

2015 NAMES POLICY PANEL

FINAL REPORT TO THE auDA BOARD, DECEMBER 2015

Executive Summary

This document contains the final report of the Panel, including conclusions developed through Panel deliberations over 10 months and two six-week public consultations. The process has attracted an unprecedented level of public interest.

The main recommendation is that, in principle, Australians should be able to register domain names directly under .au (eg. myname.au). This has never been possible before – all domain names are registered under second level domains (2LDs) for specific purposes (eg. myname.com.au for commercial entities). The proposed change would leave the existing 2LDs in place, and also add the option of registering directly for any Australian entity. Those registering directly would need to be eligible to register a domain under the existing 2LD rules, and if necessary provide evidence of eligibility; and the existing rules would also apply to the kind of name that could be registered – in general the name must be an exact match, abbreviation or acronym of the registrant's name or trade mark, or there must be a close and substantial connection between the registrant and the domain name.

Why has the Panel recommended this change? The main reason is that direct registrations would create names which are shorter, more appealing and more memorable. They would make the domain name system simpler and easier to use. Moreover, the proposed change would open a wide range of new choices for registrants, and would provide a better option, especially for some groups; in particular, the Panel thinks that individuals would be able to obtain an Australian domain name in a simple and straightforward way.

Implementation of proposed changes is not part of the terms of reference of the Panel, but the Panel has made some suggestions based on its consultations. These include the following:

- existing registrants across the all 2LDs (open and closed) should have equal access to the matching .au name through an appropriate allocation method
- the existing provisions for the creation of new 2LDs remain relevant and useful and there should be an interim process reserving potential new 2LDs
- the registrant of a direct .au name should not be permitted to use it as a de facto new 2LD by setting up a private registry
- auDA should undertake further stakeholder communication and consultation to determine the most suitable method of implementation
- there must also be a widespread education and awareness campaign leading up to the release of direct registrations.

The recommendation to allow direct registrations is supported by a substantial majority of Panel members – more than the required two-thirds consensus – and by most responses to the two public consultations. Four dissenting Panel members have submitted a minority report at Attachment B.

This report also includes the Panel's recommended changes to existing open 2LD policy rules:

- the domain name licence period should be from 1-5 years (currently it is two years)
- the policy relating to business names should be updated, to reflect the national business names registration system that came into effect in 2012
- the policy prohibiting misspellings should be retained, but there should be more flexibility in the way it is enforced.

Background

In December 2014 the auDA Board established the 2015 Names Policy Panel to:

- review the policy framework underlying the allocation and use of domain names in the .au domain space; and
- provide recommendations to the auDA Board.

The Panel's Terms of Reference set out three areas for consideration:

1. Should .au be opened up to direct registrations (eg. domainname.au)? If yes, should there be any policy rules, and if so what rules?¹
2. Should the eligibility and allocation policy rules for asn.au, com.au, id.au, net.au and org.au be changed? If yes, what changes should be made?

Relevant auDA Published Policies:

- Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs (2012-04)
 - Guidelines on the Interpretation of Policy Rules for the Open 2LDs (2012-05)
3. Should the policy rules relating to the reserved list and misspellings be changed? If yes, what changes should be made?

Relevant auDA Published Policies:

- Reserved List Policy (2014-06)
- Prohibition on Misspellings Policy (2008-09)

Full text of the Panel's Terms of Reference, a list of Panel members and minutes of Panel meetings are available on the auDA website at <http://www.auda.org.au/policies/panels-and-committees/2015-names-policy-panel/>.

Public Consultation

Under its Terms of Reference, the Panel was required to undertake at least two rounds of public consultation to ensure that its recommendations to the auDA Board were properly canvassed with, and informed by, key stakeholders and the general community.

Issues Paper, May 2015

The Panel released an Issues Paper on 17 May 2015 for a six week public comment period. The Panel received 25 written submissions from individuals and organisations, and 193 complete or partially complete online survey responses. These are published on the auDA website at <http://www.auda.org.au/policies/panels-and-committees/2015-names-policy-panel/>.

¹ For clarity, consideration of potential implementation mechanisms for opening up .au to direct registrations is outside the scope of the Panel's Terms of Reference.

The issue of direct registrations under .au (ToR issue 1) dominated responses to the Issues Paper, with strong opinions on both ends of the spectrum.

Draft Recommendations, August 2015

The Panel released its Draft Recommendations paper on 20 August 2015, also for a six week public comment period. The Panel received 30 written submissions from individuals and organisations, and 4,495 complete or partially complete online survey responses. These are published on the auDA website at <http://www.auda.org.au/policies/panels-and-committees/2015-names-policy-panel/>.

The Panel notes that this was by far the highest number of responses to an auDA Panel consultation process, stimulated in large part by an EDM sent to customers of a large registrar group. As with the Issues Paper consultation, most respondents focused on the issue of direct registrations.

The Panel understands that both rounds of public consultation attracted more media coverage than previous auDA Panel consultations. Coverage included ABC local radio interviews, articles in leading online publications including The Conversation and the Bloomberg Electronic Commerce and Law Report, as well as op-ed pieces in IT industry journals such as ITWire and ZDNet. Several Panel members also published their own blog pieces and posted to online forums.

Structure of the Australian Domain Name System (DNS)

The .au domain space is organised into a number of different second level domains (2LDs) which each have a particular purpose:

2LD	Purpose
asn.au	For Australian non-profit organisations, associations, clubs and special interest groups
com.au	For Australian commercial entities and traders
csiro.au*	For the Commonwealth Scientific and Industrial Research Organisation (CSIRO)
edu.au*	For Australian educational entities
id.au	For Australian individuals
gov.au*	For Australian government departments and agencies
net.au	For Australian commercial entities and traders
org.au	For Australian non-profit organisations, associations, clubs and special interest groups
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

*These 2LDs are excluded from the Panel’s Terms of Reference.

