

## REVIEW OF .AU DOMAIN NAME INDUSTRY

### INDUSTRY COMPETITION ADVISORY PANEL ISSUES PAPER, JUNE 2008

#### 1. BACKGROUND

1.1 In April 2008 the auDA Board established the Industry Competition Advisory Panel to:

- review auDA's competition model for the Australian domain name industry
- provide recommendations to the auDA board about what changes (if any) should be made to the competition model.

1.2 The Panel will consider the following issues:

- the method of registry operator selection/appointment post-2010
- the policy and process for registrar accreditation
- the status and regulation of resellers
- the policy and process for transfers between registrars/resellers.

1.3 Full text of the Panel's Terms of Reference, a list of Panel members and minutes of Panel meetings to date, are available on the auDA website at <http://www.auda.org.au/icap/icap-index/>.

#### 2. PUBLIC CONSULTATION

2.1 The Panel is required to undertake at least two rounds of public consultation, to ensure that its recommendations to the auDA Board have been properly canvassed with, and informed by, key stakeholders and the general community.

2.2 This Issues Paper has been drafted as a result of general discussion by the Panel of the three main issues under consideration. The purpose of the Issues Paper is to set out the current situation and canvass the issues and possible options for change that the Panel has identified in its deliberations to date.

2.3 Following this first phase of consultation, the Panel will publish its draft recommendations for further public comment before providing its final report to the auDA Board.

#### 3. SUBMISSIONS TO THE PANEL

3.1 If you would like to comment on the issues discussed in this paper, please send your submission to:

auDA Industry Competition Advisory Panel  
email: [info@auda.org.au](mailto:info@auda.org.au)  
fax: 03 8341 4112

3.2 Electronic submissions are preferred. All submissions will be posted on the auDA website within 2 working days of receipt, unless clearly marked confidential.

3.3 The closing date for submissions is **Friday 1 August 2008**.

#### 4. GLOSSARY

<i>Term</i>	<i>Definition</i>
2LD	Second Level Domain, ie. a name at the second level of the .au domain name hierarchy (eg. com.au)
3LD	Third Level Domain, ie. a name at the third level of the .au domain name hierarchy (eg. domainname.com.au)
auDA	.au Domain Administration Ltd – the .au domain administrator
ccTLD	Country Code Top Level Domain (eg. .au, .uk)
Domain monetisation	Registering a domain name in order to earn revenue from click-through advertising
DNS	Domain Name System
ICANN	Internet Corporation for Assigned Names and Numbers – the global DNS administrator
gTLD	Generic (or Global) Top Level Domain (eg. .com, .biz)
GST	Goods and Services Tax
Registrant	An entity or individual that holds a domain name licence
Registrar	An entity that registers domain names for registrants and is accredited by auDA
Registry operator	An entity that maintains the authoritative 2LD nameservers and the database of domain name registrations
Reseller	An entity that acts as an agent for a registrar
RFT	Request For Tender
RLA	Registry Licence Agreement

#### 5. COMPETITION OBJECTIVES

5.1 The Panel notes that auDA has an overarching responsibility to ensure the security and stability of the .au DNS, and it also has certain constitutional obligations with respect to both supply and demand sides of the industry. Within this context, the Panel believes that the Australian domain name industry structure and competition model should aim to achieve the following outcomes:

- continuity and certainty of DNS service provision
- level-playing field for domain name suppliers
- low pricing, at wholesale and retail levels
- customer choice.

5.2 The current industry structure is based on a three-step supply chain – registry, registrar and reseller – with competition occurring to varying degrees at each step (refer to Attachment A). A consideration for the Panel is whether the costs of providing competition at each step outweigh the public benefits to be gained.

5.3 At this early stage in the Panel's work, the general view among Panel members is that the current model is working well and delivering value to industry participants and consumers alike. However, as outlined in the Discussion of Issues below, there are aspects of the model that the Panel believes may require some changes or modifications to address points of market failure.

