

## Corporate Policy

# Process for the Development and Review of auDA Published Policies

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## Purpose

1. This document sets out the principles and processes that govern the development, review and implementation of policies for the administration of the .au ccTLD. These policies are 'Published Policies' for the purposes of the Registry, Registrar and Registrant Agreements.

## Background

### auDA

2. The .au Domain Administration Ltd (auDA) is the administrator and industry self-regulatory policy body for the .au country code Top Level Domain (.au ccTLD). The Commonwealth of Australia has endorsed auDA as the appropriate entity to administer the .au ccTLD, and auDA administers the .au ccTLD under a sponsorship agreement with the Internet Corporation for Assigned Names and Numbers (ICANN).
3. auDA is responsible for the policies that govern the administration and development of the .au ccTLD and its associated domains.<sup>1</sup> auDA is required to administer the .au ccTLD in accordance with the Commonwealth of Australia's Terms of Endorsement (April 2018).

### Terms of Endorsement

4. On 17 May 2018, the Commonwealth of Australia issued new Terms of Endorsement (TOE) for the management of the .au ccTLD. The Terms of Endorsement reiterate that the management of the .au domain must support multi-stakeholder engagement and be administered in the public interest. The TOE specifies the core functions of the administrator 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
  - operate as a fully-self funding and not for profit organisation
  - actively participate in national and international technical and policy namespace fora to ensure that Australia's interests are represented and to identify trends and developments relevant to the administration of the .au namespace
  - establish appropriate dispute resolution mechanisms

The TOEs are subject to auDA discharging it's functions by, among other matters:

- facilitating effective stakeholder engagement; and
- supporting accountability and transparency.

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<sup>1</sup> Constitution of the .au Domain Administration Limited ACN 079 009 340, cl 1.2

## Operating environment

5. auDA recognises that the .au ccTLD is a public asset and a key enabler of Australia's digital economy and society. auDA in developing policies will have regard to Australia's regulatory, economic and security objectives, including:
  - Competition and consumer law
  - Privacy law
  - Australia's Cyber Security Strategy
  - Australia's International Cyber Engagement Strategy
  - Relevant Australian and International Standards (For example: AS ISO 10002-2006 – Customer Satisfaction: Guidelines for Handling Complaints; AS/NZS ISO/IEC 27000 - Information Security Management)
6. auDA will also have regard to initiatives and policies developed by ICANN and international standards.

## Core Policy Objectives

7. The core policy objectives of auDA are:
  - (1) to develop a licensing regime for the .au domain which:
    - is transparent, responsive, accountable, accessible and efficient
    - improves the utility of the .au ccTLD for all Australians
    - promotes consumer protection, and fair trading and competition
    - provides only those protections necessary to maintain the integrity, stability, utility and public confidence in the .au ccTLD
    - expresses licence terms and conditions in objective and not subjective terms
    - implements clear, predictable and reliable complaint processes; and
    - preserves the fundamental principles of no proprietary rights in a domain name, first come, first served and no hierarchy of rights.
  - (2) to ensure the integrity, stability and security of the Australian Domain Name System (DNS).

## Principles

8. The auDA Board in administering and managing the .au ccTLD has adopted the following principles to guide .au policy development.

**Principle 1: Establishing a case for action before a problem is addressed**

9. auDA recognises that not all problems warrant the development of a new policy or policy changes. Before authorising any policy development process, the auDA Board will closely examine whether there is a problem and make an initial decision as to whether any action is required.
10. auDA identifies problems or issues that may require a policy response from a range of sources, including stakeholder feedback, compliance data, and government or Advisory Committee reports.

**Principle 2: A range of feasible policy options will be considered and costs and benefits**

11. auDA is committed to a policy process that identifies all feasible options for achieving the desired outcome, including maintaining the status quo. auDA may use a variety of mechanisms to identify policy options including establishing Advisory Committees or working groups. All policy options must identify the impact on stakeholders and the broader Australian community.
12. The development of policy options is not required where the policy changes are necessary to comply with Australian law or for administrative reasons.

**Principle 3: Adopting the option that generates the greatest net benefit for the Australian community**

13. auDA is required to administer and manage the .au ccTLD in the public interest. The auDA Board will adopt the policy option that provides the greatest net benefit to the Australian community. The net benefit may be intangible, such as increased consumer confidence in transacting with entities using a .au domain name.