Fundamentals of the Australian DNS

Central to the Panel’s considerations has been the belief that there are some elements which are fundamental to the Australian DNS, and that any proposed changes to the Australian DNS should seek to preserve and even enhance these elements. Chief amongst these are that the .au space is for

Australians – ie. individuals and entities who are not Australian (or not registered to trade in Australia) are not permitted to register a .au domain name.

The Panel is aware that the .au domain has a strong local and international reputation as a comparatively well-regulated and trusted space. The Panel's overriding concern is to ensure that any changes will facilitate the continued growth and development of the .au domain, but not at the expense of its perceived value. In this respect, the Panel notes the risk that leaving .au unchanged may lead to it becoming “frozen in time”, thus diminishing its value over the long term.

Whilst .au has remained consistently popular with Australian users, the Panel believes that there is scope for further evolution and development of the namespace. Change can be introduced to remedy deficiencies, or to improve the operation of the system. The Panel's view is that its recommended changes are likely to improve the operation of the system for its three main user categories – the domain name industry, registrants of over three million .au domain names, and Internet users in Australia and beyond.

The Panel acknowledges that any change to an established and long-standing system is bound to cause some consternation and confusion, at least in the short term. However, it notes that several changes have been made to .au policy over the years which were controversial and divisive at the time, but which were successfully implemented and integrated into the Australian DNS, such as the release of generic and geographic domain names, and the facilitation of domain monetisation and the secondary market.

Recommendations

1. Direct registrations under .au

Should .au be opened up to direct registrations (eg. domainname.au)? If yes, should there be any policy rules, and if so what rules?

Current situation

It has never been possible for people to register a domain name directly under .au (eg. myname.au). The .au 2LD hierarchy was created in the 1990s by the first administrator of the .au domain, Robert Elz, who adopted some generic Top Level Domain (gTLD) names – com.au, org.au, net.au, edu.au, gov.au – and added some uniquely Australian names – asn.au, id.au. Elz also determined that each 2LD should be for a different purpose – eg. com.au for commercial entities, org.au for charities, edu.au for educational entities and so on.

As at 30 June 2015, the total number of registrations in the open 2LDs was 2,972,751 with com.au registrations accounting for 86.5%, followed by net.au 10.8%, org.au 2.2%, and asn.au and id.au making up the remaining 0.5%.

Issues

There have been strong, diverse and often diametrically opposed views expressed about the prospect of opening up .au to direct registrations, and the Panel has thoroughly discussed and debated the issues raised both by members and in public submissions. The most commonly cited pros and cons are listed below to encapsulate, in basic dot point form, the arguments and beliefs that were put forward during the Panel's deliberations. Some of them are expanded upon in the section headed 'Views of the Panel'.

Pros of direct registrations

- “Shorter is better” – shorter domain names are more desirable and easier to type/remember.
- Consistent with international practice, in particular the recent decisions of comparable ccTLDs .uk and .nz to allow direct registrations.
- More choice for consumers.
- Evidence of customer demand (reported by some registrars and resellers).
- Help to maintain the competitiveness of the “.au brand” in a global domain market.
- Easier and more attractive for individuals (noting low user awareness and takeup of id.au).
- Very hard to find a desirable name in com.au.
- Would stimulate the Australian ICT industry.
- It is not uncharted territory, other ccTLDs offer useful implementation models.

Cons of direct registrations

- Current .au 2LD hierarchy is logical, works well and is well-known by users.
- Would create user confusion and undermine trust in well-regulated system.
- Only groups that stand to benefit are auDA, registry operator and registrars.
- Risks devaluing investments made by existing registrants.
- No clear/tested evidence of customer demand.
- Majority of direct registrations would be defensive.
- Increased risks of cybersquatting and bad faith registrations.
- Increased costs for existing registrants and rights holders to protect their brand / re-brand.
- Experiences in .uk and .nz are inconclusive, it is too early to tell if they are successful or not.
- Implementation would be complicated and costly.

Public consultation outcomes

Issues Paper

The Panel’s Issues Paper invited general comments on the headline question of whether or not .au should be opened up to direct registrations, as well as posing some supplementary questions:

- do new gTLDs pose a threat to the “.au brand”?
- is there evidence of any market demand for direct registrations?
- what types of registrants/users would benefit from direct registrations?
- what policy rules should apply to direct registrations?
- what issues would need to be taken into account as part of the implementation process?
- should .au follow the example of other ccTLDs like .uk and .nz?

On a yes/no count of submissions and survey responses, the results were 63% in favour of direct registrations and 37% against – however, many of the people who were in favour of allowing direct registrations expressed conditional support, ie. “yes, but only if ...” for example, com.au registrants are given priority rights to the matching .au name, or strict policy rules apply.

Draft Recommendations

The Panel’s Draft Recommendations paper asked people if they agreed with the following two-part draft recommendation:

- 1A: The Panel recommends in principle that .au should be opened up to direct registrations.
- 1B: The Panel recommends that the same policy rules which currently apply in the existing 2LDs should also apply to direct registrations.

87% of respondents supported 1A, and 89% supported 1B.

One thing that was very clear from the submissions and survey responses is that most people think that there must be some form of priority entitlement for existing 2LD registrants if direct registrations are introduced.

Views of the Panel

Should direct registrations be allowed?

The general consensus of the Panel was direct registrations should be allowed. A majority of Panel members have identified a number of reasons why they hold this view.

- Superiority of shorter names.

The strongest rationale for opening the Australian DNS to permit registration of domain names directly under .au is that it would make available domain names which are shorter, more appealing, and more memorable.

Shorter names would potentially simplify the operation of the DNS for its ultimate users. The effects would flow through to other activities which would benefit from simplification, greater brevity and memorability – for example, email addressing, mobile devices, advertising and marketing.