## 6. DISCUSSION OF ISSUES

### The method of registry operator selection/appointment post 2010

#### Current situation

6.1 The .au domain is divided into a number of different 2LDs (eg. com.au, org.au, gov.au etc). Whilst auDA has direct management and control of the .au TLD, the 2LDs are run by a separate, private registry operator. This is in contrast to the approach of many other ccTLDs, where the domain administrator and the registry operator are one and the same. In .au, it has been considered desirable to maintain a clear separation of policy and operations, to ensure that auDA's ability to act as an independent industry regulator is not compromised.

6.2 The current .au industry model provides for competition at the registry level in two ways:

- competition in the selection of registry operator(s), through an open tender process
- competition between multiple 2LD registry operators (eg. the registry operator for com.au competing for domain name registration sales against the registry operator for net.au).

6.3 Whilst the model provides for multiple 2LD registry operators, the registry tender processes held in 2001 and 2005 demonstrated that a single registry for all 2LDs was the most efficient option given market conditions at the time.

6.4 The current registry operator, AusRegistry Pty Ltd, holds a four year Registry Licence Agreement (RLA) with auDA, due to expire on 30 June 2010. Under the RLA, AusRegistry:

- charges a per domain name fee to registrars which varies according to 2LD and includes a reducing sliding scale based on cumulative number of domain names registered in each 2LD
- paid a one-off "sign-on" fee on being awarded the licence, and also pays an annual registry licence fee to auDA calculated according to the number of domain names registered in each 2LD.

6.5 Domain name registrations in .au have been growing by an average of 21% per annum since 2002. Registry prices have steadily reduced in line with the increasing volume of registrations. Since 2002, the registry price of com.au domain names has reduced from \$112.00 to \$20.35 (for a two year registration), which is now roughly on par with .com pricing (USD7.00 for a one year registration) despite the vast difference in volume (ie. 75m .com domains compared with 1m .au domains)..

#### Issues for consideration

6.6 The Panel notes that whilst competition at the registry level is achieved in theory via periodic re-tendering of the registry licence, experience to date is that the incumbent operator has a clear infrastructure advantage.<sup>1</sup> This is due mainly to the significant capital costs for a new entrant in meeting auDA's registry technical specification. There are also transition costs for the rest of the industry in switching to another registry operator.

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<sup>1</sup> The Panel notes that the first registry RFT in 2001 attracted eight bidders, whilst the second RFT in 2005 attracted two bidders only (ie. the incumbent and one other).

6.7 Now that the incumbent registry operator has won two successive tenders, there is some difficulty to achieve real competition in future tenders. The Panel has been considering whether the model should be changed or modified to ensure that competition objectives at the registry level continue to be met.

*Option 1: Abandon the competitive registry model and make auDA the registry operator*

6.8 The Panel's view is that such a change would represent a seismic shift in the way the .au domain operates, and does not appear to be justified given the steady growth rates and reducing prices of .au domain names since 2002. It would also undermine the fundamental principle of separation of policy and operations. The Panel notes that auDA would need to raise extra revenue from the industry (eg. by increasing its domain name fee) in order to build its own registry. In addition, major changes would need to be made to auDA's corporate structure and constitution to allow it to operate a registry.

6.9 A possible "half-way house" scenario may be for auDA to own the registry infrastructure but outsource operational management to another entity, thereby maintaining at least some degree of regulatory independence. However, this would also be a major change to the industry which does not appear to be warranted. The Panel also notes that there are often practical and legal problems that arise in the separation of ownership and operation, in relation to who is responsible for implementing upgrades and improvements, and who owns any associated intellectual property.

*Option 2: Retain the competitive registry model and implement modifications to make the tender process more competitive and/or more cost-effective*

6.10 There is general agreement among Panel members that the present arrangement of periodic competitive tenders for registry operation should remain, but that there is a need to investigate means to make the process both more cost-effective and potentially more open to competing bids.