**Principle 4: Policies should not restrict competition unless it can be demonstrated that:**

- the benefits to the Australian community should outweigh the cost, and
- the objectives of the policies can only be achieved by restricting competition

14. auDA recognises that its policies may restrict competition, including by imposing barriers to entry (such as minimum security standards) or innovation, and can have the effect of restricting consumer choice, raising costs and reducing overall economic efficiency and productivity. auDA will only restrict competition where it is necessary to achieve the policy objectives (consumer protection, fair trading, and the stability, integrity and utility of the .au domain), and the benefits of restricting competition outweighs the cost.

**Principle 5: Providing effective guidance and education to stakeholders (including government regulators, registrars, resellers and registrants) to ensure that the policy intent and compliance requirements are clear**

15. auDA is committed to being transparent and accountable to the Australian Internet Community in its development and implementation of policies. auDA requires all policy development processes to clearly articulate the rationale for choosing one option over another, and to identify the impact on various groups within the wider Australian community, and any consequences for non-compliance. auDA will publish all documents relating to the policy development and implementation process on its website.

**Principle 6: Ensuring that the policies remain relevant and effective over time**

16. To ensure the policies governing the .au domain remain relevant and effective over time, auDA will review the policies periodically. Policies will be reviewed and amended in response to relevant legislative changes or government policy.

**Principle 7: Consulting effectively with key stakeholders at all stages of the policy cycle**

17. auDA will consult key stakeholders at all stages of the development and implementation of policy. Consultation on policy options will improve outcomes for the community by:

- ensuring that stakeholders have a sound understanding of the problem being addressed
- providing perspectives and suggestions on alternative options to address the problem from stakeholders directly affected by any policy change
- helping auDA to assess competing stakeholder interests

- providing an external check on any assessment of costs and benefits, and whether/or how the proposed option will work in practice, and any risk mitigation required should a policy be implemented
- identifying any interactions or synergies with existing regulatory obligations; and
- enhancing voluntary compliance and acceptance of the policy change by encouraging and welcoming stakeholder participation in the process.

**Principle 8: ensuring that all policy outcomes are effective and proportional to the issue being addressed**

18. auDA is committed to ensuring that any policy change is proportional to the issue or policy objective.

### Processes

19. auDA is committed to a policy development process that:

- actively fosters and encourages stakeholder participation;
- is accessible to and presented in a form understandable by the wider Australian community;
- is transparent and accountable to stakeholders and the Australian Government in its administration of the .au domain.

20. auDA may use a variety of mechanisms to develop policy, including Advisory Committees, expert working groups or internal resources.

### Advisory Committees

21. auDA may use Advisory Committees to develop new policy proposals or a major review of an existing policy to ensure it is effective and efficient in achieving policy objectives. The Board will only establish a Committee where the issue has a significant impact on the .au domain and its users.

22. The role of a Committee is to provide recommendations on developing or reforming policy. auDA is responsible for translating these recommendations into policy and implementation.

### Establishment

23. The Board will only pass a resolution to establish an Advisory Committee and its terms of reference, if the Board is satisfied that action is required to address an issue. The Board in deciding whether action is warranted may take into consideration a range of information sources, including stakeholder feedback, the number of parties affected, compliance data, government or Advisory Committee reports or relevant regulatory changes.

## Terms of Reference

24. The Board must approve terms of reference at the time of establishing an Advisory Committee. The terms of reference must include:

- the problem or issue that the Committee is to address and any matters to which the Committee must have regard
- a timeline for when the Committee should provide interim progress reports, and a date for the Committee to present its final report and recommendations
- the Chair of the Committee (if known)
- the composition of the Committee, including the number of members
- preliminary budget for the Committee to cover the support necessary to meet the objectives.

## Participants

25. auDA will encourage broad representation on Committees from all key stakeholders including auDA members, as well as non-members, by:

- using multiple communication channels to advise stakeholders of the Committee and its Terms of Reference and seeking expressions of interest for Committee membership; and
- actively contacting appropriate organisations and government agencies.

26. auDA Board Directors are ineligible to sit on Committees, due to a potential conflict of interest, as they will ultimately have to vote on the output of a Committee. Board directors may attend Committee meetings as observers.