Some evidence that shorter names are more attractive to registrants can be seen in .uk and .nz, both of which introduced direct registrations in mid-2014. Monthly .nz statistics suggest that there is a shift underway from 2LDs to direct .nz names (although the figures are variable month-on-month)². A similar trend is visible in .uk, where total registrations under 2LDs have declined by approximately 95,000 since January 2015, while direct registrations have increased by approximately 180,000³.

- Wider choice and appeal to registrants, especially individuals.

Opening up a new namespace within .au will give Australians more choice in deciding what domain name to register, or in some cases may give them a choice where there now is none.

The Panel believes that direct registrations would be more appealing to natural individuals, who are not well served by the current structure and generally have not taken up the current 2LD for individuals, id.au. AusRegistry research shows that while there has been an increase in the number of people registering different types of domain names for individual use, there has been a decrease in the number of id.au domain names being registered⁴.

- Adding value for everyone

The Panel believes that opening up the Australian system will add value to all three main categories of users – vendors, registrants and ultimate users of the system.

² .nz Domain Name Commission website at <http://dnc.org.nz/story/monthly-nz-statistics-domain-names-2ld-0?m=346>

³ Nominet website at <http://nominet.uk/news/reports-statistics/uk-register-statistics-2015/>

⁴ “Behind the Dot: State of the .au Domain” Edition 4, August 2015 at <http://www.ausregistry.com.au/research-au>

The Panel is very aware that the existing system holds a great deal of value, with over three million registrations and a comparatively high per capita penetration rate of 130 domain names per 1000 inhabitants. It is important that any change to the system should generate new value, rather than adding trivially to existing value, or simply duplicating existing functionality, or cannibalising valuable domain territory. The fact that change may be driven from the supply side does not mean that the change will not also be beneficial to people on the demand side of the industry.

A common argument is that expanding the number of available domain names, coupled with an implementation which will reserve new names for holders of matching names in the open 2LDs, amounts to rent-seeking on the part of the domain name industry. People who make this argument claim that the great majority of registrations at the second level will simply be defensive registrations on the part of existing registrants, leading to additional costs, administrative burden and inconvenience for those already in the system, and closing down naming options for new entrants.

It has also been argued that the newly-acquired direct registration is likely to be redirected to the registrant's existing website, meaning that the new namespace is unlikely to result in any new online content for users. There is some evidence from .nz and .uk to support this argument, however it is still too early to make a proper assessment of registration trends since those TLDs opened up at the second level. The Panel believes that it is important to take a long term view – for a larger entity, a change of domain identity is not a simple exercise, and will take time. It is also the case that a high proportion of Australian com.au names are relatively new (41% are in their first two-year registration cycle) and in reality registration of names within the system is quite volatile; it is therefore considered to be unlikely that large numbers of new names at the second level would remain unused for long periods of times as domain name registrants sit on them defensively.

- The wider context

The Panel has considered a range of issues about the context in which the DNS is evolving. auDA Panels have a track record of recommending incremental policy changes as a response to emerging market trends and changes in user behaviour. Allowing direct registrations may be regarded as removing another obstacle to the natural evolution of the namespace, which will be decided by the market and consumer choice.

The Panel has considered whether the creation of hundreds of new gTLDs through the current ICANN process is having, or will have, a major impact on the “.au brand”. Whilst the introduction of new gTLDs is significant, it is not of itself a reason to introduce changes to .au. It was felt that the .au namespace stands on its own merits, at least as far as Australian registrants and users are concerned.

The Panel has also taken into account whether the introduction of direct registrations would be confusing to users of the Australian DNS. The potential for widespread confusion is commonly raised as an argument against making changes, but the system has undergone various changes over the past 15 years without this being an insurmountable problem. There is an argument that there is already confusion among users between the different .au 2LDs and what they are supposed to represent. It has also been suggested that as more people get used to being able to register domain names directly at the second level in an increasing number of ccTLDs and new gTLDs, over time it will become more confusing for users if the Australian namespace remains the “odd one out”.

The Panel has also looked at the effect of new and emerging technological developments on the future use and relevance of domain names. Website and email addressing in the context of the massive growth in mobile computing is another contextual issue, which highlights the desirability of having shorter names that are easier to type and display on mobile devices.

Policy rules for direct registrations

The Panel is clear that .au should only be available to Australians (entities or individuals), and that there should be policy rules about who can register a .au name and what type of name they can register – ie. an open slather approach is explicitly rejected.

The Panel's draft recommendation was that the same eligibility and allocation rules that apply in the open 2LDs should also apply to direct registrations. This was intended to give effect to the Panel's view that the rules for direct registrations should not be any more restrictive or exclusive than the rules for the open 2LDs – in other words, anyone who is eligible to register a domain name in the open 2LDs should also be eligible to register a domain name in .au, and they should be able to register the same type of name in .au which they would be able to register in the open 2LDs. This view extends to the often contentious issue of domain monetisation, to which the Panel gave special consideration. Ultimately, it was agreed that domain monetisation should be allowed in direct registrations, on the grounds that is already allowed in com.au and net.au and it would be too difficult to enforce a complete ban.

The Panel recognises that implementation of its draft recommendation would not be straightforward. Attachment A sets out a possible framework for applying the current eligibility and allocation policy rules for open 2LDs to direct registrations. To this would need to be added the somewhat more complex eligibility and allocation policy rules for the gov.au and edu.au closed 2LDs, so that registrants in those spaces would also be able to register directly in .au if they chose to do so.

As indicated in Attachment A, the eligibility criteria for direct registrations would be divided into those with a verifiable official registration (eg. ABN, ACN, TM etc) and those based on registrant warranty in the first instance (eg. Australian citizen or resident). The allocation criteria would include "exact match, abbreviation or acronym", as well as the "close and substantial connection" rule which encompasses a broad range of allowable activities, including domain monetisation (currently allowed in com.au and net.au) as well as personal interests or hobbies (currently allowed in id.au).