6.11 The current registry licence period was set at four years to give the registry operator sufficient time to implement its business model and achieve a reasonable return on investment, whilst at the same time keeping pressure on the registry operator to respond to market developments and maintain competitive performance levels. The Panel notes that a longer licence period (eg. 6-8 years) may serve to encourage greater competition during the tendering process, by giving prospective new entrants more time to recover their start-up costs.

6.12 On the other hand, a longer licence period might act as a disincentive to the registry operator to invest in new technologies and keep up with international best practice, resulting in registry lethargy and reduced service levels to .au customers. The Panel notes however, that despite the steady reduction in .au pricing, the registry operator still makes healthy profits and that in itself provides an incentive for it to remain in good standing with auDA and the industry by maintaining high service standards.

6.13 Given that the start-up capital costs constitute the most significant barrier for prospective new entrants, it has been suggested that one way to level the playing field might be to charge the incumbent the same amount as it would cost a new operator to build a registry. Alternatively, auDA could waive the "sign-on" fee for a new operator.

6.14 The Panel has also given some consideration to ways in which the tender process itself could be made more cost-effective. For example, auDA could offer an extended licence to the incumbent, subject to negotiation on pricing and other key terms; if negotiation failed, then auDA could move to conduct an RFT. Whilst this may avoid the need to expend resources on a full RFT, it would also have the effect of further entrenching the incumbent.

6.15 Another approach may be for auDA to set registry prices and service levels, and seek tenders accordingly. This may help to deliver better value, because it enables auDA to take a proactive role in setting prices and service levels rather than being restricted to those put forward by tenderers.<sup>2</sup>

**The Panel invites comments on the issues and options raised above, as well as any other comments or suggestions in relation to the registry operator.**

## **The accreditation and regulation of registrars**

### Current situation

6.16 The current .au industry model allows for multiple registrars who have a direct technical connection to the registry and compete in the marketplace to provide customer sales and support services to registrants. Registrars are accredited by auDA and operate under a Registrar Agreement which requires compliance with auDA policies and an industry Code of Practice. The purpose of the accreditation process is to ensure that registrars are able to perform policy compliance checks on domain name applications and provide adequate customer support services, as well as being able to connect technically with the registry.

6.17 Accredited registrars pay an annual fee to auDA of \$3,300 and there is also a \$2,200 non-refundable accreditation application fee. Registrars are free to set their own domain name fees to resellers and retail customers; as at April 2008, the registrar retail price of a two year com.au domain name registration ranged from \$27.95 to \$140.00.

6.18 There are currently 27 accredited registrars, and the top four registrars hold a combined market share of approximately 60%. In 2006-2007, auDA received 48 formal complaints about accredited registrars (of which 16 complaints were under auDA's jurisdiction) (refer to Attachment B).

### Issues for consideration

6.19 The registrar level is where most competitive market activity and regulation occurs within the current industry structure. The Panel has identified a number of areas which it believes may be in need of some revision or modification to improve competition outcomes for both industry and consumers alike.

### *Registrar accreditation*

6.20 When registrar accreditation was introduced in 2002, the main objective was to keep barriers to entry as low as possible in order to expedite the transition from monopoly to competition. The Panel notes that the domestic and global domain name markets have undergone significant changes in the past six years, which have impacted on the business case for seeking accreditation. Falling registry prices, and

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<sup>2</sup> auDA already sets certain minimum technical service levels in the registry technical specification, in line with international best practice (eg. 99.9% service availability in a calendar month, 95% of database queries serviced within 0.5 seconds).

the emergence of a number of different registrar business models, have combined to make the .au market much more attractive than it has been in the past.

6.21 Currently, there is no restriction on a foreign company (ie. one that is not located or registered in Australia) becoming an accredited registrar. Concerns have been raised that foreign registrars may be unfamiliar with Australian laws and market practices, and their lack of local presence and time zone differences may pose customer service problems. The Panel also notes that non-Australian registrars do not have to charge their customers GST, which creates the perception that they are cheaper than Australian registrars.<sup>3</sup> It has been argued that only Australian entities should be allowed to apply for registrar accreditation, which would be consistent with policy rules that allow only Australian entities to register .au domain names.

