet Tropics World Heritage Area
<i>Tafe Queensland Act 2013</i>  <i>TAFE SA Act 2012</i>	TAFE technical and further education TAFE SA