The way in which these rules would be applied to direct registrations is a matter for auDA to determine through the implementation process, and the Panel is aware that it will be a challenging task to apply rules which were designed for a series of purpose-specific 2LDs to a single space that does not have a defined purpose, whilst still maintaining the overall integrity and consistency of the .au policy framework.

Implementation Issues

The Panel is very aware that its Terms of Reference specifically exclude consideration of potential implementation mechanisms for direct registrations, and it has been careful to observe this constraint during its deliberations. However, it has not been possible for Panel members to avoid completely any discussion of implementation, given the complex nature of the issues under consideration and the simple fact that the circumstances in which direct registrations would be introduced makes a major difference to people's views on the subject.

Whilst acknowledging that implementation will be a matter for auDA to determine should it approve this recommendation, and through processes which it would develop, Panel members are keen to alert the auDA Board to particular issues that they believe should be considered:

- Recognition of existing registrants.

The Panel was struck by the significant number of submissions and survey responses which emphasised the importance of allowing existing registrants to have priority access / first right of refusal to the matching .au name. Further, the Panel notes that the majority of ccTLDs which have moved from a 2LD hierarchy to direct registrations have provided some form of recognition of existing registrants. Panel members acknowledge that this approach would tend to conflict with the fundamental 'no hierarchy of rights' principle underpinning the .au domain space, however it is felt that not affording any prior rights to existing registrants would be considered to be unreasonable and unfair, and that for most respondents some priority of access to the directly-registered form of their domain name would be a condition of support for the change.

Whilst many respondents thought (or assumed) that prior rights should be afforded to com.au registrants only, the Panel firmly believes that existing registrants across the all 2LDs (open and closed) should have equal access to the matching .au name through an appropriate allocation method.

Panel members also considered whether other rights holders (particularly trade mark owners) should be included in a priority registration process, but on balance it is felt that these rights are more appropriately protected by other mechanisms such as the .au Dispute Resolution Policy (auDRP).

- New 2LDs.

The current Australian system has provision for the creation of new 2LDs, subject to an approval process with defined criteria based on meeting user demand and the broader public interest. The Panel believes that the existing provisions for the creation of new 2LDs remain relevant and useful, and that it should still be possible for new 2LDs to be created in future. For example, neither the courts nor Australia's nine parliaments are logically (or 'legally') part of the gov.au 2LD, and there may be public benefit in having them reside within their own 2LD (eg. court.au and parliament.au). Indigenous nations are another group which do not easily sit within any of the existing 2LDs and might also benefit from having their own separate 2LDs, or a single 2LD (eg. nation.au).

The Panel believes that there should be a process by which names can be withheld or excluded prior to the release of direct registrations, for potential future use as new 2LDs (with any such exclusion being for a limited time only).

On a related note, Panel members also believe that the registrant of a direct .au name should not be permitted to use it as a de facto new 2LD by setting up a private registry outside the centralised registry database and auDA-regulated system.

- Reserved List policy for direct registrations.

auDA's Reserved List Policy, which the Panel has recommended retaining in its current form for the open 2LDs (see section 3 below), prohibits the unauthorised use of words and phrases that are restricted under Commonwealth legislation. The Panel considers that an expanded version (or additional schedule) of the Reserved List should be applied to direct registrations to include names of special significance or names which could give rise to

consumer confusion by appearing to be authoritative or government-sponsored in some way.

- WHOIS policy for direct registrations.

Currently auDA policy does not permit registrants to use private or proxy registration services to prevent their name from being disclosed on WHOIS. One of the Panel's stated reasons for recommending that direct registrations be allowed is to cater for individuals who are not well-served by the current 2LD hierarchy, and there is an expectation that perhaps the highest level of demand for direct registrations will come from individuals. Some Panel members have raised concerns that auDA's current policy prohibiting the use of private or proxy registrations may deter individuals from taking up a direct registration, and therefore this policy should be reviewed as part of the implementation process.

- Education and awareness.

Finally, but most importantly, the Panel wishes to emphasise the need for auDA to undertake further stakeholder communication and consultation in order to determine the most suitable method of implementation. This may include the formation of an expert working group, and conducting market research with both existing registrants and non-registrants.

In addition, there will need to be a widespread education and awareness campaign leading up to the release of direct registrations, which will have significant cost implications for auDA and the industry.

RECOMMENDATION 1A:

The Panel recommends in principle that .au should be opened up to direct registrations.

RECOMMENDATION 1B:

The Panel recommends that the same policy rules which currently apply in the existing 2LDs should also apply to direct registrations (refer to Attachment A).

2. 2LD eligibility and allocation policy rules

Should the eligibility and allocation policy rules for asn.au, com.au, id.au, net.au and org.au be changed? If yes, what changes should be made?

Current situation

The current policy rules for asn.au, com.au, id.au, net.au and org.au (known as the "open 2LDs") have been in place, mostly unchanged, since 1 July 2002.

The Domain Name Eligibility and Allocation Policy Rules for Open 2LDs (2012-04) set out three types of rules:

- General policy rules that apply to all 2LDs, eg. "first come, first served" and a fixed 2 year licence period.
- Eligibility criteria that apply in each 2LD, eg. commercial entities are eligible for com.au and net.au, not-for-profit entities are eligible for asn.au and org.au, individuals are eligible for id.au.

- Allocation rules that apply in each 2LD, eg. exact match, abbreviation or acronym, or “close and substantial connection” rule (which includes domain monetisation in com.au and net.au).

The policy rules are further elaborated in the Guidelines on the Interpretation of Policy Rules for the Open 2LDs (2012-05), including the different types of official identifier required for a registrant to establish their eligibility – eg. ACN or ABN for a com.au and net.au domain name.