6.22 In the gTLDs, many registrars hold more than one ICANN accreditation (eg. US-based company Enom holds over 60 registrar accreditations), the main purpose being to maximise their connections to the registry and increase their chances of picking up domain names as they drop. Some are “private” registrars, which register domain names only for themselves and their associates, and do not offer service to the general public. The Panel notes that these new registrar business models have started to appear in the Australian market; of the total 27 auDA accredited registrars, four entities hold more than one registrar accreditation, including one entity which owns four registrars.

6.23 Whilst the Panel acknowledges that there may be other reasons behind single ownership of multiple registrars (eg. natural market consolidation), it seems likely that gTLD trends will replicate in the .au domain, especially given the recent opening up of the domain name secondary market.<sup>4</sup> The Panel is considering whether the registrar accreditation criteria and process needs to be modified either to restrict or to accommodate these new models.

#### *Registrar fees*

6.24 Registrar fees have not changed since they were introduced in 2002, and the Panel is considering whether they should be recalculated. The Panel notes that the fees were set by auDA on a mostly cost-recovery basis, and that it was also considered appropriate at the time for registrars to make a financial contribution to the new industry self-regulatory scheme.

6.25 Panel members have raised the following arguments in relation to registrar fees:

- Many other types of fees are indexed, why shouldn't registrar fees be treated the same way? On the other hand, the registry and auDA domain name fees have been steadily decreasing over time, so why should registrar fees be different?
- A significant increase in registrar fees may discourage the practice of holding multiple accreditations to maximise connections to the registry, but it may also act as a barrier to natural market consolidation.
- Reducing registrar fees may lead to a large increase in the number of applications, causing resourcing and regulatory problems for auDA.

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<sup>3</sup> Non-Australian registrars must pay GST to the registry, however the Australian Taxation Office has advised that they do not have to charge GST to their customers.

<sup>4</sup> auDA introduced a new registrant transfers policy on 1 June 2008, removing the prohibition on resale of .au domain names.

- Reducing registrar fees may set the barrier to entry too low and result in reduced quality of service to customers and possible risks to the technical operation of the .au DNS.

#### *Registrar services*

6.26 The current accreditation process aims to ensure that registrars have adequate systems and procedures in place to handle domain name registrations and provide associated customer support. However, the only services that are actually mandated under the Registrar Agreement are the processing of domain name registration applications and the updating of registrant data.

6.27 From time to time, problems have arisen in relation to the provision of domain name renewal services (refer to Attachment B). Currently, it is up to each registrar to determine how it provides renewal services; the Code of Practice merely requires a registrar to make “reasonable commercial efforts” to advise the registrant of the need to renew their domain name. Most registrars send a renewal notice to the registrant at regular intervals leading up the expiry date (eg. 90 days, 60 days, 30 days, 14 days, 7 days). Depending on their customer service model, some registrars send email notices only while others also use alternative registrant contact details.

6.28 The Panel is considering whether it may be necessary to mandate that registrars must send domain name renewal notices to registrants, as opposed to relying on a “best commercial endeavours” approach, on the basis that consumers have a reasonable expectation to receive a renewal notice. However, concerns have been raised about the increased cost and liability for registrars, especially where the domain name was registered through a reseller.

#### *Registrar penalties*

6.29 auDA does not have the legal power to impose financial penalties on a registrar who has breached the Registrar Agreement. The only remedies available to auDA for a non-rectifiable breach are to suspend or terminate the registrar’s accreditation, both of which have the potential to cause major disruption and inconvenience to the registrar and its customers (registrants). Whilst suspension or termination may be appropriate in the case of serious and/or persistent breaches by a registrar, it is far too heavy-handed for dealing with minor breaches.

