

December 2020

# Explanatory Guide

## .au Domain Administration Rules – Licensing



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## Introduction

The .au Domain Administration Limited (auDA) decision to implement domain licences at the second level provided an opportunity to review, reform and consolidate the existing auDA Published Policies into a single uniform licensing scheme that would apply to all namespaces within the .au domain, with the exception of the gov.au and csiro.au namespaces.<sup>1</sup> A uniform licensing scheme provides benefits to the Australian community as it reduces administrative burden on registrants who hold licences in more than one namespace, as they no longer need to comply with different registration rules and makes it easier for persons wanting to register a domain name in a namespace within the .au domain.

The .au Domain Administration Rules – Licensing (‘the Licensing Rules’) consolidate and update more than 30 auDA Published Policies dealing with registrant obligations and the complaints process into a single document. The Licensing Rules also incorporate several rule changes or new rules, which are derived from the policy reform recommendations of the 2017 Policy Review Panel or auDA management.<sup>2</sup> These rule changes, include among others:

- (1) eligibility rules for the .au namespace;
- (2) changes to the use of the State and Territory namespaces to include Peak State and Territory bodies;
- (3) the use of internationalised domain names in the .au namespace;
- (4) the omission of the Domain Monetisation test for com.au and net.au namespaces;
- (5) a new prohibition on sub-leasing, renting or otherwise allowing another party to use a licence, except where the Person is a related body corporate;
- (6) a public interest test to deal with government requests; and
- (7) a new suspension power to provide a more proportionate response to non-compliance with the Licencing Rules.

These changes are necessary to ensure that the .au domain is responsive to the changing demands of the Australian economy and community.

This explanatory guide provides:

- (1) a brief overview of the policy reform process; and

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<sup>1</sup> Ibid, Rec 1.

<sup>2</sup> Policy Review Panel, [Final Report: Recommendations to the auDA Board: reform of Existing Policies & Implementation of Direct Registration](#) (25 March 2019); *auDA Management Response: 2017 Policy Review Panel Final Report and Recommendation* (11 April 2019).



- (2) an explanation as to where the rule is derived from (Published Policies, 2017 Policy Review Panel recommendation) or a policy rationale for where the rule is new.

**This explanatory guide is for information purposes only, and is not intended as legal advice, an interpretation of the rules or an indication of .au Domain Administration Limited enforcement or compliance policy.**

This explanatory guide should be read in conjunction with the [PRP Final Report](#), [auDA Management Response](#) and the [Licensing Rules](#).

## Background

### .au Domain Administration Ltd

.au Domain Administration Limited (auDA) is the administrator and policy body for the .au country code Top Level Domain (ccTLD). auDA administers the .au ccTLD under a sponsorship agreement with the Internet Corporation for Assigned Names and Numbers (ICANN) and the Australian Government Terms of Endorsement (TOE).<sup>3</sup> The Australian Government TOE require auDA to administer the .au ccTLD in the public interest and to perform the core functions, of among others:

- ensure stable, secure and reliable operation of the .au domain space
- respond quickly to matters that compromise DNS security
- promote principles of competition, fair trading and consumer protection
- operate as a fully self-funding and not-for-profit organisation
- establish appropriate dispute resolution mechanisms.

auDA as a company limited by guarantee is also governed by its [corporate constitution](#), which sets out the objects of the company as, among others:

- to maintain and promote the operational stability and utility of the .au ccTLD and more generally, the internet's unique identifier system, and to enhance the benefits of the internet to the wider community
- develop and establish a policy framework for the development and administration of the .au ccTLD
- to establish appropriate complaints handling and dispute resolution processes to provide for conciliation or redress of grievances on matters associated with the administration of the .au ccTLD.

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<sup>3</sup> Commonwealth of Australia, Department of Communications and the Arts, [Review of .au Domain Administration. Terms of Endorsement \(18 April 2018\)](#).



The development of policies for the .au ccTLD is governed by the principles and processes set out in the [Corporate Policy: Process for the Development and Review of the auDA Published Policies](#).

## 2017 Policy Review Panel

In September 2017, the auDA Board established the Policy Review Panel (PRP) to examine and make recommendations on the consolidation and reform of the auDA Published Policies and to develop an implementation model for the introduction of registration of domain names at the second level (direct registration).<sup>4</sup> The PRP undertook a program of public consultation, which involved the release of discussion papers, stakeholder written submissions, surveys and forums. Further information on the PRP consultation process can be found on the [Policy Review Panel webpage](#).<sup>5</sup>

On 25 March 2019, the PRP submitted its Final Report on recommendations for the reform of the auDA Published Policies and an implementation model for the registrations at the second level ('direct registration') (PRP Final Report).<sup>6</sup> The PRP made a total of 25 recommendations, with 21 recommendations relating to policy reform and four recommendations on the implementation of second level domain name registrations. The PRP noted that auDA was responsible for updating and consolidating the auDA Published policies relating to Registrants.<sup>7</sup>

## Licensing Rules

On 15 April 2019, auDA Management provided a response to the PRP Final Report to the auDA Board and draft .au Domain Administration Rules –Licensing ('the Licensing Rules'). The auDA Management response set out:

- which PRP recommendations had been implemented in part or whole in the Licensing Rules;
- reasons for not implementing some of the PRP recommendations; and
- the rationale for the inclusion of new policy rules.<sup>8</sup>

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<sup>4</sup> 2017 Policy Review Panel Terms of Reference <<https://www.ada.org.au/policies/panels-and-committees/2017-policy-review-panel/2017-policy-review-panel-tor/>>

<sup>5</sup> Further information on the PRP can be found at <<https://www.ada.org.au/policies/panels-and-committees/2017-policy-review-panel/>>

<sup>6</sup> Policy Review Panel, [Final Report: Recommendations to the auDA Board: reform of Existing Policies & Implementation of Direct Registration](#) (25 March 2019).

<sup>7</sup> Policy Review Panel, [Minutes of the meeting of 9 August 2018](#), [1.4.1]; [Policy Review Panel, Minutes of the meeting of 10 September 2019](#), [2.4].

<sup>8</sup> [auDA Management Response: 2017 Policy Review Panel Final Report and Recommendations](#). A copy of the report is available here <<https://ada-corp-web-s3.s3.ap-southeast-2.amazonaws.com/prod/public/2020-12/2017prpauDA-Management-Report-PRP-Recommendations-Final.pdf>>



The PRP Final Report, auDA Management response and draft Licensing Rules were released for public consultation. Following the outcome of this consultation process,<sup>9</sup> the auDA Board approved the Licensing Rules subject to the following conditions:

- further consultation on the Public Interest test under paragraph 2.17; and
- the removal of allocation rules for the com.au and net.au namespaces.

On 5 August 2019, the then Department of Communications and the Arts requested that auDA undertake further public consultation on the proposed changes to the Licensing Rules before they are adopted, in particular the removal of the allocation rules for the com.au and net.au namespaces.<sup>10</sup>

The auDA Board in [a letter](#) dated 19 August 2019 to the then Department of Communications and the Arts agreed to reinstate the allocation rules for com.au and net.au namespaces and undertake a further 12 weeks of public consultation on the Licensing Rules.<sup>11</sup>

auDA amended the Licensing Rules to take into consideration feedback from the public consultation forums, registrars and Australian and State and Territory Government agencies. Amendments to the Licensing Rules, include:

- clarification of the operation of the Public Interest Test
- refining the definition of an Australian Trade Mark to be consistent with the trade mark classification system used by IP Australia
- a new definition of match to enable Persons to register a domain that is a partial match to a Person's name, business name or company name and an Australian Trade Mark where that trade mark is not being used to establish an Australian Presence.

At its meeting on 26 February 2020 and 1 July 2020, the auDA Board approved amendments to the Licensing Rules, and set a commencement date for the Licensing

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<sup>9</sup> *Report to auDA Board on the consultation phase covering the management response to the Policy Review Panel's report on policy reform and direct registration.* A copy of the report is available at <[https://auda-corp-web-s3.s3.ap-southeast-2.amazonaws.com/prod/public/2020-12/2017prpauDA-Report-on-Public-Consultation-20-May-2019.pdf?9KGUvdu\\_hbZmfGAQGL5\\_TzF6Uv3wZuSN=](https://auda-corp-web-s3.s3.ap-southeast-2.amazonaws.com/prod/public/2020-12/2017prpauDA-Report-on-Public-Consultation-20-May-2019.pdf?9KGUvdu_hbZmfGAQGL5_TzF6Uv3wZuSN=)>

<sup>10</sup> Department of Communications and the Arts letter to .au Domain Administration (5 August) <[>](https://auda-corp-web-s3.s3.ap-southeast-2.amazonaws.com/prod/public/2020-12/DOCA-letter-to-Ms-S-Ewart-5.8.19.pdf?yvKUUDN4re0tsEx6vRVo1GNQy8CX5Fjp=)

<sup>11</sup> .au Domain Administration Limited letter to the Department of Communications and the Arts (19 August 2019) [https://auda-corp-web-s3.s3.ap-southeast-2.amazonaws.com/prod/public/2020-12/2017prpauDA-DOCA-letter-19Aug2019.pdf?hr32qIIPC4CHneIhIAymwVZ\\_CK9nKTWv=](https://auda-corp-web-s3.s3.ap-southeast-2.amazonaws.com/prod/public/2020-12/2017prpauDA-DOCA-letter-19Aug2019.pdf?hr32qIIPC4CHneIhIAymwVZ_CK9nKTWv=)



Rules, with the exception of rules relating to the .au namespace, id.au namespace and Internationalised Domain Names (IDNs).

## LICENSING RULES

### PART 1: INTRODUCTION

#### *Paragraphs 1.1.1 to 1.1.3*

These paragraphs establish the contractual framework under which .au Domain Administration has the power to impose and enforce the Licencing Rules.

.au Domain Administration derives its power to perform its functions from:

- (a) the Internet Corporation for Assigned Names and Number's (ICANN) delegation of the .au ccTLD to .au Domain Administration; and
- (b) the Australian Government's endorsement of .au Domain Administration to administer the .au ccTLD dated 18 April 2018.

.au Domain Administration, as the administrator for the .au ccTLD, imposes and enforces its policies through contractual arrangements between .au Domain Administration and the Registrar (Registrar Agreement), and between the Registrar and Registrant (Licence Agreement).

.au Domain Administration is a company limited by guarantee and is governed by its corporate Constitution.

### 1.2 COMMENCEMENT

#### *Paragraphs 1.2.1 to 1.2.3*

The auDA Board has the flexibility and control over when to commence the Licensing Rules for:

- edu.au, com.au, net.au, org.au, asn.au, id.au and State and Territory namespaces
- .au namespace; and
- Internationalised Domain Names ('IDNs').

This allows the Board to set commencement dates for different rules and namespaces to allow for administrative work to be completed before commencement, minimise consumer and public confusion caused by multiple rule changes and ameliorate any disadvantage that may arise for a class of registrants should the Rules commence at



the same time. For example, the Board may decide to delay the commencement of the id.au namespace rules until the introduction of the .au namespace. If this was to occur, then domain name registration in the id.au namespace would be subject to Schedule D of [Domain Name Eligibility and Allocation Policy Rules for Open 2LDs \(2012-04\)](#).

### 1.3 OBJECTS

#### *Paragraph 1.3.1*

The objects set out the key principles that underpin the licencing scheme for the .au ccTLD. The key principles provide a coherent policy framework in which the Licencing Rules should be interpreted and applied. These principles are drawn from:

- (1) clause 1.2 of the Constitution of .au Domain Administration Limited;
- (2) Australian Government Terms of Endorsement dated 18 April 2018;
- (3) paragraphs 2.1 and 2.3 of the *Domain Name Eligibility and Allocation Policy Rules for Open 2LDs (2012-04)*; and
- (4) Principles of Good Regulation.<sup>12</sup>

The objects are augmented by the key principles under paragraph 3.1 of the Licencing Rules relating to the complaints process.

### 1.4 DEFINITIONS

The definitions define key terms that are used in the Licencing Rules. The Licencing Rules retain definitions which are used consistently across the auDA Published Policies, Registrar Agreement and Registry Licence Agreement.