Issues

The Panel identified a number of potential issues for consideration at the outset of its deliberations, but after the first round of public consultation it was clear to Panel members that people are generally satisfied with the current open 2LD eligibility and allocation policy rules. As a consequence, the Panel ended up focusing its discussions on just two issues: the domain name licence period, and business name registrations.

Public consultation outcomes

Issues Paper

The Panel’s Issues Paper invited comments on the following issues:

- Should the domain name licence period remain fixed at two years?
- Should the principles of ‘first come, first served’ and ‘no hierarchy of rights’ be retained?
- Should the current 2LD eligibility criteria (ie. restricting com.au/net.au to commercial entities, org.au/asn.au to not-for-profit entities, id.au to individuals) be modified?
- Is the ‘close and substantial connection’ rule desirable?
- What changes are required to address the new practice regarding business name registrations?

Submissions and survey responses demonstrated a reasonably high level of satisfaction with the current eligibility and allocation rules for open 2LDs. The majority of respondents were in favour of retaining both the current eligibility criteria for the different 2LDs, and the close and substantial connection rule. The one issue on which there was clear majority support for change was in relation to the domain name licence period.

Draft Recommendations

The Panel’s Draft Recommendations paper asked people if they agreed with the following draft recommendations:

- 2A: Subject to draft recommendations 2B and 2C below, the Panel recommends that the eligibility and allocation criteria for open 2LDs be retained in their current form.
- 2B: The Panel recommends that the fixed two year licence period be changed to a variable 1-5 year period (ie. registrants could choose to register their domain name for 1, 2, 3, 4 or 5 years).
- 2C: The Panel recommends that auDA and/or AusRegistry should make the appropriate changes to the policy and/or registry database fields to reflect the nationalised business names registration system, ensuring that there is no disadvantage to registrants.

There was clear majority support for each of the draft recommendations (85% for 2A, 94% for 2B and 91% for 2C).

Views of the Panel

The two rounds of public consultation indicated that people are generally happy with the current eligibility criteria and allocation rules in the open 2LDs. Apart from the two issues set out below, in the absence of any evidence of policy failure or shortcoming, the Panel's view is that the status quo be maintained.

Domain name licence period

auDA's 2010 Names Policy Panel recommended that the fixed two year licence period be changed to a variable 1-5 year period (ie. registrants could choose to register their domain name for 1, 2, 3, 4 or 5 years). The current (2015) Panel was advised that the recommendation is currently on hold and is due to be considered by the auDA Board at the time of the next registry tender process (scheduled for 2017).

The Panel notes that the majority of respondents to its two public consultations supported changing from a fixed licence to a variable licence period, as it offers greater choice and flexibility for registrants and registrars alike. Accordingly, the Panel wishes to endorse the recommendation from the 2010 Panel and urges the auDA Board to proceed with implementation as part of the next registry tender process. The Panel notes that the domain name renewal window (currently 90 days prior to, and 30 days after, the expiry date) may also need to be changed to reflect the changes to the domain name licence period.

Business names registration

One of the eligibility criteria for com.au and net.au domain names is a registered business name and number. The Panel understands that when the Australian Securities and Investment Commission (ASIC) took over the registration of business names from the states and territories in 2012, the consequential changes to the format of business numbers caused some problems in relation to registrants whose business details are out-of-date and/or cannot be verified by the registrar.

The Panel's view is that a registered business name should continue to be accepted as an eligibility criterion for com.au and net.au domain names. Accordingly, auDA should implement whatever changes are necessary to reflect ASIC's business names registration system, with the proviso that there be no disadvantage to registrants. The Panel notes that implementation may also require AusRegistry to make changes to the registry database fields.

RECOMMENDATION 2A:

Subject to draft recommendations 2B and 2C below, the Panel recommends that the eligibility and allocation criteria for open 2LDs be retained in their current form.

RECOMMENDATION 2B:

The Panel recommends that the fixed two year licence period be changed to a variable 1-5 year period (ie. registrants could choose to register their domain name for 1, 2, 3, 4 or 5 years).

RECOMMENDATION 2C:

The Panel recommends that auDA and/or AusRegistry should make the appropriate changes to the policy and/or registry database fields to reflect the nationalised business names registration system, ensuring that there is no disadvantage to registrants.

3. Other 2LD policy rules

Should the policy rules relating to the reserved list and misspellings be changed? If yes, what changes should be made?

Current situation

In addition to the core domain name policy rules, two other auDA policies also govern the types of domain names that people can register in the open 2LDs:

- Reserved List Policy (2014-06) – prohibits the registration of words and phrases restricted under Commonwealth legislation, without requisite authorisation.
- Prohibition on Misspellings Policy (2008-09) – prohibits the registration of misspellings of entity, personal and brand names.

Issues

These policies raised very few issues for the Panel to consider, as they are almost universally supported in principle and have been working well in practice for a number of years. The Panel mostly focused its discussions on potential improvements to enforcement mechanisms, as opposed to the policies themselves.

Public consultation outcomes

Issues Paper

The Panel's Issues Paper invited general comments on both of the policies listed above. A majority of submissions and survey responses (approximately 60%) were supportive of retaining the policies, with people believing that they serve to discourage cybersquatting and help to protect the integrity of the .au space.

Draft Recommendations

The Panel's Draft Recommendations paper asked people if they agreed with the following draft recommendations:

3A: The Panel recommends that the Reserved List Policy be retained in its current form.

3B: The Panel recommends that the Prohibition on Misspellings Policy be retained, but that auDA should revise the audit list provisions to provide more flexibility in the way the policy is enforced.

As with draft recommendations 2A-2C, there was a high level of support for these draft recommendations among submissions and survey responses (80% for 3A and 86% for 3B).