6.30 In the majority of cases where auDA finds that a registrar has breached the Registrar Agreement, its usual course of action is to instruct the registrar to rectify the breach and ensure that it does not happen again. In more serious cases, auDA may also make a public announcement regarding the breach.<sup>5</sup> The Panel notes that this approach is often criticised by complainants who feel that the registrar has received merely a “slap on the wrist”, and by registrars who feel that they have been unfairly singled out.

6.31 The Panel is considering whether there is a need to introduce a more formalised system of penalising registrars who breach the Registrar Agreement, to address the lack of transparency and certainty for industry and consumers generally in understanding how particular types of complaints are handled and the type of penalty that may be imposed.

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<sup>5</sup> Since 2002, auDA has publicly cited six registrars for breach, for activities including sending misleading mailouts or incorrect renewal notices, accepting unauthorised transfers, and registering domain names in breach of the policy rules.

6.32 One suggestion is to implement a demerit system similar to drivers' licensing schemes, where particular types of breaches would incur demerit points, and once a given number of demerit points is reached then the registrar's accreditation would be suspended or terminated. The challenge would lie in defining the types of breach that would give rise to demerit points, and how many points would be incurred for each breach; this is something that auDA would need to do in consultation with the industry.

6.33 It should be noted that an increase in regulatory compliance costs for the industry may result in higher prices for consumers, and may also discourage smaller players from entering the market.

#### *Other registrar activities*

6.34 The majority of registrars provide other IT services such as web hosting, email forwarding, website design and so on. These activities currently fall outside auDA's regulatory jurisdiction (eg. auDA does not handle complaints about them), and there is no suggestion that auDA's role be expanded to cover what are essentially non-domain related activities.

6.35 Questions have been raised however, about the extent to which registrars should be allowed to participate in domain-related activities other than the core business of registering domain names for registrants. For example, is it appropriate or desirable for registrars to be in the business of warehousing domain names for their own domain monetisation purposes? In this regard, the Panel notes that registrars have access to information about deleted or expiring domain names that may not be readily available to the general public, or even to other registrars. There are concerns that a registrar's use of such information to register domain names on its own behalf for activities like domain monetisation, may be regarded as a form of "insider trading" (conceptually, not legally). These concerns are heightened by the prospect of registrars using multiple registry connections to give themselves an advantage over other registrars and the general public (refer to paragraph 6.22 above). It has been suggested that this lack of market transparency could be addressed by publishing a list of deleted and expiring domain names, or by placing the domain names in a "holding pool" for a period of time before making them available to the general public.

**The Panel invites comments on the issues and options raised above, as well as any other comments or suggestions in relation to registrars.**

## **The status and regulation of resellers**

### Current situation

6.36 Many registrars use sales agents known as resellers. Resellers are not accredited by auDA and do not have a direct technical connection to the registry. Under the Registrar Agreement, registrars must notify auDA when they appoint a reseller, and must ensure that their resellers comply with auDA policies and the industry Code of Practice. There are currently approximately 2,900 resellers notified to auDA.

6.37 auDA's process for handling complaints about resellers is to deal with the reseller via their registrar, ie. the registrar is responsible for ensuring that the reseller responds to the complaint and takes any necessary corrective action. In 2006-2007,



auDA received 43 formal complaints about resellers (of which 26 complaints were under auDA's jurisdiction) (refer to Attachment B).

6.38 When the current industry model was introduced in 2002, registrars were required to pay a \$250 fee for every reseller they notified to auDA. The fee placed an administrative burden on auDA and registrars, and acted as a deterrent to notifying auDA of reseller appointments. The fee was abolished in 2003 following a public policy review.