New definitions were added to clarify concepts and shorten the Licencing Rules by reducing the repetition of explanatory text. Some of these definitions are set out below:

*Acronym* means an abbreviation formed from the initial letters of other words. This definition consolidates paragraph 9.1 of the *Guidelines on the Interpretation of Policy Rules for Open 2LDS (2012-05)*.

*Australian presence* is defined by an exhaustive list of the legal arrangements and natural persons that are deemed to have an Australian Presence. The list is drawn from Schedules B to F of the *Domain Name Eligibility and Allocation Policy Rules for Open 2LDs (2012-04)*. This definition gives effect to recommendations 2 and 3 of the PRP Final Report.<sup>13</sup> The PRP also recommended that a person be able to satisfy the Australian

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<sup>12</sup> Frieberg, Arie, *Regulation in Australia* (2017, Federation Press) 165-168.

<sup>13</sup> Policy Review Panel, [Final Report: Recommendations to the auDA Board: reform of Existing Policies & Implementation of Direct Registration](#) (25 March 2019), 8.



presence requirement where they have a pending application for or a registered Australian trade mark. That person would be limited to registering a domain name that is an exact match to the words the subject matter of the trade mark.<sup>14</sup>

*Commercial entity* sets out an exhaustive list of Persons that may apply for a licence in the com.au and net.au namespaces. The list incorporates Schedule C and E of the *Domain Name Eligibility and Allocation Policy Rules for Open 2LDs (2012-04)*.

*Domain Name Monetisation* clarifies and consolidates paragraph 11 of the *Guidelines on the Interpretation of Policy Rules for the Open 2LDs (2012-05)*.

*Internationalised Domain Name* are defined using the definition in the ICANN Acronym and Terms Glossary.

*Licence* clarifies that .au Domain Administration licences the use of the Domain Name System (DNS), and not the actual domain name. A person is free to choose any available name, subject to satisfying any eligibility or allocation criteria. The licence is a personal contractual right and not a property right.

*Licence Agreement* replaces Registrant Agreement to further clarify that it is a contract for a licence that a person has entered into with a Registrar.

*Not for Profit entity* sets out an exhaustive list of corporate bodies and other legal arrangements that are eligible to apply for and be issued a licence in the org.au namespace. It incorporates and updates Schedule F of the *Domain Name Eligibility and Allocation Policy Rules for Open 2LDs (2012-04)*. For example, Schedule F, paragraph 1(b) of the *Domain Name Eligibility and Allocation Policy Rules for Open 2LDs (2012-04)* only specifies a political party registered with the Australian Electoral Commission and not State and Territory Political Parties registered with the relevant State or Territory Electoral body.

*Person* is defined by reference to an expanded but exhaustive list of natural and legal persons. This replaces the list at paragraph 5 of the *Guidelines on the interpretation of Policy Rules for Open 2LDS (2012-05)*.

*State and Territory Group* is used to expand the categories of groups eligible to apply for a licence in a State or Territory namespace to include peak State or Territory community service, sporting, recreational or cultural bodies. This will enable peak State bodies such as Carers NSW to apply for carers.nsw.au.

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<sup>14</sup> Policy Review Panel, [Final Report: Recommendations to the auDA Board: reform of Existing Policies & Implementation of Direct Registration](#) (25 March 2019),<sup>7</sup>



*Service* is defined by a non-exhaustive list of services, which are illustrative of the types of services captured by the domain name allocation rule in the com.au, net.au, org.au and asn.au namespaces, which requires that a domain name 'is an match or synonym of the name of a service that a person provides,' at the time of application. This definition is broad enough to capture online information and directory services often associated with domain monetisation. See recommendation 8 of the PRP Final Report.

## **PART 2: LICENCES**

### **2.1 OVERVIEW**

The overview sets out the subject matter dealt with under this Part.

### **2.2 APPLICATION**

#### *Paragraph 2.2.1*

The requirement for a Person to use the Registrar's form to make an application for a licence retains paragraph 3.1 of the *Guidelines on the Interpretation of Policy Rules for Open 2LDs (2012-05)*.

#### *Paragraph 2.2.2*

A Person must provide certain information when making an application for a licence and agree to the licence terms and conditions and pay the licence fee. This paragraph consolidates and refines existing requirements under:

- (1) requirement to be a Person – paragraph 5 of the *Guidelines on the Interpretation of Policy Rules for Open 2LDs (2012-05)*;
- (2) legal name - Schedule A of the *WHOIS Policy (2014-07)*
- (3) contact details for the Person – Schedule A of the *WHOIS Policy (2014-07)*.
- (4) administrative and technical contacts – Schedule A of the *WHOIS Policy (2014-07)*;
- (5) evidence that a Person satisfies the Australian presence requirement and any applicable eligibility and allocation criteria – paragraphs 4.2, 4.3 and paragraph 2 of Schedule A of the *Domain Name Eligibility and Allocation Rules for the Open 2LDs (2012-05)* and paragraphs 3.1 and 6.1 of the *Guidelines on the interpretation of Policy Rules for Open 2LDs (2012-05)*;
- (6) domain name applied for – paragraph 4 of the *Guidelines on the interpretation of Policy Rules for Open 2LDs (2012-05)*;
- (7) licence period applied for – paragraph 4 of Schedule A of the *Domain Name Eligibility and Allocation Rules for the Open 2LDs (2012-05)*; and paragraph 4.6 of the *.au Domain Name Suppliers' Code of Practice (2004-04)*; and



- (8) agree to the licence terms and conditions – *Mandatory Terms and Conditions Applying to .au Domain Name Licences (2008-07)*.

### *Paragraph 2.2.3*

A Person is prohibited from using a privacy or proxy service to hide the identity of the Person holding a licence in the .au ccTLD. A Person is not permitted to disguise their identity as a consumer should be able to identify the Person with whom they are transacting, and if necessary, to hold that Person accountable under Australian law. The prohibition is based on subparagraph 2.4(b) of the *Registrant Contact Information Policy (2010-07)* which states that a Person must not do anything “which may have the effect of concealing the true identity of the registrant or registrant contact (e.g. by using a private or proxy registration service).”

## Agents

### *Paragraphs 2.2.4 to 2.2.6*

A Person may use an agent to apply for a licence on their behalf. Many businesses and individuals use agency arrangements to outsource their Intellectual Property management, IT, web-development and hosting, including the registration and renewal of licences for domain names.

An agent must ensure that the Person on whose behalf they are applying for or renewing a licence is recorded as the Registrant in the Registry data. This prevents a Person using an agency arrangement to:

- (1) disguise the identity of the Person, especially a Person who would not be eligible for a licence in the .au domain; and
- (2) reduce disputes between agents and a Person over who holds the licence.

Agents need to have the requisite authority of the Person before they apply for a licence on that Person’s behalf, otherwise the Licence Agreement may be void. An agent will need to warrant that they have the requisite authority to enter into a Licence Agreement on behalf of a Person and bind that Person to the terms and conditions. This rule is drawn from paragraph 12 of the *2015-09 edu.au Mandatory Terms and Conditions Policy*.

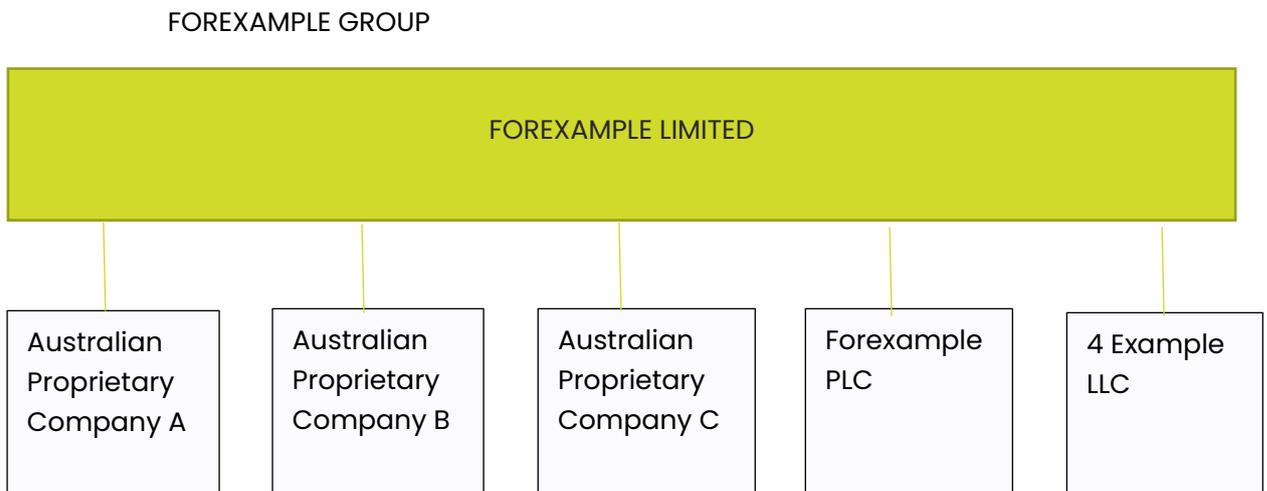
A Registrar is not permitted to act as an agent for a Person making an application. A Registrar is the gatekeeper for the integrity of the .au domain. A Registrar acting as an agent for a Person may give rise to a conflict of interest with their obligation to verify the Person’s identity and eligibility for a licence under the Registrar Agreement.



## Related Body Corporates

*Paragraphs 2.2.8 and 2.2.9*

Large corporate groups often use a holding company or a subsidiary to control assets, including licences for domain names. In 2016-17, there were 1,470 large Australian corporate groups representing 27,500 active companies, with an annual turnover of \$1.8 trillion.<sup>15</sup> The related body corporate rule enables a company within a corporate group to apply for and hold a licence on behalf of an Australian subsidiary or holding company.



**Diagram 1:** Forexample Group of Companies

Diagram 1 illustrates a corporate group structure. The related body corporate rule would allow Forexample Limited (holding company) to hold licences on behalf of Australian Company A, Australian Company B and Australian Company C. Forexample Limited would not be permitted to hold licences on behalf of its foreign subsidiaries, Forexample PLC and 4 Example LLC, as they do not satisfy the Australian presence requirement.

The eligibility and allocation rules for a licence in the com.au and net.au namespaces have been expanded to enable a Person to register a domain name that is an match to the name of a related body corporate.

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<sup>15</sup> Australian Taxation Office, Demographics of large corporate groups , <https://www.ato.gov.au/General/Tax-and-Corporate-Australia/In-detail/Demographics-of-large-corporate-groups/> (21/03/2019). See the QANTM Group as an example of a corporate structure <<http://qantmip.com/about-qantm/qantm-group/>.



A related body corporate is defined by reference to section 50 of the *Corporations Act 2001* (Cth).

A Registrar may not apply for a licence on behalf of a related body corporate as this may give rise to a conflict of interest.

## 2.3 DECISION TO ISSUE A LICENCE

### *Paragraph 2.3.1*

.au Domain Administration will issue a licence, where the Registrar is satisfied that the Person's identity has been validated and the Person is eligible to be allocated a licence with that domain name in the relevant namespace. The requirement for a Registrar to be satisfied as to the matters in subparagraphs (1) to (7) reflects that the Registrar is best placed to assess the application before the information is entered in the Registry data. This requirement replicates paragraphs 5 and 6 of the *Guidelines on the Interpretation of Policy Rules for Open 2LDs* (2012-05) and 4.2 of the *Domain Name Eligibility and Allocation Rules for the Open 2LDs* (2012-04).

### *Paragraphs 2.3.2 and 2.3.3*

A licence will be issued on a first come, first served basis. The first Person that submits their application to the Registry will be allowed to register that domain name, subject to satisfying any eligibility and allocation criteria. The date and time of receipt by the Registry of that application will be the sole reference point. This paragraph incorporates paragraph 2.3 of the *Domain Name Eligibility and Allocation Rules for the Open 2LDs* (2012-04).