Views of the Panel

Reserved List Policy

The Panel believes that the Reserved List Policy continues to be relevant and effective in maintaining the integrity of the .au domain space, and that it should be retained in its current form. This view is supported by the outcomes of both public consultations.

Prohibition on Misspellings Policy

The Panel believes that this policy serves a useful consumer protection purpose by discouraging typosquatting and misleading and deceptive behaviour. The Panel acknowledges comments that the policy also has the effect of providing free protection to many brand names, however it does not think that this detracts from the primary purpose of the policy.

Panel members were advised by auDA staff that the audit list provisions of the policy have become administratively burdensome, with over 2,000 names currently on the prohibited misspellings list requiring investigation whenever they are registered. Many of the names have been on the list for several years and are no longer recognisable brands within the meaning of the policy; this is particularly true of singular/plural versions of generic words. In light of this advice, the Panel's view is that whilst the overall policy and complaints-based mechanism should be retained, the audit provisions should be revised to give auDA more flexibility in the way it enforces the policy.

RECOMMENDATION 3A:

The Panel recommends that the Reserved List Policy be retained in its current form.

RECOMMENDATION 3B:

The Panel recommends that the Prohibition on Misspellings Policy be retained, but that auDA should revise the audit list provisions to provide more flexibility in the way the policy is enforced.

Glossary

Term	Definition
2LD	Second level domain, ie. a name at the second level of the .au domain name hierarchy (eg. com.au)
ABN	Australian Business Number
ACN	Australian Company Number
ASIC	Australian Securities and Investment Commission
auDA	.au Domain Administration Ltd, the administrator of the .au DNS
ccTLD	Country Code Top Level Domain (eg. .au for Australia, .nz for New Zealand)
DNS	Domain Name System
Domain monetisation	The practice of registering domain names in order to earn revenue from advertising
gTLD	Generic (or Global) Top Level Domain (eg. .com, .info, .sydney, .melbourne)
ICANN	Internet Corporation for Assigned Names and Numbers, the global DNS governing body
RBN	Registered Business Number
Registrant	An entity or individual that holds a domain name licence
Registrar	An entity that register domain names for registrants and is accredited by auDA
Registry operator	An entity that operates the central registry database of domain names
TLD	Top Level Domain

PROPOSED APPLICATION OF 2LD ELIGIBILITY AND ALLOCATION CRITERIA TO DIRECT REGISTRATIONS

The table below proposes a model by which the current eligibility and allocation criteria for the open 2LDs could be applied to direct registrations.

Note that the eligibility and allocation criteria for the closed 2LDs (edu.au and gov.au) would also need to be incorporated into this model, in consultation with the relevant bodies for those domain spaces.

NB: This model is for illustrative purposes only, to convey the Panel's intentions regarding the policy rules for direct registrations.

	Eligibility criteria – how is the registrant eligible for a name?	Allocation criteria – what name can the registrant have?
.au	<p>A registrant must be:</p> <ul style="list-style-type: none"> a) an Australian registered company; or b) trading under a registered business name in any Australian State or Territory; or c) an Australian partnership or sole trader; or d) a foreign company licensed to trade in Australia; or e) an owner of an Australian Registered Trade Mark; or f) an applicant for an Australian Registered Trade Mark; or g) an association incorporated in any Australian State or Territory; or h) an Australian commercial statutory body; or i) an association incorporated in any Australian State or Territory; or j) a political party registered with the Australian Electoral Commission; or k) a trade union or other organisation registered under the Fair Work (Registered Organisations) Act 2009; or l) a sporting or special interest club operating in Australia; or m) a charity operating in Australia, as defined in the registrant's 	<p>The domain name must be:</p> <ul style="list-style-type: none"> a) an exact match, abbreviation or acronym of the registrant's name or trademark; or b) otherwise closely and substantially connected to the registrant, in accordance with the categories: <ul style="list-style-type: none"> i. a product that the registrant manufactures or sells; or ii. a service that the registrant provides; iii. a program that the registrant administers; or iv. an event that the registrant organises or sponsors; or v. an activity that the registrant facilitates, teaches or trains; or vi. a venue that the registrant operates; or vii. a profession that the registrant's employees practise; or viii. a name that includes, or is derived from, one or more words of the registrant's personal name; or ix. a name by which the registrant is commonly known (ie. a nickname). <p>A domain name may be registered for the purpose of domain</p>

	<p>constitution or other documents of incorporation; or n) a non-profit organisation operating in Australia, as defined in the registrant’s constitution or other documents of incorporation; or o) an Australian citizen; or p) an Australian resident.</p> <p>Corporate registrant must provide an official identifier (ABN, ACN, RBN, ARBN, TM).</p> <p>Sporting/special interest club does not have to provide an official identifier (warranty-based).</p> <p>Individual registrant does not have to provide an official identifier, but sole trader registrant may choose to provide their ABN.</p>	<p>monetisation, provided that the following conditions are met: a) the content on the website to which the domain name resolves must be related specifically and predominantly to subject matter denoted by the domain name; and 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 was registered.</p> <p>A domain name may be registered if it refers to a personal interest or hobby of the registrant, but the domain name must not be, or incorporate, an entity name, personal name or brand name in existence at the time the domain name was registered.</p>
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The model is based on the Panel’s intended outcome that the rules for direct registrations should not be any more restrictive or exclusive than the rules for the open 2LDs – in other words, anyone who is eligible to register a domain name in the open 2LDs should also be eligible to register a domain name in .au, and they should be able to register the same type of name in .au which they would be able to register in the open 2LDs.