#### Issues for consideration

6.39 There is a view on the Panel that the somewhat unofficial status of resellers within the current industry structure has some negative impacts on the market:

- resellers generally do not have a good understanding of the role of auDA, the code of practice and auDA policies, which has two main consequences:
  - they cannot provide accurate advice and information to their customers, leading to poor customer service outcomes
  - they become the subject of complaints to auDA and may be required to undertake corrective action to remedy a breach that they did not know they had made
- because it is the registrar and not the reseller who is listed on the WHOIS database, registrants who purchase their domain name through a reseller often do not know who they should contact to renew or make other changes to their domain name
- handling customer complaints about resellers via their registrar is often cumbersome and time-consuming for all involved.

6.40 It has been suggested that these problems might be addressed if resellers had more formal recognition within the industry structure. One proposal put forward by Panel members is to introduce a voluntary "registered reseller program". Under the proposal, resellers would choose to pay a fee to register with auDA and in return would receive the following benefits:

- listing in the WHOIS database as the "reseller of record"
- use of an official reseller logo or registered certification mark<sup>6</sup>
- direct contact with auDA, including access to education and training.

6.41 The proposal would also mean that resellers would be subject to direct regulation by auDA, in relation to complaints-handling and general regulatory compliance. Legally, this would require auDA to enter into some form of agreement with resellers, similar to the Registrar Agreement.

6.42 Given the large number of resellers in the market (currently approximately 2,900 notified to auDA, although the Panel feels that there are potentially many more), moving to a direct reseller regulation model would have significant cost and resource implications for auDA, although these may be offset by reintroducing a reseller fee as envisaged under the above proposal. The Panel also notes there may be some difficulties with regard to listing resellers in the WHOIS database and consequences for the transfers policy. There is also the question of whether a voluntary program would have the desired coverage and effect.

**The Panel invites comments on the issues and options raised above, as well as any other comments or suggestions in relation to resellers.**

<sup>6</sup> The process of registering a certification mark would require auDA to seek approval from the ACCC and IP Australia.

## **The policy and process for transfers between registrars/resellers**

### Current situation

6.43 The ability of registrants to transfer the management of their domain name from one registrar to another is a key component of a competitive market. The Transfers (Change of Registrar of Record) Policy (2004-03) stipulates that a registrant may transfer their domain name at any time, and the losing registrar must not charge a transfer fee or otherwise impede the transfer process. Refer to <http://www.ada.org.au/policies/ada-2003-03/>.