A Person who is issued with a licence to use the DNS with a domain name does not own that domain name. This is a fundamental principle that underpins the licencing system in the .au domain. See paragraph 2.1 of the *Domain Name Eligibility and Allocation Policy Rules for Open 2LDs* (2012-04).

## 2.4 ELIGIBILITY AND ALLOCATION CRITERIA

### *Paragraphs 2.4.1 to 2.4.2*

The threshold requirement for holding a licence in any namespace in the .au domain is an Australian presence. This reflects the existing requirements for registrants to be Australian under paragraph 2 of Schedule A of the *Domain Name Eligibility and Allocation Policy Rules for Open 2LDs* (2012-04). However, as the PRP noted the existing mechanism for defining 'Australian' by reference to exhaustive lists of entities and arrangements is unwieldy, as the requirement is not expressed in the same way across



the different namespaces.<sup>16</sup> The definition of Australian presence in Part 1.4 of these Licensing Rules implements recommendations 2 and 3 of the PRP Final Report.

A Person with an Australian presence must also satisfy any eligibility and allocation criteria for the relevant namespace. These Licensing Rules preserve the special purpose namespaces (com.au, net.au, org.au, asn.au and id.au) for use by certain Persons. For example, the org.au namespace is reserved for use by not for profit entities and the edu.au namespace for educational institutions. See Schedule B of the *Eligibility and Allocation Policy Rules for Open 2LDS (2012-04)* and Schedule 1 of the *2016-02 edu.au Registration Policy*.

### **.au namespace**

#### *Paragraph 2.4.3*

A Person who has an Australian presence may apply for a licence with any domain name on a first come, first served basis, subject to availability. There are no allocation rules for domain names in the .au namespace, with the sole exception of reserved names under paragraph 2.6 of these Licensing Rules. This implements recommendation 23 of the PRP Final Report.

The rationale for dispensing with allocation rules is that it provides Australians with the opportunity to shape and develop the usefulness of this namespace to meet their needs in a rapidly evolving economy and digital environment. The PRP noted that the utility of the .au namespace requires that it provides ‘something more’ than that offered by the existing namespaces and it should not replicate ‘existing functionality.’<sup>17</sup> The .au namespace could be used by:

- (1) an entrepreneur who wants an online presence to market test their services or products but does not yet want to establish a commercial entity for a com.au licence.
- (2) a political candidate that wants to use their own name or a slogan to run an election campaign. Political candidates wanting to use their own name need to register their name as a business name to be eligible for a com.au licence or apply for a licence in the id.au namespace.
- (3) the Australian courts or Parliament who may want a digital presence to signify their separation from the executive arm of government, such as HighCourt.au or Parliament.au.

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<sup>16</sup> Policy Review Panel, *Final Report: Recommendations to the auDA Board: reform of Existing Policies & Implementation of Direct Registration* (25 March 2019), 7.

<sup>17</sup> Policy Review Panel, *Registrant Policy: Enabling Australia's Digital Economy and Society* (January 2018), 14.



- (4) a person who wants to provide information or to blog about a social issue and this does not meet the definition of a hobby under the allocation rules for the id.au namespace.
- (5) Government and Community Services that want to run a short-term campaign about a social, health or emergency issue.

The .au namespace also provides scope for Persons that hold a licence in a third level namespace to utilise the namespaces for different purposes. A company may choose to use a com.au licence for the company website and email address, and the .au namespace for product launches.

A Person's right to apply for and hold a licence with any domain name is not absolute. A Person's right to use a licence with that domain name may be challenged by another party under Australian law. A Person who believes that a Registrant has registered a licence with a domain name with the intention of trading off that Person's business reputation and goodwill may bring an action against the Registrant under the *.au Dispute Resolution Policy* (2016-01) or in a court.<sup>18</sup>

The .au namespace rule gives effect to paragraph 3.1 of Annexure E (Draft Direct Registration Policy) of the *auDA Policy Review Panel, Public Consultation Paper: Reform of Existing Policies & Implementation of Direct Registration*.

### com.au and net.au

#### *Paragraph 2.4.4*

A Person who is a 'commercial entity' may apply for a licence in the com.au and the net.au namespaces. The definition of commercial entity incorporates and updates the list of Persons at paragraph 1 of Schedule C and E of the *Domain Name Eligibility and Allocation Policy Rules for Open 2LDs* (2012-04). For example, the reference to 'trading under a business name in any State and Territory' has been updated to refer to 'an entity or natural Person issued with an Australian Business Number under the *A New Tax System (Australian Business Number) Act 1999* (Cth).' The list has also been expanded to include trading cooperatives and incorporated limited partnerships under State or Territory legislation.

#### *Allocation Rules*

The PRP argued that it was necessary to differentiate the .au namespace from the existing namespaces to maximise the utility of and to preserve and strengthen the

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<sup>18</sup> Policy Review Panel, *Final Report: Recommendations to the auDA Board: reform of Existing Policies & Implementation of Direct Registration* (25 March 2019), 28.



integrity of and trust in the existing namespaces. The PRP recommended tightening the allocation rules for the com.au and net.au namespaces and removing domain name monetisation as a basis for satisfying the close and substantial connection rule.<sup>19</sup>

The match or acronym of a Registrant's name under paragraph 2 of Schedule C and E of the *Domain Name Eligibility and Allocation Policy Rules for Open 2LDs* (2012-04) has been expanded to include a related body corporate, partnership and trust. This reflects that there may be no direct relationship between the name of the Person making an application for a licence and the domain name being applied for.

The allocation rules retain the categories of close and substantial connection under paragraph 10.5 of the *Guidelines on the Interpretation of Policy Rules for Open 2LDs* (2012-05), with the exception that the term 'products' has been replaced with 'goods' to make it consistent with the operation of the Australian Consumer Law. The definition of service is broad enough to encompass online directories and information services. This implements recommendation 8 of the PRP Final Report.

The nexus between a domain name and a category of close and substantial connection has been clarified and expanded to include a match to, and a synonym of, the name of a service, good, event, activity or premise. This new rule is less restrictive than the 'connected' requirement under paragraph 10.1 of the *Guidelines on the Interpretation of Policy Rules for Open 2LDs* (2012-05), as a synonym provides a broader range of words and descriptive phrases that may be used as a domain name. A synonym is also an objective test, as the substitutability of names can be determined by reference to the *Oxford Australian Dictionary* or the *Oxford Australian Thesaurus*. For example, a Person who provides gardening services could use landscaping, floriculture, groundskeeping and horticulture as a domain name.

The allocation rules for domain monetisation under paragraph 11 of the *Guidelines on the Interpretation of Policy Rules for Open 2LDs* (2012-05) have not been retained. A Person may apply for a licence for investment purposes provided they satisfy the eligibility and allocation rules for the com.au and net.au namespaces. It should be noted the definition of services under paragraph 1.4 of the Licencing Rules is sufficiently broad to capture online directories and informational services.

#### *Paragraph 2.4.5*

A Person who relies on an Australian trade mark to establish an Australian presence will only be permitted to register a domain name that is an exact match to the words which are the subject matter of the Australian trade mark. The definition of exact match in

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<sup>19</sup> Policy Review Panel, [Final Report: Recommendations to the auDA Board: reform of Existing Policies & Implementation of Direct Registration \(25 March 2019\) 12](#).



paragraph 1.4 of the Licensing Rules means that the domain name must be identical to and include all words in the order in which they appear in the Australian trade mark, excluding among others, DNS identifiers and articles such as ‘the’. For example, if .au Domain Administration relied on its trademark (Fig2) to establish an Australian presence, it may only apply to register `auauhqhomeofeverything.com.au`.

This rule is a departure from the existing trade mark policy, which permits an applicant for or owner of an Australian trade mark to register multiple domain names on the basis of a single trade mark application under the close and substantial connection rule.<sup>20</sup> For example, .au Domain Administration could register the following domain names based on its Australian trade mark number 1856158 (Fig 2), among others, `au.com.au`, `auHQ.com.au`, [home.com.au](http://home.com.au), `everything.com.au`, `aahe.com.au`, `domain.com.au`, `compliance.com.au`, `registry.com.au`, `auDA.com.au`, `policies.com.au`; `publishedpolicies.com.au`, `transfers.com.au` and `password.com.au`

The PRP argued that the existing rule may undermine consumer confidence in the .au domain as there is an expectation that the registrant has an Australian connection and there is a relationship between the domain name and the registrant. The PRP recommended that this loophole be closed by only permitting foreign entities to register a domain name that was an exact match to their trademark.<sup>21</sup>

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<sup>20</sup> Sub-paragraphs 1(e) and (f) of Schedules C & E of the *Domain Name Eligibility and Allocation Policy Rules for open 2LDs (2012-05)*, which permit a Person to register domain names that are a partial match, acronym or abbreviation of the Person’s trade mark or otherwise closely and substantially connected to the registrant.

<sup>21</sup> Policy Review Panel, [Final Report: Recommendations to the auDA Board: reform of Existing Policies & Implementation of Direct Registration](#) (25 March 2019), 7



<p>Number <b>1856158</b></p> <p>Words <b>AU AUHQ THE HOME OF EVERYTHING.AU</b></p> <p>Image description <b>DROP &amp; ENDLESS-BELT, INCOMPLETE ARE LTRS AU</b></p> <p>Status ● <b>Registered:</b> <b>Registered/protected</b></p> <p>Priority date <b>30 Jun 2017 (Convention)</b></p> <p>Classes <b>9, 16, 35, 38, 41, 42, 45</b></p> <p>Kind <b>Figurative</b></p>		<p><b>Dates</b></p> <table border="0"> <tr><td>Renewal due</td><td><b>03 Jul 2027</b></td></tr> <tr><td>Registration advertised</td><td>02 Jan 2019</td></tr> <tr><td>Entered on Register</td><td>02 Jan 2019</td></tr> <tr><td>Acceptance advertised</td><td>18 Oct 2018</td></tr> <tr><td>Acceptance</td><td>11 Oct 2018</td></tr> <tr><td>Filing</td><td>03 Jul 2017</td></tr> </table>	Renewal due	<b>03 Jul 2027</b>	Registration advertised	02 Jan 2019	Entered on Register	02 Jan 2019	Acceptance advertised	18 Oct 2018	Acceptance	11 Oct 2018	Filing	03 Jul 2017				
Renewal due	<b>03 Jul 2027</b>																	
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<p><b>Goods &amp; Services</b></p> <p><b>Class 9:</b> Computer software and platforms for website hosting, cyber security and data management; apparatus for data collection and storage; electronic publications</p> <p><b>Class 16:</b> Publications, newsletters and manuals</p> <p><b>Class 35:</b> Business management; business administration; business incentive programs; advertising; administering the registration of domain name registries and registrars; data management services</p>		<p><b>Owner</b> <b>.au Domain Administration Ltd</b> <a href="#">See full address »</a></p> <p><b>Address for service</b> <b>Ashurst Australia</b> <a href="#">See full address »</a></p> <p><b>Indexing constituents</b></p> <p><b>Word</b></p> <table border="0"> <tr><td>AU</td><td>AUHQ</td></tr> <tr><td>HOME</td><td>EVERYTHINGAU</td></tr> <tr><td>=AU</td><td>LTR</td></tr> <tr><td>=AUHQ</td><td>EVERYTHING</td></tr> <tr><td>.AU</td><td>OF</td></tr> <tr><td>THEHOMEOFEVERYTHING</td><td></td></tr> </table> <p><b>Image</b></p> <table border="0"> <tr><td>DROP</td><td>ENDLESS-BELT</td></tr> <tr><td>INCOMPLETE</td><td>FOUR-SIDED</td></tr> </table>	AU	AUHQ	HOME	EVERYTHINGAU	=AU	LTR	=AUHQ	EVERYTHING	.AU	OF	THEHOMEOFEVERYTHING		DROP	ENDLESS-BELT	INCOMPLETE	FOUR-SIDED
AU	AUHQ																	
HOME	EVERYTHINGAU																	
=AU	LTR																	
=AUHQ	EVERYTHING																	
.AU	OF																	
THEHOMEOFEVERYTHING																		
DROP	ENDLESS-BELT																	
INCOMPLETE	FOUR-SIDED																	

Fig 2: .au Domain Administration trade mark No 1856158

*Paragraph 2.4.6*

A Person applying for a licence in the org.au namespace must be a not for profit entity. The definition of a not for profit entity is an exhaustive list of Persons that must operate as a not for profit under Australian law. The list also includes unincorporated associations registered with and regulated by the Australian Charities and Not-for-profits Commission (ACNC) and political parties registered under State or Territory legislation. This approach fosters and reinforces the trust Australians have in the org.au namespace as they can be confident that they are transacting with an Australian not for profit entity. In 2016, the ACNC reported that registered charities generated \$121.8 billion in income, a significant proportion of which was donations and bequeaths.