Notes re eligibility criteria:

- Corporate registrants would be required to provide an official identifier to prove their Australian identity, consistent with current practice in com.au/net.au and org.au/asn.au.
- Sporting/special interest club would not have to provide an official identifier (warranty-based), consistent with current practice in org.au/asn.au.
- Individual registrants would not have to provide an official identifier (warranty-based), consistent with current practice in id.au. Given that an individual who is an Australian citizen or resident is not required to provide an official identifier, it would be inconsistent to require an individual who is an Australian sole trader to provide their ABN. Industry experience suggests that individuals would choose to register under the warranty-based criteria rather than the evidentiary criteria. However, it is conceivable that some sole traders may want to associate their ABN with their domain name for business reasons, in which case they should be permitted to do so.

- The eligibility criteria for edu.au and gov.au would also need to be incorporated, in order to allow the registrants in those domain spaces equal access to direct registrations.

Notes re allocation criteria:

- All eligible registrants would be able to register a domain name that is an exact match, acronym or abbreviation of their name or trade mark, or under any category of close and substantial connection.
- All eligible registrants would be able to register a domain name for the purpose of domain monetisation, subject to conditions.
- All eligible registrants would be able to register a domain name that refers to a personal interest or hobby, subject to conditions.
- In practice, registrants would be able to register a very broad range of names under .au, but with some protections offered by the conditions on registering for domain monetisation or personal interest/hobby purposes.
- The allocation criteria for edu.au and gov.au would also need to be incorporated, although as their criteria are much more restrictive than the open 2LD criteria then it may be somewhat of a redundant issue.

MINORITY REPORT ON RECOMMENDATION 1A

The Minority Panel ('MP') has chosen to provide the auDA Board with an alternative recommendation on the issue of whether direct registration under .au should be permitted (Recommendation 1A).

The MP is composed of:

1. Philip Argy
2. Andrew Christie
3. Nicole Murdoch
4. Ned O'Meara

The MP strongly holds views that are contrary to the majority of the panel ('Majority') on most of the issues relating to Recommendation 1A. In particular, the MP considers that:

- the evidence offered in support of the recommendation is not persuasive on closer analysis and, when properly understood, is at best no more than equivocal
- the disadvantages of instituting the Majority's recommendation outweigh the advantages
- given the magnitude of the proposed change to the .au domain name space, an additional and more comprehensive process of consultation (especially targeting the domain name registrant ignorant of this policy development process) is warranted before acceptance of the recommendation
- the Panel's terms of reference should be modified by removing the bar on consideration of implementation issues, so that the problems which render the recommendation impractical are clearly exposed.

Review of the arguments in favour of the recommendation

Shorter is better

A primary argument in favour of the recommendation is that "shorter is better". The degree of shortening that the recommendation would achieve is at most four characters – ie. the three characters of the longest of the existing second-level identifiers (com, net, etc) and the dot preceding them. We do not consider shortness persuasive, especially given that the overwhelming majority of users now use search engines rather than direct entry of URLs. In addition, "shorter" potentially has a problem with acceptance and recognition. 86% of total current registrations are in com.au. Consumers and businesses are therefore used to com.au as the premier domain. It is commonplace, trusted and accepted. To introduce a shorter extension will potentially lead to confusion and conflict. The new registration statistics for .uk back this up.

More choice

While it may be true that adding direct registration would create a new pool of domain names, this will not provide more opportunities for people to register a domain name of their choice if the Majority's further recommendation is adopted to the effect that existing registrants in the third level be given some form of priority entitlement to take up the equivalent name in the second level without being forced to relinquish their current registration. If those existing registrants do not forgo their existing 3LD holdings, there will be no net increase in the availability of domain names for new registrants. Indeed the Panel consultation process suggested that the majority of existing registrants would feel compelled defensively to acquire or maintain an additional registration merely to protect their existing investment.

Adding value

The MP does not agree with the Majority that direct registration would “add value to all three main categories of users – vendors, registrants and ultimate users of the system”. If existing registrants are given a priority entitlement in the 2LD to their existing 3LD registrations, and are not required to forgo their 3LD registrations in the event that the entitlement is taken up, any added value will come at a high cost to demand side participants and represent a potential windfall to supply side participants without resultant public benefit.

Consistent with comparable ccTLDs

The Majority’s view that it is desirable for .au to become consistent with international practice is based primarily on changes made in the .uk and .nz ccTLDs. These ccTLDs are said to be “comparable”. We are not satisfied that those ccTLDs are relevantly comparable for the following reasons. First, the .nz ccTLD is largely unregulated, in that it does not have any eligibility requirements for registration. In particular, the .nz ccTLD neither requires a registrant to conform to the description of the “community of interest” for each of the unmoderated 2LDs (eg. it is not necessary to be a commercial entity to register in co.nz) nor to have any connection at all with New Zealand (ie. it is not necessary to be an entity operating, or individual living, in New Zealand to register in the .nz domain space). Similarly, the .uk ccTLD, unlike the .au ccTLD, does not apply meaningful eligibility requirements for registrations in the main 2LD (co.uk) and does not require registrants to be based or trading in, or otherwise connected with, the UK.

The MP sees no reason for .au to follow other ccTLDs when those ccTLDs do not appear to value the integrity and security that comes with a restrictive approach to permissible registrations. In our view the high reputation which .au enjoys would be jeopardised by a 2LD implementation which relaxes the existing eligibility and nexus requirements. To that extent we certainly agree with the Majority recommendation to maintain the existing rules.

Evidence in support of the recommendation

Survey responses and written submissions

We have misgivings about the outcome of the consultation processes of this Panel. It is true that the process leading to the Panel’s final report has “attracted an unprecedented level of public interest”. However, one large registrar group emailed its customer base soliciting a “yes” vote to the proposal contained in the August 2015 Draft Recommendations paper. It seems to us that a large proportion of the 4,495 responses to the online survey were a result of that “push polling” effort. We have discounted the survey results for that reason.