### Issues for consideration

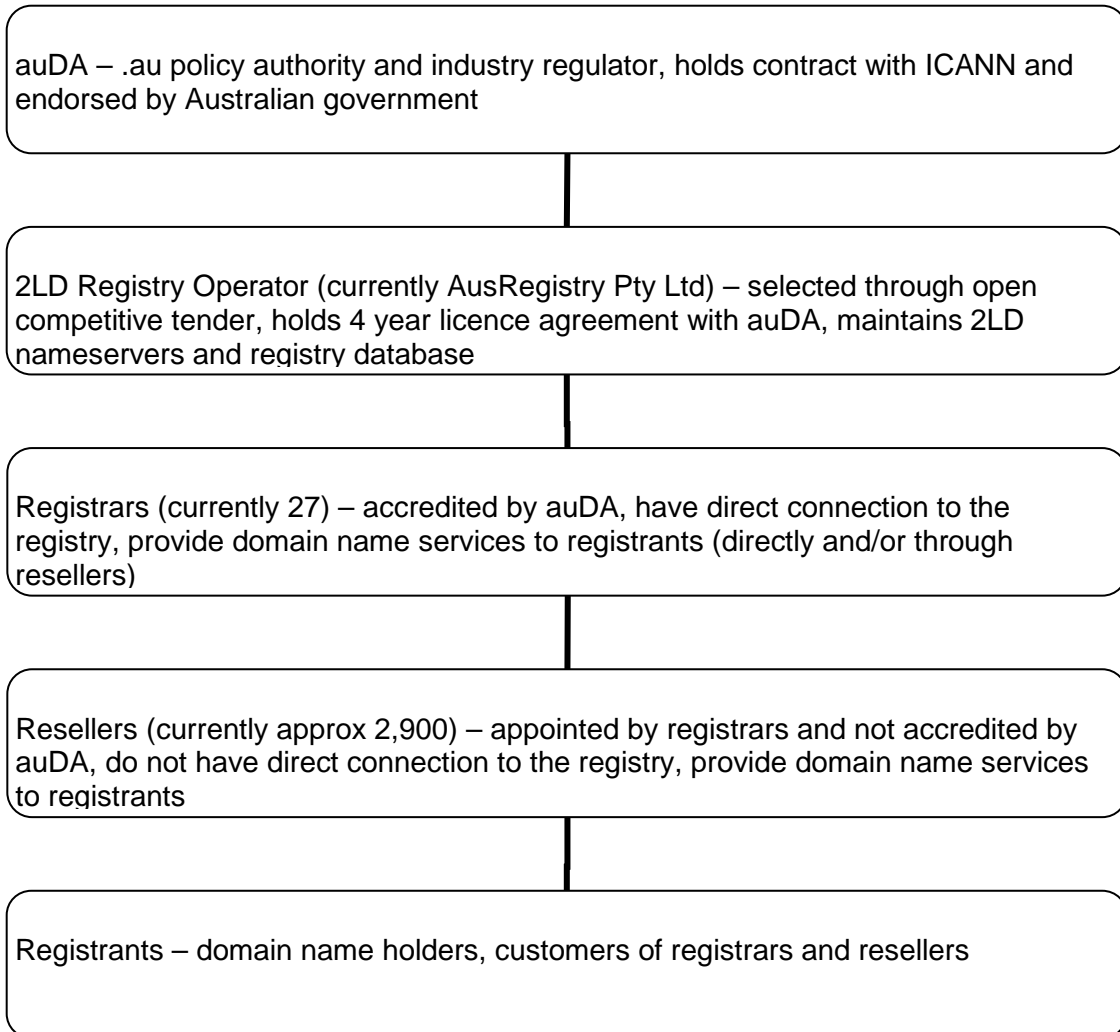
6.44 The Panel has identified a couple of difficulties associated with the current transfer policy and process:

- although registrars are not permitted to charge a transfer-out fee, anecdotal evidence is that some registrars impose an effective transfer-out fee via other means (eg. by charging for password recovery)
- problems with password recovery can be a barrier to transfer, especially where a registrant is seeking to transfer multiple domain names.

6.45 A suggested solution to these problems might be to centralise the password recovery process through auDA or AusRegistry, although it should be noted that this would involve a change to the current industry supply chain, whereby it is the primary role and responsibility of registrars (and resellers) to provide domain name services to registrants.

**The Panel invites comments on the issues and options raised above, as well as any other comments or suggestions in relation to the transfers policy and process.**

CURRENT .AU DOMAIN NAME INDUSTRY STRUCTURE



The price paid by a registrant for a two year domain name registration is made up of:  
auDA Domain Name Fee + AusRegistry Fee + Registrar Fee (+ Reseller Fee)

**.AU DOMAIN NAME INDUSTRY COMPLAINTS, 2006-2007**

**Registrars**

Total number of accredited registrars: 26

Total number of complaints regarding accredited registrars: 48

Number of complaints under auDA jurisdiction: 16

Examples include:

- certificate of registration not provided
- renewal notice not sent
- renewal notice sent to registrant who had transferred to another registrar
- renewal not processed.

Number of complaints not under auDA jurisdiction: 32

Examples include:

- complaints about web hosting services
- misunderstanding of auDA policy by the complainant.

**Resellers**

Total number of resellers notified to auDA: approx 2,300

Total number of complaints regarding resellers: 43

Number of complaints under auDA jurisdiction: 26

Examples include:

- deceptive and misleading mailouts
- domain name registered in reseller's name instead of registrant's name
- reseller's contact details listed for the domain name instead of registrant's contact details
- renewal notice not sent.

Number of complaints not under auDA jurisdiction: 17

Examples include:

- complaints about other services
- inability to contact reseller.