The definition of not for profit entity incorporates and clarifies the list of non-commercial entities at paragraph 1 of Schedule B of *Domain Name Eligibility and Allocation Policy Rules for the Open 2LDs (2012-04)*. The list does not include the catch all definitions of a sporting and special interest club (1(d)) and non-profit organisation



operating in Australia, as defined in the registrant's constitution or other documents of incorporation (1(f)) as they are too imprecise to enforce. The definition of not for profit captures the majority of the legal entities that would have been eligible under these definitions, with the exception of unincorporated associations.

The allocation rules retain the categories of close and substantial connection under paragraph 10.4 of the *Guidelines on the Interpretation of Policy Rules for Open 2LDs* (2012-05). However, the existing requirement for a domain name to be connected to a category under the close and substantial connection rule under paragraph 10.1 of the *Guidelines on the Interpretation of Policy Rules for Open 2LDs* (2012-05) has been replaced with the requirement for an match or synonym of the name of a close and substantial connection category. This requirement is not as restrictive as the 'connected test' as a Person will be able to use a broader range of words that are synonymous with the name of a close and substantial connection category. For example, a Charity providing a homeless service to people living on the street will be able to use 'rough sleeping' as a domain name.

### asn.au namespace

#### *Paragraph 2.4.7*

A Person who is a not for profit entity or is acting on behalf of an unincorporated association may apply for an asn.au licence. The definition of unincorporated association and not for profit entity maintains and updates the existing eligibility requirements for the asn.au licences under paragraph 1 of Schedule B of the *Domain Name Eligibility and Allocation Policy Rules for Open 2LDs* (2012-04). It should be noted that special interest or sporting clubs are no longer a separate basis for eligibility but are caught within the definition of an unincorporated association or not for profit entity.

The allocation rules retain the categories of close and substantial connection under paragraph 10.4 of the *Guidelines on the Interpretation of Policy Rules for Open 2LDs* (2012-05). However, the 'connected' test has been replaced with a requirement for the domain name to be an 'match or synonym' of the name of one of the close and substantial connection categories. The ability to use a synonym of the name of a service, program, event, activity, premise or occupation gives a Person more choice in domain names. Whether or not a word is a synonym of the name of a category will be determined solely by reference to the Oxford Australian Dictionary or the Oxford Australian Thesaurus.

### id.au namespace

#### *Paragraph 2.4.8*



A natural Person may apply for a licence in the id.au namespace. The Person may apply for a domain name which is a match of the Person's legal name, first name or family name, an acronym or abbreviation of the Person's legal name, first name or family name; or a nickname. These allocation rules are consistent with paragraph 2(a) of the *Domain Name Eligibility and Allocation Policy Rules for Open 2LDs* (2012-04) and subparagraphs 10.6(a) and 10.6(b) of the *Guidelines on the Interpretation of Policy Rules for Open 2LDs* (2012-05).

It is no longer permissible to register a domain name that refers to a personal interest or a hobby in the id.au namespace. A person could previously register a domain name that referred to a personal interest or hobby where that domain name did not incorporate an entity name, personal name or brand name in existence at the time of registration. See paragraph 12.1 of the *Guidelines on the Interpretation of Policy Rules for Open 2LDs* (2012-05). This condition was imposed to ensure that registering names for personal interest or hobby purposes was not used for cybersquatting or other misleading or fraudulent activity. The id.au namespace was used by default as the com.au and org.au namespaces were not considered appropriate for the pursuit of personal interests or hobbies. The problem with this approach is that many hobbies and personal interests are now considered to be carrying on a business under Australian taxation law and the *Corporations Act 2001*. For example, a Person who blogs about rock climbing and accepts paid advertising on their blog may be carrying on a business in Australia. Hobbies and personal interests are now accommodated within the .au namespace, and the no allocation rules in this namespace means that a person has more choice in the domain name they use to describe their hobby or personal interest.

### State and Territory namespaces

*Paragraphs 2.4.9 and 2.4.10*

The State and Territory namespaces were designed to allow communities that reside in an addressable locality to use that locality as a domain name for community purposes, known as Community Geographic Domain Names (CGDNs). For example, the community of Carlton have registered carlton.vic.au to host a website providing local information about services and activities for residents. There has been limited uptake of CGDNs by communities, with only 230 licences across all State and Territory namespaces as at April 2018. See: *Policy Rules and Guidelines for Community Geographic Domain Names (CGDNs)* (2008-04).

These rules retain the CGDNs for the use of community groups within a geographically defined locality but also allow the State and Territory namespaces to be used by Peak State or Territory bodies that have been established for the following purposes:



- (1) community services;
- (2) encouragement of art, literature and music; or
- (3) animal racing, sport or recreational activity.

A peak community service organisation will be able to register a match or acronym of their legal or business name, such as carers.vic.au. This provides an alternative to the org.au and asn.au namespaces and has the added benefit of identifying the State or Territory in which they operate. The State and Territory namespaces will be a dedicated namespace for community groups and peak bodies to develop online digital identities that signify the local, regional or State or Territory based communities and groups that they represent.

### edu.au namespace

*Paragraphs 2.4.11 and 2.4.12*

The edu.au namespace and child zones were for the exclusive use of education service providers at the Commonwealth, State and Territory levels. These service providers were originally Government regulated schools, universities and research institutions. With the rapid commercialisation of the education sector, there has been a gradual loosening of the rules to include other types of service providers with an educational nexus. Many of these educational service providers also register licences in other namespaces within the .au domain. It was recognised that a uniform licensing scheme would significantly reduce regulatory burden on existing registrants who need to comply with different licensing rules when registering domain names in the edu.au and another 2LD. For example, Monash University has registered monash.edu.au, monash.com.au, monash.net.au and monash.org.au. Monash University is only able to renew monash.edu.au for a two year term but may renew all other domain name registrations for a period of 1 to 5 years.

The eligibility and allocation rules for the edu.au namespace and its child zones is set out in Schedule 1 of the Licencing Rules. These rules replicate the eligibility and allocation requirements for edu.au namespace and child zones in Schedules 1 and 2 of the of the *2016-02 edu.au Registration Policy*.



## Prohibition on Domain Name Monetisation

*Paragraphs 2.4.13 and 2.4.14*

Domain Monetisation is prohibited in the org.au, asn.au, id.au, edu.au and the State and Territory namespaces. This prohibition reflects the status quo under paragraph 11 of the *Guidelines on the Interpretation of Policy Rules for Open 2LDs* (2012-05). A Person is not permitted to apply for a licence in these namespaces for the sole purpose of transferring the licence to another Person. This is consistent with the paragraph 8 of Schedule A of the *Eligibility and Allocation Rules for all Open 2LDs* (2012-04) and paragraph 2.6 of the of the *2016-02 edu.au Registration Policy*. The no resale prohibition has not been included as there is no proprietary interest in a domain name nor licence within the .au domain. A Person cannot sell a licence as it is a personal interest.

## 2.5 DOMAIN NAME AVAILABILITY

*Paragraph 2.5.1*

A domain name will be available for registration on a first come, first served basis, where the domain name is not already registered in the namespace, it is not a reserved name and it complies with the syntax requirements for a domain name in that namespace. These requirements are drawn from paragraphs 1, 3 and 7 of Schedule A of the *Domain Name Eligibility and Allocation Policy Rules for Open 2LDs* (2012-04).

*Paragraphs 2.5.2 to 2.5.4*

There is a risk that Persons will apply to register domains in the .au namespace which are deceptively similar to the second level domain descriptor of another namespace within the .au domain, such as medicaregov.au is similar to medicare.gov.au. A domain name is deceptively similar to a namespace, if it so nearly resembles that namespace that it is likely to deceive or cause confusion to users of the internet. For example, a Person will not be permitted to register the domain name comm.au as it resembles com.au and may cause confusion when a Person creates sub-domains, such as netbank.comm.au.

## 2.6 RESERVED NAMES

*Paragraphs 2.6.1 to 2.6.3*

A Person may not register a domain name that is a reserved name. A reserved name is:

- (1) a word, acronym or abbreviation whose use is prohibited or restricted under an Australian law;
- (2) a name or abbreviation of an Australian state or territory, including the word 'Australia' and



- (3) names that may pose a risk to the security, stability and integrity of the .au and the global Domain Name system.

The categories of reserved names replicate paragraph 2.1 of the *Reserved List Policy* (2014-06).

The rules set out when a Person may apply to register a name whose use is restricted or prohibited under Australian law. The rules incorporate paragraph 3.1 of the *Reserved List Policy* (2014-06) as well as recognising that there are other circumstances in which a Person may use a prohibited name; including:

- (1) the Person is a statutory authority for whom the name has been restricted for their use, such as NAL for the National Acoustics Laboratories; or
- (2) the Person is not captured by the relevant prohibition.

A licence using a name that is a prohibited name may be suspended or cancelled by .au Domain Administration or a Registrar depending on the circumstances.

#### *Paragraphs 2.6.4 to 2.6.7*

.au Domain Administration has a requirement under its ICANN Sponsorship Agreement and corporate constitution to ensure the operational stability and utility of the .au ccTLD. As a result, .au Domain Administration reserves the right to prohibit the use of any domain name that may pose a risk to the operational security, integrity and utility of the .au domain. This rule implements paragraph 5.1 of the *Reserved List Policy* (2014-06).

The Australian, State and Territory Governments now digitise many of their transactions and service delivery, which means that a significant proportion of the Australian population now access government services online. Most Australians require a MYGOV account (my.gov.au) account to transact with Medicare, Centrelink, and the Australian Taxation Office. The move to digitisation of government services raises the risk that malicious actors or criminals will register similar names to government domain names for the purpose of identity theft and fraud.<sup>22</sup> To address this risk, .au Domain Administration has included a new rule which will allow it to reserve names where it is necessary for the public administration of government.

.au Domain Administration may reserve names for future use as the administrator of the .au ccTLD for operational purposes or as second level domains. .au Domain Administration will only be able to reserve names for future use as 2LDs where the

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<sup>22</sup> Commonwealth of Australia, Digital Transformation Agency, *Submission to the Policy Review Panel Discussion Paper: Implementation of Second Level Domain Name Registrations* (10 November 2017) 3.



domain name is not already registered in the .au namespace. Any names proposed to be reserved for future use must be published on the auDA website for a minimum period of 21 calendar days. This allows the public to make a submission for why the name should not be reserved. The ability to reserve names for future use as 2LDs implements recommendation 20 of the PRP Final Report.

.au Domain Administration will publish a list of all names that pose a risk to the operational security, integrity and stability of the .au domain, once those names have been blocked at the Registry.

## 2.7 SYNTAX REQUIREMENTS

### *Paragraph 2.7.1*

There is no change to the syntax requirements for a domain name under paragraph 3 of Schedule A of the *Domain Eligibility and Allocation Policy Rules for Open 2LDs (2012-04)*. The syntax requirements do not apply to Internationalised Domain Names.

## 2.8 INTERNATIONALISED DOMAIN NAMES

### *Paragraph 2.8.1*

The use of Internationalised Domain Names (IDNs) is about enhancing linguistic diversity in cyberspace. The 2017 EURID IDN World Report estimated that two percent of all domain names are IDNs and that there is a strong correlation between the IDNS and the language content of the website. IDNs are widely used in emerging economies in South and South-east Asia.