The survey responses to the April 2015 Issues Paper do not appear to have been influenced by similar activity. They show much more equivocal support for the recommendation. In particular, approximately one-third of respondents appeared to unconditionally support the recommendation, approximately one-third appeared to unconditionally oppose it, and the remainder appeared to support the recommendation only on the condition that their particular interests were protected or advanced by it. The “conditional” responses varied in terms of the conditions that were attached to their response. These conditions often conflicted – eg. some conditions required and others resisted priority entitlement to existing registrants; some required and others resisted adequate rights protection for trade mark owners; some required and others resisted strict eligibility requirements. A similar range of responses was observed in the written submissions to both the Issues Paper and the Draft Recommendations paper. Many remarks made by survey respondents display some lack of knowledge or understanding of the domain name system generally and the .au space in particular. Whilst we are not critical of those respondents, we think that the opinions they have expressed need to be treated with caution as they did not display sufficient insight into the consequences of the

proposed changes. We would have preferred to see a plebiscite of all .au registrants accompanied by a proper explanation of the direct registration proposal. The MP recommends that the auDA Board consider taking that step before adopting such a significant change to the .au space.

Experience in other ccTLDs

The most recent data (January to October 2015) for the .uk ccTLD show that new registrations in the 3LD are, month-by-month, consistently more than five times higher than in the 2LD. Under .nz the 2LD change appears to have been more popular, but the numbers are small. The MP suggests that it is too early to make a proper assessment of the experience in the .uk and .nz ccTLDs and, in any event, does not interpret the existing data as predictive of material demand for direct registrations in the .au ccTLD.

Disadvantages of instituting direct registration

The MP foresees a number of disadvantages of instituting direct registration. Prime among these are that it would devalue the logic and integrity of the existing .au ccTLD structure, would increase the potential for consumer confusion and for misleading behaviour by competitors, and would require complex, costly and ineffective implementation processes.

Devalues logic and integrity of existing .au ccTLD structure

Currently, the .au ccTLD has a relatively clear and meaningful logic. Through a combination of reasonably strict eligibility requirements and allocation criteria, the .au domain space has been able to proudly claim “it does what it says on the box”. That is to say, a consumer can reasonably safely assume that a domain name in the .com or .net 2LD is held by a commercially entity, while one in the org.au or asn.au 2LD is held by a not-for-profit entity, and one in the id.au 2LD is held by an individual. With direct registrations it will no longer be as clear what the label on the “box” is “saying”. In particular, there will be no cue as to whether the registrant of a 2LD .au domain name is a commercial entity, a not-for-profit entity, an individual, or something else altogether. The MP believes the logic and integrity of the .au ccTLD is valuable and should not be jeopardised by direct registration.

Increases potential for consumer confusion and misleading behaviour

Due to the understanding of the logic and integrity of the .au ccTLD that has developed over time, consumers have become accustomed to registrations being in the 3LD. The MP is concerned with the potential for significant consumer confusion should registrations in the 2LD be permitted. For example, if registrations such as health.au, police.au and government.au were permitted to be registered without restriction significant consumer harm could result. In order to prevent such harm extensive regulatory oversight by auDA may be required with the need for a difficult-to-formulate policy more sophisticated than the current Reserved List approach. The Majority’s recommendation to expand the Reserved List recognises this real likelihood.

Separately, there is significant potential for commercial entities to engage in misleading behaviour directed against competitors. Such behaviour includes paradigmatic “cybersquatting” (registering in the 2LD a domain name that is identical or confusingly similar to an entity’s name or trade mark) through to more subtle free-riding (such as registering in the 2LD a domain name identical or confusingly similar to a competitor’s 3LD domain name – eg. registering cairnstravel.au to free-ride off the reputation of a competitor using cairnstravel.com.au). We agree with the Majority that the auDRP should of course be extended to any direct registration regime, but at the 2LD it is much more difficult to make out the limited grounds for relief. For example, descriptive domain names, such as cairnstravel.com.au, are unlikely to constitute trade marks and may not be the registrant’s corporate name.

Complex, costly and ineffective implementation

The Majority recommends that the existing policy rules for 3LD registrations should be maintained and applied to registrations in the 2LD. A possible framework for doing so is set out in Attachment A in respect of a limited number of 2LDs. It does not, for example, take account of the policy rules for the 2LDs gov.au and edu.au. As Attachment A demonstrates, implementing direct registration involves significant complexity. The Majority also recommends some form of priority entitlement for existing registrants, a process for withholding or excluding strings that could form new 2LDs, and an expansion of the Reserved List.

We are not persuaded that auDA's existing policies can easily be adapted or applied to direct registrations under .au. Indeed we fear that attempts to do so will prove either too costly or not feasible at all.

Additional process of consultation warranted

The MP regards the .au domain space as a public good, like the radio spectrum. It believes this space must be allocated fairly and efficiently, and that important changes to the allocation rules should occur only after a process that is reasonably exhaustive and rigorous. For such a fundamental change as direct registration to be considered by the auDA Board the MP recommends a supplementary consultation process, which should include an independently conducted survey of a representative sample of all .au domain name registrants (of which there are approx. 1,700,000, holding approx. 3,000,000 domain names), and a more detailed engagement with consumer and government constituencies for whom the Panel's deliberations were not conspicuous. The MP believe that the consideration of the proposed eligibility and allocation criteria should not be separated from the question of opening the 2LD. Thus, potential respondents should be provided with a sufficient explanation of the current and proposed eligibility and allocation criteria to ensure that their responses are informed by a more complete understanding of the .au space and what rules would apply if the 2LD was opened.

The MP feels that the Panel's terms of reference for this supplementary consultation should not include a bar on consideration of implementation issues. By requiring the Panel not to consider the practical consequences of the implementation of its recommendations, we feel that the cost and practicalities of implementation that might militate against direct registrations has remained hidden. We commend our alternative views to the auDA Board.