The .au namespace is about providing equal opportunity for all Australians to engage online and celebrate “freedom of thought, speech, religion, enterprise and association.”<sup>23</sup> As a third of Australia’s population are born overseas and more than one fifth of Australians speak a language other than English at home, .au Domain Administration is implementing IDNS to support the Australian Government’s commitment to a strong and diverse multicultural media through online content.<sup>24</sup>

The initial IDNs to be introduced in the .au namespace reflect the four languages most spoken at home other than English (Mandarin, Arabic, Cantonese and Vietnamese) (ABS 2016 Census) and the languages spoken by Australia’s top three non-English speaking export trading partners (China, Japan and Korea). All Australians will be able to register an IDN in the specified languages in the .au namespace. This allows

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<sup>23</sup> Australian Government, Department of Home Affairs, Australia’s Multicultural Statement, [9https://www.homeaffairs.gov.au/mca/Statements/english-multicultural-statement.pdf](https://www.homeaffairs.gov.au/mca/Statements/english-multicultural-statement.pdf)

<sup>24</sup> Ibid 11.



Australian businesses to target markets in China, Japan and Korea using domain names in their language and for local communities in Australia to celebrate their ethnic identity by having linguistically and culturally relevant domain names to use to provide information and services to their communities. For example, the Age newspaper prints a Chinese language newspaper.

## 2.9 COLLECTION USE AND DISCLOSURE

### *Paragraphs 2.9.1 to 2.9.3*

A Person applying for a licence in a namespace consents to the collection, use and disclosure of their information by the Registrar, Registry Operator and .au Domain Administration for certain purposes. There is no change to the enumerated purposes under paragraph 2 of the *Mandatory Terms and Conditions Applying to .au Domain Name Licences (2008-07)*.

A Person is required to consent to the use and disclosure of their information by .au Domain Administration for the purpose of undertaking business analytics on the registry data to inform policy development, registry management, compliance activities and service delivery. Data used for business purposes will only be available in aggregate form and individuals will not be identifiable.

Where a Person is providing information related to another person, that Person must obtain their consent to provide their personal information. Where that Person is unable to obtain consent of the other person, then the Person applying for the licence must use role-based descriptions.

These requirements comply with the relevant Australian Privacy Principles under the *Privacy Act 1988 (Cth)*.

## 2.10 WARRANTIES

### *Paragraph 2.10.1*

Warranties are a contractual statement of fact. A person must warrant to both .au Domain Administration and the Registrar, at the time of making an application or renewing a licence, that the state of things is as represented. The warranties that a Person must make, incorporate sub-paragraphs 1.1, 1.2 and 1.5 of the *Mandatory Terms and Conditions to .au Domain Name Licences (2008-07)* and additional warranties necessary to give effect to these Licencing Rules.

The additional warranties are:

- (1) that the name or acronym used as a domain name is not a reserved name (see paragraph 2.6 of the Licencing Rules);



- (2) that the name is not deceptively similar to the name of a namespace in the .au ccTLD (see paragraph 2.5.2 to 2.5.4 of the Licencing Rules);
- (3) that the Person is not providing a proxy or privacy service (see paragraph 2.2.3 of the Licencing Rules)
- (4) that the Person will not, and does not, use the licence for any purpose that is unlawful, illegal or fraudulent under Australia law (See: subparagraph 10.1(d) of the *2015-09 edu.au Mandatory Terms and Conditions Policy* and paragraph 3.1 of Annexure E of the PRP Final Report); and
- (5) the Person agrees that the use of the Licencing Service is solely at their own risk (See: subparagraph 10.1(f) of the *2015 edu.au Mandatory Terms and Conditions Policy*)

.au Domain Administration or a Registrar may cancel or suspend a licence where a warranty is found to be untrue.

## 2.11 REGISTRANT OBLIGATIONS

### Contractual Capacity

#### *Paragraph 2.11.1 to 2.11.2*

A Person must have the contractual capacity to hold a licence in the .au domain. This reflects the requirement to be a legal entity under paragraph 5.1 to 5.3 of the *Guidelines on the Interpretation of Policy Rules for Open 2LDs (2012-05)*.

A Person's licence is deemed to be cancelled 30 calendar days after the Person ceases to exist or loses their contractual capacity to hold a licence. The 30 calendar day grace period is a departure from paragraph 2.4 of the *Complaints (Registrant Eligibility) Policy (2004-01)*, which deems a licence to be automatically cancelled when a Person ceases to exist. The 30 calendar grace period recognises that there may be circumstances where a Person can have their contractual capacity reinstated.

A Person will not be able to renew or transfer a licence after the date the licence is deemed to be cancelled. This reflects paragraph 5.4 of the *Complaints (Registrant Eligibility) Policy (2004-01)*. There are no exceptions to this rule. A Person who agrees to transfer a licence to another Person is required to do so within 14 calendar days of the date of an agreement being entered into and before the expiry of the 30 calendar day grace period.

### Australian Presence

#### *Paragraphs 2.11.4 to 2.11.5*



It is a threshold requirement for a licence in the .au domain that the Person has an Australian Presence. This implements Recommendations 2 and 3 of the PRP Final Report. Where a Person ceases to satisfy the Australian presence requirement, the licence will be cancelled by the Registrar or .au Domain Administration. This incorporates recommendation 4 of the PRP Final Report in relation to an Australian trademark which is the sole basis for satisfying the Australian presence requirement.

### Namespace Eligibility

#### *Paragraph 2.11.6*

The requirement that a Person continues to satisfy the eligibility criteria for a licence throughout the licence period is taken from paragraph 1.2 of the *Mandatory Terms and Conditions Applying to .au Domain Name Licences (2008-07)*.

### Accurate registry data

#### *Paragraph 2.11.7*

The requirement for a Person to ensure their licence information is up to date throughout the licence period is drawn from paragraph 3.1 of *Registrant Contact Information Policy (2010-07)*. There is now a requirement that a Person must inform the Registrar of any changes to their licence information within 14 calendars of becoming aware of that change. This clearly places an onus on the Person to maintain their licence information. A Registrar or .au Domain Administration may suspend a licence where the information is incomplete or inaccurate until the Person rectifies the information deficit under paragraphs 2.16.4 to 2.16.6 of these Licencing Rules.

### Sub-domains

#### *Paragraphs 2.11.9 to 2.11.10*

A Person may create sub-domains under their licence to host websites related to their main website or to operate internal systems. An example is the Commonwealth Bank of Australia which has created sub-domains for its *commbank.com.au* licence to provide online banking services, such as *my.commbank.com.au*. Sub-domains of .au, com.au, net.au, asn.au, org.au and id.au licences are not recorded in the Registry.

A person may not create sub-domains for the purpose of setting up a for profit private registry. The risk of private registries may increase with registrations of domain names at the second level as they resemble the existing structure of the second level domains within .au. The problem with private registries is that the purchaser may not be aware of the following:



- their sub-domain is at the mercy of the licence holder, who may transfer their licence, forget to renew their licence or their licence may be suspended or cancelled by .au Domain Administration or a Registrar;
- the sub-domain is not entered in the Registry and therefore they are not listed in the WHOIS service; and
- they are not afforded the protections under the Licensing Rules, including the resolution of complaints.

The Licensing Rules place minimal restrictions around the creation of sub-domains, including:

- A Person holding a licence in the .au domain must not allow another Person to use their sub-domain unless that Person satisfies the Australian presence test and any applicable eligibility rules for that namespace. This ensures that the creation of sub-domains is not used to circumvent the Australian presence requirement to hold a licence in the .au domain.
- A Person cannot use a sub-domain for any illegal, or unlawful purposes and cannot sell or lease a sub-domain. These rules make it clear that .au Domain Administration can suspend or cancel a licence where a sub-domain contravenes these requirements and it is in the public interest test. For example, if a Person who holds a licence 'ato.au' creates a subdomain 'myreturn.ato.au' and that sub-domain is being used for phishing, then an enforcement body may request .au Domain Administration to cancel the licence 'ato.au' under the public interest test in order to take down the subdomain. Paragraph 2.17 of the Licensing Rules sets out the Public Interest Test.

A registrant who creates sub-domains under its licence is responsible for the use of that sub-domain by any third party.

### Third Party Use

*Paragraphs 2.11.11 to 2.11.12*

The PRP in its *Registrant Policy: Enabling Australia's Digital Economy and Society Issues Paper* (January 2018) identified the following issues with sub-leasing in the .au domain:

- a) 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.



- b) Eligibility and Allocation rules: There is a risk that sub-leasing will undermine the integrity of and trust in the .au domain. An entity or person not eligible to register a domain name in a specific namespace may be able to gain access to that namespace by leasing a licence. This may increase the risk of fraudulent activity in these namespaces, especially in the org.au namespace which enjoys a high level of consumer trust.
  
- c) 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.

The PRP noted in its auDA Policy Review Panel Interim Report, dated 15 May 2018, that it would recommend that the subleasing of domain names be prohibited.<sup>25</sup> Sub-leasing or sub-licensing of a domain name undermines the integrity of the .au licensing scheme which is based on the premise that the identity of the registrant has been validated and is accurately recorded in the WHOIS.

The rent, leasing, and sub-licencing of licences is prohibited across all namespaces in the .au domain. The sole exception is the related body corporate rule, where a Person can hold a licence on behalf of and for the use by a related body corporate. This recognises that there are legitimate corporate reasons for the sub-leasing of licences as part of an intellectual property management strategy. The related body corporate rule only applies to the com.au and net.au namespaces. The prohibition is consistent with paragraph 2.6.1 of the *2015-02 edu.au Registration Policy*.

A person must not grant or purport to grant a security interest in their licence or associated domain name. This reinforces that a Person does not have a proprietary interest in the DNS or a domain name. For example, a licence cannot be forfeited under an asset confiscation scheme as it is not property.

## Complaints and Disputes

*Paragraphs 2.11.13 to 2.11.14*

A Person applying for a licence agrees to participate in, and be bound by, a decision made under the complaints process in Part 3 of these Licencing Rules and a decision

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<sup>25</sup> Policy Review Panel, *auDA Policy Review Panel Interim Report* (15 May 2018) 18.



made under the *.au Dispute Resolution Policy* (2016-01). This incorporates the requirements under paragraph 2 of the *.au Dispute Resolution Policy* (2016-01), and paragraph 5 of the *Mandatory terms and Conditions Applying to .au Domain Name Licences* (2008-07), which includes the *Complaints Policy* (2015-01) and *Complaints (Registrant Eligibility) Policy* (2004-01).

### Prohibited uses

#### *Paragraphs 2.11.15*

The .au domain is a key enabler of Australia's economy and social connectedness. As more Australians transact with others online, it is important to have strict prohibitions against the use of the .au domain and DNS for illegal, unlawful or fraudulent purposes or where such use would comprise the integrity, stability and security of the .au domain and DNS. The Australian Competition and Consumer Commission (ACCC) reported 6,806 incidents of online scams resulting in a loss of \$13,841,651 as of 30 July 2020. It is likely that some of these scams were perpetrated using .au domains.<sup>26</sup>

The ability to suspend or cancel a licence which poses a risk to the stability, security and integrity of the .au and global DNS is an incidental power which flows from .au Domain Administration's role as administrator of the .au ccTLD and its legal obligations under the ICANN Sponsorship Agreement. It replicates paragraph 6.3 of the *Mandatory terms and Conditions Applying to .au Domain Name Licences* (2008-07).

#### *Paragraph 2.11.17*

Currently, .au Domain Administration receives requests from enforcement bodies for the cancellation of a licence where a Person is convicted of a criminal offence. .au Domain Administration will only cancel a licence where the judgement specifies that the licence and its associated domain name were instrumental in the commission of the offence for which the person was convicted.

#### *Paragraph 2.11.18*

Paragraph 6.2 of the *Mandatory Terms and Conditions Applying to .au Domain Name Licences* (2008-07) allows .au Domain Administration, at its sole the discretion, to cancel a licence "in order to comply with a request of a law enforcement agency or an order of a court or under applicable law, government rule or requirement, or under any dispute resolution process." This clause is too broad as it encompasses any domestic

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<sup>26</sup> Paul Smith, 1000 Australian websites taken down after China-based criminal plot revealed (AFR 7 Oct 2016) <https://www.afr.com/technology/more-than-1000-australian-websites-taken-down-following-china-led-criminal-plot-20161007-grxa2o>



or foreign law enforcement agency and any applicable law, which does not need to be an Australian law. See: Recommendation 15 of the PRP Final Report.

This rule clarifies that .au Domain Administration has the discretion to suspend, cancel or otherwise deal with a licence on request of an enforcement body or intelligence agency, where it is in the public interest to do so. A Person making a request must satisfy the definition of an enforcement body or an intelligence agency under paragraph 1.4 of the Licencing Rules.

The power to suspend or otherwise deal with a licence is new. Currently, the only power available to .au Domain Administration is to cancel a licence, and this may not be appropriate in all circumstances. .au Domain Administration may exercise the suspension power in respect of a licence as a temporary measure to mitigate any potential detriment to the community while an enforcement body seeks a court order. The 'otherwise deal with' power is to enable .au Domain Administration to respond to a request from a law enforcement or national security agency to 'sinkhole' a domain for investigative or intelligence gathering purposes.

The power of .au Domain Administration to suspend, cancel or otherwise deal with a licence is not unfettered, as it is subject to the public interest test under paragraph 2.17 of the Licencing Rules.

## 2.12 AUTHORISATION CODE

*Paragraphs 2.12.1 to 2.12.11*

The term authorisation code is used instead of password to reduce the risk of a Person confusing their Registrar account password with the authorisation code for their licence. The authorisation code rules replicate the *Domain Password Policy (2002-29)*. There is an additional requirement that a Person who transfers their licence to another Registrar must change the authorisation code within two calendar days. Where a Person fails to change their authorisation code, the Registrar may reset the authorisation code. This new rule prevents the previous Registrar using the authorisation code to make changes to the licence.

## 2.13 LICENCE TRANSFERS

### Transfers – Change of Registrant

*Paragraphs 2.13.1 to 2.13.7*

The transfer of a licence between a Registrant and another Person incorporates paragraph 4 and Schedule A of the *Transfers (Change of Registrant) Policy (2011-03)*. The rules clarify that a Registrar must ensure that the Registrant is eligible to hold the licence at the time of transfer, and that the other Person satisfies the Australian



presence and any other eligibility and allocation criteria for the namespace in which the licence is held.

A Registrant's Licence Agreement is terminated when a licence is transferred under these rules, and the Person to whom the licence was transferred must enter into a new Licence Agreement with a new licence term and pay the applicable licence fee. This clarifies the legal process under paragraph 4.3 of the *Transfers (Change of Registrant) Policy* (2011-03).

### Transfers – Change of Registrar

*Paragraphs 2.13.8-2.13.10*

The ability of a Registrant to transfer their licence between Registrars promotes competition in the provision of licencing services within the .au domain. A Registrant has the right to transfer their licence between Registrars provided the Registrant is eligible to hold the licence at date of transfer and the licence is not subject to any dispute resolution or court proceedings. This rule incorporates paragraphs 3 and 4 of the *Transfers (Change of Registrar) Policy (2013-02)*. A Registrant is not required to pay a fee for the transfer of a licence between Registrars. This replicates paragraph 6 of the *Transfers (Change of Registrar) Policy (2013-02)*.

The sole exception to the portability of licences between Registrars is where the licence is held in the edu.au domain or a child zone. A Registrant is not permitted to transfer an edu.au licence to another Registrar, as Education Services Australia is the only Registrar accredited by .au Domain Administration to provide registrar services for the edu.au domain and child zones.

The Registrar Rules set out the requirements for Registrars when transferring a licence to another Registrar and the bulk transfer policy.

### Domain Synchronisation

*Paragraph 2.13.11 and 2.13.12*

There are no changes to the synchronisation rules under paragraph 4.2 of the *Domain Renewal, Expiry and Deletion Policy* (2010-01). There is an additional provision stating that a Person is not entitled to a refund of the licence fee if the term of the licence is reduced under the synchronisation rule.

## 2.14 LICENCE RENEWAL

*Paragraphs 2.14.1 to 2.14.6*



The renewal rules clarify that a Person must remain eligible for the licence and the domain name at the time of making an application to renew their licence. When a Person renews their licence, they are entering into a new Licence Agreement for that licence with a Registrar and must agree to the Terms and Conditions and pay the applicable licence fee. A licence renewal is not an extension of the existing Licence Agreement between the Registrant and Registrar. A new licence is issued as of the expiry date of the previous licence.

A Person may renew a licence within 90 calendar days of the licence expiry date and within 30 calendar days after the licence expires. The 90 calendar days renewal window prior to the expiry of a licence is retained as the Registrant is agreeing to the Terms and Conditions set out in the Licence Agreement at the date they renew the licence and not when the new licence is issued. A fundamental principle of contract law is that a Person should know the terms and conditions of a contract at the time they enter into that contract. The renewal rules incorporate paragraphs 4 and 5 of the *Domain Renewal, Expiry and Deletion Policy* (2010-01).

## 2.15 CANCELLING AND RESTORING A LICENCE

### Cancelling a licence

*Paragraphs 2.15.1 to 2.15.3*

A Registrant may cancel their licence at any time during the licence period. A Registrar must cancel the licence within 2 calendar days of receiving the request. There is no direct correlation for these rules in the *Domain Renewal, Expiry and Deletion Policy* (2010-01).

### Cooling Off Period

*Paragraphs 2.15.4 to 2.15.6*

A Person may terminate their licence within three days of entering into the Licence Agreement. The Registry Operator will refund the licence fee to the Registrar. It is a matter for the Registrar whether they pass this refund through to the Person, in full or part. This provision is consistent with paragraph 3.1 of the *Domain Renewal, Expiry and Deletion Policy* (2010-01).

### Restoring a licence

*Paragraphs 2.15.7 to 2.15.9*

A Registrant who cancels their licence under paragraph 2.15.1 of the Licencing Rules may request a Registrar to restore the cancelled licence. The request must be made within 2 calendar days of the Registry Operator cancelling the licence. A Registrar may



charge the Registrant a restoration fee. This is a new rule to accommodate Registrant change of mind in respect to cancelling a licence.

## 2.16 AUDIT AND COMPLIANCE MONITORING

*Paragraphs 2.16.1 and 2.16.2*

Public confidence and trust in the .au domain is dependent on .au Domain Administration's ability to encourage, monitor and where necessary, enforce compliance with its Licensing Rules. Currently, .au Domain Administrations compliance activities are complaint focused, which is problematic for the following reasons:

- focuses on individual non-compliance
- reactive rather than proactive in addressing non-compliance
- does not assist in identifying systemic compliance issues
- does not identify areas where there is high compliance by a registrant class
- does not provide sufficient data to assess the effectiveness of the policy or rule

.au Domain Administration requires a more comprehensive approach for encouraging, monitoring, and enforcing compliance with the Licensing Rules. This approach would include audits of the registry data, review of complaints data collected by Registrars and .au Domain Administration, and business analytics under paragraph 2.9.2 of the Licensing Rules. These compliance activities will allow .au Domain Administration to better understand the regulated population, and to identify classes of registrants that may require targeted education or assistance to help them comply with their licence obligations.

Subparagraph 2.16.2(3) explicitly acknowledges that .au Domain Administration may undertake searches of the registry data on request of an enforcement body or an intelligence agency. These requests will be subject to the requirements of the *Privacy Act 1988* (Cth).

### Licence Suspension and Cancellation

*Paragraph 2.16.3 to 2.16.4*

.au Domain Administration or a Registrar will have the option to suspend or cancel a licence where a Registrant breaches the terms and conditions of a licence, where it is in the public interest or to comply with a court order or an instrument made under Australian law. These rules provide clarity and certainty to a Person as to when .au Domain Administration or a Registrar will suspend or cancel a licence in response to a breach of the terms and conditions.

*Paragraphs 2.16.4 to 2.16.9*



.au Domain Administration or a Registrar will have the power to suspend a licence in circumstances where a Registrant's non-compliance does not warrant cancellation of a licence. Currently, the only option available to .au Domain Administration is to cancel a licence under paragraph 6 of the *Mandatory Terms and Conditions Applying to .au Domain Name Licences* (2008-07).

A suspended licence will not resolve to the DNS and the licence cannot be transferred. The Person will not be able to use the licence while it is suspended. For example, where a Person uses a licence to host a website, the domain name will no longer point to the website. A Person will need to type in the Internet Protocol address to access the website.

A Person whose licence has been suspended will have 30 calendar days in which to rectify the non-compliance issue. For example, a Registrant who has provided incomplete information at the time of applying for the licence will be required to update and complete that information before the suspension is lifted. The sole exception to the 30 calendar days rectification period is where a licence is suspended on public interest grounds or to comply with a court order or an Australian law. The licence will remain suspended for the period determined by .au Domain Administration under paragraph 2.17.11 of the Licensing Rules or as specified by the court order or under the relevant Australian law.

Where a Person fails to rectify the non-compliance issue within 30 calendar days, the Registrar or .au Domain Administration will cancel the licence.

### Licence Cancellation

*Paragraphs 2.16.10 to 2.16.12*

.au Domain Administration may, in its sole discretion, cancel a licence in the circumstances specified in paragraphs 6.1 to 6.3 of the *Mandatory Terms and Conditions Applying to .au Domain Name Licences* (2008-07). The grounds on which .au Domain Administration may cancel a licence are too broad and arbitrary given that licences enable businesses, government, non-government organisations, and educational institutions to provide services and to conduct business in the digital economy. The cancellation of a licence may be disproportionate response to an act of non-compliance.

These rules set out the circumstances in which .au Domain Administration or a Registrar may cancel a licence. The circumstances in which a licence will be cancelled include where a Person has acted fraudulently, the Person is not eligible to hold the licence or use a reserved name, to comply with a court order, where it is in the public interest or to protect the stability, integrity or stability of the .au domain.



.au Domain Administration will have the right to restore a cancelled licence, and no restoration fee will be payable. This enables .au Domain Administration to intervene where a licence has been cancelled by a Registrar, and .au Domain Administration reverses the Registrar's decision on appeal.

## 2.17 PUBLIC INTEREST TEST

The public interest test is a new rule to address:

- (1) the PRP concern that the 'request provision' under paragraph 6.2 of the *Mandatory Terms and Conditions Applying to .au Domain Name Licences (2008-07)* was too broad and may lead to the abuse of government power;
- (2) increased threat of criminal misuse of the Domain Name System; and
- (3) the requirement for .au Domain Administration to administer the .au ccTLD in the public interest.

### Request provision

Paragraph 6 of the [\*Mandatory Terms and Conditions Applying to a .au Domain Name Licences \(2008-07\)\*](#) ('Mandatory Terms and Conditions') provides that .au Domain Administration "may, at its discretion, cancel the registration of a .au domain name or revoke a licence to use a .au domain name" in the following circumstances, among others:

- (1) 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 (para 6.2); or
- (2) to protect the integrity and stability of the domain name system or the .au registry (para 6.3).

The PRP found that the 'request provision' was too broad and that there is 'no requirement that the relevant request be lawful or enforceable' and that the term 'government rule or requirement' may simply refer to a policy or wish of a government agency. The PRP also noted that the key terms 'law enforcement agency', 'order of a court', 'applicable law' and 'government rule or requirement' are not defined nor is there is an Australian jurisdiction requirement.<sup>27</sup> This means that .au Domain Administration may revoke a licence to comply with a request of a foreign law enforcement agency, foreign court or foreign government rule or requirement.

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<sup>27</sup> Policy Review Panel, [\*Final Report: Recommendations to the auDA Board: reform of Existing Policies & Implementation of Direct Registration\*](#) (25 March 2019), 14.



The PRP noted the 'request provision' only permitted .au Domain Administration to revoke a licence, which may not be appropriate in all circumstances. For example, where the registrant is unaware that their server or website has been compromised by a third party, such as containing malware or operating as part of a botnet. Revoking a licence may have a significant impact on the person's business reputation and customer goodwill, and there is a risk that the person may not be able to reacquire the domain name when it is purged from the registry.

### Criminal misuse of the DNS

The .au DNS is a key enabler of Australia's economy and society, as businesses, government, non-government organisations, educational institutions and the public use the DNS to connect and transact with each other over the Internet. In 2014, the internet based economy contributed \$79 billion to the Australian economy, and is expected to rise to as much as \$139 billion annually by 2020 (7.3 percent of GDP).<sup>28</sup> The growing importance of the Internet to the Australian economy, and government service delivery means that it is an attractive target for cybercrime and espionage. The Australian Government's position is that it is a shared responsibility of government and the private sector to ensure that cybercrime and other malicious activities do not undermine public confidence in the internet.<sup>29</sup>

The Australian Institute of Criminology's (AIC) Report into *Criminal Misuse of the Domain Name System* found that the DNS could be used as a target or facilitator of cybercrime, such as the use of malicious domains and phishing activities.<sup>30</sup> It is estimated that US \$1.02 trillion is lost in economic growth due to cybercrime.<sup>31</sup> The Australian Government reports that:

- \$2.3 billion was stolen by cybercriminal from Australians in 2017;
- 964 data breach notifications in the period from April 2018 to March 2019, 60 percent which were malicious or criminal attacks;
- 2500 percent increase in the sale of ransomware on darknet sites in 2016 and 2017;

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<sup>28</sup> Commonwealth of Australia, Department of Prime Minister and Cabinet, Australia's Cyber Security Strategy, 14 < <https://cybersecuritystrategy.homeaffairs.gov.au/sites/all/themes/cybersecurity/img/PMC-Cyber-Strategy.pdf> >

<sup>29</sup> Commonwealth of Australia, Department of Home Affairs, *Australia's 2020 Cyber Security Strategy: A Call for Views* (August 2019), 8.

<sup>30</sup> Krone T & Smith R (2018). *Criminal misuse of the Domain Name System*. Research Reports No. 3. Canberra: Australian Institute of Criminology. <https://aic.gov.au/publications/rr/rr03>

<sup>31</sup> Commonwealth of Australia, Department of Foreign Affairs and Trade, *Australia's International Cyber Engagement Strategy*, October 2017, 33.



- 250 percent increase in the share of inbound emails that were phishing emails in 2018; and
- \$2.1 billion per year is the estimated impact of identity crime in Australia.<sup>32</sup>

The conventional legal framework for investigating and prosecuting criminal offences is inadequate for dealing with the immediate threat to the Australian community from cybercrime activities involving the misuse of the .au DNS. The Australian Government recognises that its current legislative framework for using its' cyber security capabilities was "established before the internet became a foundational element of our economy and without a modern perspective on how malicious cyber activity crosses geographic borders."<sup>33</sup> This means that an enforcement body or intelligence agency may not have specific powers under their legislation to direct .au Domain Administration to suspend or cancel a licence being used for criminal or espionage purposes.<sup>34</sup>

### Public Interest requirement

The Australian Government TOE require .au Domain Administration to administer the .au ccTLD in the 'public interest.' The public interest requirement is a corollary of the Commonwealth of Australia's assertion of sovereignty over the .au domain. As a result, the Australian Government has imposed on .au Domain Administration considerations of what is in the 'public interest' when discharging its functions, considerations which normally fall within the remit of public officers or the courts.<sup>35</sup>

The TOE does not define the 'public interest.' The Lexis Nexis Australian Legal Dictionary (2<sup>nd</sup> Ed) defines the public interest as "*a concern common to the public at large or a significant portion of the public, which may or may not involve the personal or proprietary rights of individual people.*" This means that .au Domain Administration must act in the interests of the public at large or a significant portion of the public rather than private interests. This concept of the public interest is also reflected in Principle 3 of the [Corporate Policy: Process for the Development and Review of the auDA Published Policies](#), which requires adopting the option that generates the greatest net benefit for the Australian Community.

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<sup>32</sup> Commonwealth of Australia, Department of Home Affairs, [Australia's 2020 Cyber Security Strategy: A Call for Views](#) (August 2019), 7.

<sup>33</sup> Ibid, 9

<sup>34</sup> Consumer Affairs Australia and New Zealand submission to the 2017 Policy Review Panel, 2  
<<https://www.auda.org.au/assets/Policies/panels-and-committees/2017PRP/registrantissuespaper/CAANZ-March-5-2018.pdf>>

<sup>35</sup> .au Domain Administration has previously considered the public interest in its [WHOIS Policy \(2014-07\)](#), [2.2].



The public interest must also be understood within the context of .au Domain Administration's functions and role as administrator of the .au ccTLD. The TOE specifies .au Domain Administration's core functions as, among others:

- ensure stable, secure and reliable operation of the .au domain space
- respond quickly to matters that compromise DNS security
- promote principles of competition, fair trading and consumer protection
- establish appropriate dispute resolution mechanisms.

In addition to these core functions, it is necessary to recognise that cyber criminals, State and non-State actors may target critical systems using the DNS to threaten the "physical safety, economic security and the continuity of Government and its services."<sup>36</sup> .au Domain Administration considered that it should also be able to suspend, cancel or otherwise deal with a licence, where the enforcement body or intelligence agency could demonstrate that it was necessary for:

- the proper administration of government;
- the judicial system;
- public health and safety;
- national security;
- the prevention and detection of crime and fraud;
- the economic wellbeing of Australia; and
- complying with Australia's obligations under international law.

These public interest objectives go to the core of effective democratic government in Australia, the Australian economy and public confidence in the Internet.

### Public Interest Test

*Paragraphs 2.17.1 to 2.17.3*

.au Domain Administration may only suspend, cancel or take any action in the public interest where it:

- (1) has received a request from an enforcement body or intelligence agency and
- (2) believes on reasonable grounds that the action is in the public interest and satisfies one or more of the public interest objectives.

All limbs of the public interest test must be satisfied before .au Domain Administration may act in the public interest. The public interest requires that the use or misuse of a

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<sup>36</sup> Commonwealth of Australia, Department of Home Affairs, [Australia's 2020 Cyber Security Strategy: A Call for Views](#) (August 2019), 8.



licence or the DNS is of concern to the public at large or a significant proportion of the public, and that this concern falls within one or more of the public interest objectives.

### *Written Request*

#### *Paragraphs 2.17.4 to 2.17.6*

.au Domain Administration, as an Australian company limited by guarantee, should only be expected to act in the public interest where an enforcement body or intelligence agency has exhausted all other avenues for addressing the problem or it is a national emergency situation and Government agencies need to take swift action to avoid harm to the Australian community and economy. The Australian Government has acknowledged that its ability to rapidly respond to cyber incidents may be hampered by existing legislative frameworks which were not designed to deal with the rapidity or scale of cyber incidents.<sup>37</sup> However, it is important that the public interest test is not used as a short cut or alternative to accessing legislative powers except in time critical matters.

An enforcement body or intelligence agency when making a request must tell .au Domain Administration:

- (1) the grounds for why the suspension or cancellation of the licence or the requested action is in the public interest;
- (2) why .au Domain Administration is considered the appropriate body to determine the request; and
- (3) why the requested action cannot be undertaken by another statutory body or under an Australian law.

.au Domain Administration may request further information from an enforcement body or intelligence agency to assist in determining the request. .au Domain Administration as a private company has the discretion whether to act on the request of an enforcement body or intelligence agency. However, .au Domain Administration is deciding to act on an enforcement body or intelligence request must believe on reasonable grounds that the action is in the public interest.

### *Registrar Notice*

#### *Paragraphs 2.17.7 to 2.17.9*

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<sup>37</sup> Commonwealth of Australia, Department of Home Affairs, [Australia's 2020 Cyber Security Strategy: A Call for Views](#) (August 2019), 10.



.au Domain Administration is not required to provide notice to the Registrar, when it has cancelled, suspended or otherwise dealt with a licence in the public interest. This reflects that in some circumstances it may not be practical to give notice to the Registrar given the urgency of the incident, security concerns or the risk to an ongoing investigation of an enforcement body or intelligence agency.

## 2.18 ACCESSING REGISTRY DATA

### By the Registrant

#### Correction of Registrant Information

*Paragraphs 2.18.2 to 2.18.4*

These paragraphs specify when a Registrant can correct the information relating to the Person recorded as the Registrant in the Registry data. The circumstances in which a Person can change the information relating to the legal holder of the licence are drawn from paragraph 5 of the *Transfers (Change of Registrant) Policy (2011-05)*. There is an additional requirement that the Registrant corrects the information within 14 calendar days of the licence being recorded in the Registry data. This requirement is to reduce the number of disputes as to who the legal holder of the licence is, especially where the licence has been registered by an agent on behalf of that Person. It also ensures that there is transparency as to who the holder of the licence is.

### Updating of Registry Data

*Paragraphs 2.18.5 to 2.18.8*

A registrant has an obligation to keep their licence information up to date. A registrant can request a Registrar to update their information and the Registrar must do so within two calendar days. This is a slight change from the five business days rule under paragraph 3.2 of the *Registrant Contact Information Policy (2010-07)*.

A Registrant can also apply to .au Domain Administration for a registry search of licences using that Registrant's details. A common scenario is where different employees or agents register multiple licences for a company. In these circumstances it can be difficult for registrants to consolidate their entire licence portfolio. This allows organisations to identify licences that may have been registered by different areas within their organisations. A Person must use the 'Request for domain name search' available on .au Domain Administration website.

### By Other Persons

*Paragraph 2.18.9*



.au Domain Administration or a Registrar will provide registry information to another Person, where access to the information is authorised or requested under Australian law. A valid request for access to information held in the Registry is a request from an enforcement agency under the *Privacy Act 1988* (Cth). Another example is a subpoena or court order which requires .au Domain Administration to provide the information. This incorporates paragraph 2.8 of the *Mandatory Terms and Conditions Applying to .au Domain Name Licences* (2008-07).

#### *Paragraph 2.18.10 to 2.18.12*

A Person involved in making a claim under the *.au Dispute Resolution Policy* (2016-01) or involved in civil or criminal proceedings may request information on the creation date of a licence. .au Domain Administration will provide that information on a cost recovery basis. A Person will be advised at the time of submitting the application the amount that must be paid before the request will be actioned.

#### **Disclosure and use of data – WHOIS information**

##### *Paragraph 2.18.13*

This paragraph sets out the licencing information that will be disclosed on the WHOIS service by reference to Schedule D of the Licencing Rules. A Person will know exactly what information is publicly disclosed at the time of making an application. See paragraph 3.2 of the *WHOIS Policy* (2014-07).

#### **Disclosure and use of data – prohibited uses**

##### *Paragraph 2.18.14 to 2.18.15*

These paragraphs set out the prohibited uses of the WHOIS data. These paragraphs replicate paragraphs 5.1 and 5.2 of the *WHOIS Policy* (2014-07).

## **2.19 LIMITATION OF LIABILITIES AND INDEMNITY**

### *Paragraphs 2.19.1 to 2.19.3*

The liability and indemnity provisions are drawn from paragraph 7 of the *Mandatory Terms and Conditions Applying to .au Domain Name Licences* (2008-07) and updated to reflect changes to the Australian consumer law. The liability and indemnity provisions have been extended to cover the Registry Operator.

## **PART 3: COMPLAINTS**

### **3.1 OVERVIEW**

The overview sets out the subject matter dealt with under this part.



## 3.2 OBJECTS

### *Paragraph 3.2.1*

The objects set out the policy objectives of the complaints process and provides guiding principles for the handling and resolution of complaints. The objects are drawn from Schedule A of the *Complaints Policy* (2015-01).

## 3.3 COMPLAINTS AND REVIEW OF DECISIONS

### *Paragraphs 3.3.1 to 3.3.3*

The complaints rules clearly articulate the complaints handling process, and the escalation pathway for review of a decision of the Registrar or .au Domain Administration.

The Licencing Rules retain a four-tiered approach to complaints handling. The four tiers are:

- (1) complaints made directly to Registrars – see paragraph 3 of the *Complaints (Registrant Eligibility Policy)* (2004-01) and paragraph 15 of the *.au Domain Name Suppliers' Code of Practice* (2004-04);
- (2) review of a Registrar decision by .au Domain Administration compliance unit – see the *Complaints Policy* (2015-01);
- (3) internal review of a decision made by .au Domain Administration – see subparagraph 4.1 of the *Registrant Review Panel Rules* (2012-01); and
- (4) external review of a decision by .au Domain Administration – see the *Registrant Review Panel Rules* (2012-01).

The retention of Registrars as the first tier of the complaints system recognises that they are better placed to deal with complaints about licences for which they are the Registrar of Record. It is more efficient and effective for complaints to be dealt with at the lowest tier.

## 3.4 COMPLAINTS

### **Application Process**

#### *Paragraph 3.4.1*

Registrars are responsible for assessing a Person's application for a licence and verifying that Person's identity. Registrars are best placed to deal with complaints about their customers. A Person must make a complaint about a Registrant's non-compliance with the Licencing Rules to the Registrar of Record. This retains the requirement under paragraph 3 of the *Complaints (Registrant Eligibility Policy)* 2004-01.



The complaint must be made in the manner or form as required by the Registrar. See paragraph 15 of the *.au Domain Name Suppliers' Code of Practice (2004-04)*.

### Registrar Obligations

*Paragraphs 3.4.4 to 3.4.6*

The obligations for a Registrar to resolve a complaint within 30 calendar days, unless the Registrar notifies a Person otherwise, is consistent with existing obligations under paragraph 14.4 and subparagraphs 15.6 (d) and 15.6(e) of the *.au Domain Name Suppliers' Code of Practice (2004-04) (Code of Practice)*.

Registrars must notify a complainant in writing of the outcome of the complaint and the Registrar's reasons for that outcome. That written notification must include the right of the Complainant or Person to have .au Domain Administration review the decision. This requirement reflects the current status quo under paragraphs 14.6, 14.7, and subparagraphs 15.6(c) and 15.6(f) of the *Code of Practice*.

## 3.5 REVIEW OF REGISTRAR DECISIONS

*Paragraphs 3.5.1 to 3.5.3*

The review process allows a Person to make an application to .au Domain Administration for the review of a Registrar's decision or an action taken by or the conduct of a Registrar. The request must relate to an obligation of the Registrar under the auDA Rules (Licencing and Registrar).

A Person must have fully exhausted all avenues of redress with the Registrar before making a request for review to .au Domain Administration, and the request must be made within the specified time limits, unless an extension has been granted under paragraphs 3.5.4 to 3.5.6 of these Rules.

### Extension of Lodgement Period

*Paragraphs 3.5.4 to 3.5.6*

.au Domain Administration may extend the time limits for making an application for review on request by a Person. .au Domain Administration has the discretion whether to grant or deny the extension request. .au Domain Administration must not extend the five calendar day application for review of a decision to cancel a licence.

### Form of Application

*Paragraph 3.5.7*



A Person making an application for review must provide the information specified in paragraph 3.5.7 of the Licensing Rules. .au Domain Administration will review the decision on the basis of the information provided to the Registrar and the Registrar's application of the Licensing Rules. .au Domain Administration will not consider any new material. It is not unusual for complainants to provide different or additional information to .au Domain Administration during the complaints process, which may if provided to the Registrar in the first instance have changed the decision.

### Receipt of Application

*Paragraphs 3.5.8 to 3.6.14*

A Person's request for a review of a Registrar's decision must be acknowledged by .au Domain Administration within three business days of receipt. Where the application provides all the required information, .au Domain Administration will immediately place a hold on the actions of the Registrar. Where a Registrar has cancelled a licence, the cancellation process will be suspended until such time as .au Domain Administration makes a decision.

.au Domain Administration may, at its sole discretion, reject an application for review that is frivolous, vexatious or not made in good faith.

.au Domain Administration may affirm, vary or revoke the Registrar's decision or remit the decision back to the Registrar. .au Domain Administration must notify the Person and provide them with written reasons for the decision.

## 3.6 REVIEW OF .au DOMAIN ADMINISTRATION DECISION

*Paragraphs 3.6.1 to 3.6.4*

An internal review process provides the following benefits to persons affected by a .au Domain Administration decision:

- it is a quick and easily accessible form of review for persons affected by a .au Domain Administration decision;
- it is a review on the merits of the case; and
- operates as a useful quality control mechanism.

A Person may request that .au Domain Administration conduct an internal review of a decision made by .au Domain Administration, including a decision relating to the review of a Registrar's decision. A Person must make an application for review of a decision to cancel a licence within 48 hours of receiving notification of the decision and within 28 calendar days for all other matters.

### .au Domain Administration Review Officer



#### *Paragraphs 3.6.5 to 3.6.6*

.au Domain Administration must appoint a Review Officer on receipt of a request for internal review. The Review Officer is a more senior .au Domain Administration staff member who has had no previous involvement in the case. These requirements address the issue of perceptions of non-independence which may arise from the organisational structure.

#### **Form of Application**

##### *Paragraph 3.6.7*

A Person making an application must do so using the approved form and provide the information specified under this paragraph. .au Domain Administration will conduct its review on the basis of the material provided.

#### **Receipt of Application**

##### *Paragraphs 3.6.8 to 3.6.11*

.au Domain Administration must acknowledge receipt of an application for review within one business days. The Review Officer must place on hold any actions taken by .au Domain Administration on receipt of a valid application. An application is valid if it contains all the material specified in paragraph 3.6.7 of the Licencing Rules. The Review Officer must advise the Person of the date by which the internal review will be completed.

.au Domain Administration may, at its sole discretion, reject an application for an internal review that is frivolous, vexatious or not made in good faith.

### **3.7 OUTCOME OF RECONSIDERATION**

#### *Paragraphs 3.7.1 to 3.7.3*

The Review Officer may affirm, revoke or vary the decision made by .au Domain Administration. The Review Officer must notify the Person in writing the outcome of their review, reasons and the right to seek an external review of the decision by .au Domain Administration.

### **3.8 EXTERNAL REVIEW**

The Licensing Rules retain the external review process under the *Registrant Review Panel Rules* (2012-03) with a few changes:



- the Licence Review Panel members are appointed for a three year term instead of the permanent tenure arrangements for members of the Registrant Review Panel;
- the ability for Licence Review Panel members to be also appointed to determine matters under the Registrant Review Panel Rules;
- rotating of cases through a list of members of the Licence Review Panel rather than the discretion of a Registrant Review Panel Chair as to whether or not to assign a matter to a member;
- the requirement for Licence Review Panel members to provide a decision within 10 calendar days of being assigned the matter;
- requirement for the Licence Review Panel to review a decision based on the material before them instead of the ability to request further information or to conduct a hearing under the *Registrant Review Panel Rules (2012-03)*. This recognises that the role of the Licence Review Panel is to determine whether .au Domain Administration applied the Licensing Rules correctly to the information it had before it when making the decision.

### External Review

*Paragraphs 3.8.1 to 3.8.4*

External review lies at the apex of the .au Domain Administration complaints process. A person must have exhausted their right to an internal review of a complaint by .au Domain Administration before making an application to the Licence Review Panel. A person will not be able to seek an external review of a decision of .au Domain Administration to suspend or cancel a licence under the public interest test. This recognises the sensitivity of the information that .au Domain Administration may rely on when deciding to act in the public interest. A person aggrieved by a decision of .au Domain Administration under the public interest test has the right to instigate legal action for breach of contract.

### Form of Application

*Paragraphs 3.8.5 to 3.8.8*

A person making an application to the Licence Review Panel must provide any correspondence from .au Domain Administration, a copy of the written reasons, set out the reasons for making the application and the remedies which the Person is seeking. This is consistent with paragraphs 6.1 of the *Registrant Review Panel Rules (2012-01)*.

The person must pay the application fee for external review within three calendar days of making the application. This requirement implements paragraph 5.2 of the



*Registrant Review Panel Rules* (2012-01). The application fee will be set by .au Domain Administration and published on the .au Domain Administration website.

### Receipt of Application

*Paragraphs 3.8.9 to 3.8.11*

.au Domain Administration must acknowledge receipt of the application for external review within seven calendar days and place a lock on the licence to ensure that it cannot be updated, transferred or deleted while the external review process is underway. .au Domain Administration must allocate the application for external review to a Licence Review Panel member within three days of the receipt of the application. The receipt of the application is taken from the date that .au Domain Administration acknowledges the application.

### Licence Review Panel

*Paragraphs 3.8.12 to 3.8.19*

Licence Review Panel members must be independent in order to be able to discharge their duties effectively. The independence of the Licence Review Panel members is achieved through two mechanisms:

- (1) appointment terms of up to 3 years for Panel members; and
- (2) a prohibition on Panel members being an employee, director or contractor of .au Domain Administration or an auDA Registrar.

The ability to appoint Panel members for periods of up to three years provides a high degree of flexibility in Panel member appointment as the demand for external review may fluctuate over time. There is no maximum or minimum number of persons that .au Domain Administration must appoint to the Licence Review Panel. It is expected that the demand for external review may increase substantially with the introduction of second level domain name registrations and changes to eligibility and allocation for some namespaces under the Licensing Rules.

Licence Review Panel members may also be appointed to the Registrant Review Panel. This recognises that there is likely to be a significant proportion of registrants who will be required to make an application for external review under the existing auDA Published Policies and the Licensing Rules. To reduce the administrative burden on a person from having to make an application under both schemes, a person will be able to make an application to the Licence Review Panel for external review, where at least one licence which is the subject of the application is caught by the Registrant Review Panel Rules (2012-01). This will reduce administrative burden on registrants and improve the efficiency of the complaints process by:



- (1) allowing a person to make a single application for external review where the matter involves two or more licences subject to different schemes;
- (2) allowing a single member to decide both matters;
- (3) reduce the costs associated with external review, as only one application fee will be paid by the person.

The Panel member must determine the application on the material before them. This is a change from the ability of the Registrant Review Panel to request additional material or to conduct hearings in certain circumstances. The ability for the Registrant Review Panel to consider additional material increases the burden on both the registrant and .au Domain Administration to prepare and respond to new material and undermines the efficiency of the complaints process.

A Panel member needs to affirm the decision, make a new decision or remit the matter back to .au Domain Administration for further consideration within 10 calendar days of being assigned the case. An applicant needs a timely resolution to complaints, especially where the suspension or cancellation of a licence impacts on their ability to transact online and erodes business reputation and customer goodwill.

### **3.9 RIGHTS OF APPLICANTS**

*Paragraphs 3.9.1 to 3.9.2*

A Person has the right to pursue any cause of action under Australian law in respect of a complaint made to a Registrar or .au Domain Administration. However, a Person who commences proceedings will no longer be able to bring a complaint under the Licencing Rules in relation to the same subject matter.

## **PART 4: AMENDMENTS AND TRANSITIONAL ARRANGEMENTS**

### **4.1 OVERVIEW**

The overview sets out the subject matter dealt with under this part.

### **4.2 AMENDMENT TO THE auDA RULES AND LICENCE TERMS AND CONDITIONS**

*Paragraphs 4.2.1 to 4.2.5*

.au Domain Administration has the right to amend the auDA Rules and the terms and conditions applying to a licence. Any amendments to the auDA Rules and licence terms and conditions will follow the process set out in the *Corporate Policy: Process for the Development and Review of auDA Published Policies*. Any changes to these Licencing Rules must be made publicly available on .au Domain Administration website for at least 21 calendar days before coming into effect, with the exception of urgent amendments required to protect the integrity, stability or utility of the .au DNS.



.au Domain Administration may not amend Schedule 1 of these Licencing Rules without consultation with the appropriate education bodies and the edu.au Registrar.

The amended Licencing Rules will apply to a licence issued or renewed on or after the date the Rules came into effect.

### **4.3 TRANSITIONAL ARRANGEMENTS**

*Paragraphs 4.3.1 to 4.3.2*

The Licencing Rules will apply to a Person who makes a licence application, renews or transfers a licence on or after the commencement date specified in these Licencing Rules. For avoidance of doubt, a Person that holds a licence before the commencement date will be subject to the auDA Published Policies in existence at that time, until such time as the licence is renewed or transferred to another Person. This implements Recommendation 11 of the PRP Final Report.

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