27. The Chair of the Committee is responsible for establishing a shortlist of Committee members for consideration by the Board. The Board can only veto a Committee member where there is a perceived conflict of interest.

28. The Chair is responsible for advising nominees that they have been appointed to the Committee.

29. Committee members are expected to make a continuing contribution to the Committee's work. The Chair may remove a Committee member in the following circumstances:

- the Committee member fails to attend or participate in meetings
- the Committee member fails to contribute to the Committee's outcomes
- the Committee member is obstructive or disruptive
- the Committee member's conduct is rude, disparaging or unprofessional.

30. The names of the Committee members and their position on the Committee must be published on the auDA website.

31. A Committee member may resign from the Committee at any time by giving the Chair written notice. The Chair may publish the reasons for resignation.

## Removal of Chair

32. The Committee members may determine that the current Committee Chair is not appropriate and propose a more suitable person as Chair. The current Committee Chair must advise the

Board of the vote of no confidence and the preferred candidate. The Board must appoint the new candidate unless there are compelling reasons to retain the current Chair.

33. The Board may remove the Committee Chair for the following reasons:

- inadequate progress of the Committee in achieving its objectives
- conflict of interest
- misconduct, including being rude or disparaging of stakeholders.

34. The Board must advise the Chair in writing that he or she will be removed and the reasons.

#### Operational Procedures

35. The Committee is responsible for determining its operational procedures, including

- the process to be followed by the Committee to meet the required outcomes under its Terms of Reference. The Committee must develop a project plan and timeline for delivering its outcomes, including deliverables, when and how public consultation will be undertaken and Committee meeting schedule. The Committee must publish this plan and timeline on the auDA website.
- the Committee must develop and publish a stakeholder engagement plan, which identifies the relevant stakeholders, and how consultation with these stakeholders will be undertaken.
- proposing to the Board any alterations in the Terms of Reference, or specification of work for new policies or standards. The Board must determine whether the Committee is the most appropriate body to undertake this work, the impact on the Committee's current deliverables and any other relevant matters. The Board must alter the Terms of Reference, if the Committee's mandate and deliverables change. The Committee will report to the Board if it requires assistance with any requirements, guidance or resources that the Committee requires to carry out its Terms of Reference.
- the Committee must publish on the auDA website its meeting agendas and the minutes. Minutes must be published within 10 business days of the meeting date. The Committee must also publish any Board progress reports within 10 business days from the date of the Board meeting to which the report was submitted. The Board may request a progress report from the Committee at any time. The request must be made 10 business days before the relevant Board meeting.
- the Committee must adopt a consensus approach to developing policy recommendations. Consensus requires at least 2/3 of the Committee members to agree. Where the Committee cannot achieve consensus, the Chair may call for a vote to determine the views of members on controversial matters, but the dissenting views must be noted in the Committee's minutes and report to the Board.
- the Committee must consult widely with the Australian Internet Community, including other Advisory Committees, consumer and industry associations and government authorities. At a minimum, a Committee must undertake at least two public consultations on an issue, and any submissions and outcomes must be published on the auDA website. The Committee must note in its report to the Board why it has not accepted some proposals.

- the Secretariat will be provided by auDA.

#### Public Consultation Procedures

36. The Committee must consult with stakeholders:

- when identifying feasible options for achieving the policy objective
- prior to recommending any option to the Board.

37. Stakeholders must be given an opportunity to comment on the draft final report to the Board.

38. The Committee when undertaking consultation must:

- ensure that all documents are drafted in plain English
- include how to make a submission and when submissions close
- allow a minimum of 20 business days for public comment and consultation
- must ensure that stakeholders are able to make confidential submissions
- provide a mechanism for stakeholders to engage outside of the public consultation process. All meetings and discussions with stakeholders must be minuted and the minutes published on the auDA website.

39. The Committee must represent stakeholders' views in the draft report and the rationale for accepting or not accepting some stakeholder input.

#### Approval of Advisory Committee recommendations

40. The Board may accept a Committee report and recommendations, in whole or part. Where the Board decides not to accept a recommendation, the Board should set out its reasons in the Board minutes.

41. The Board may request a Committee to provide supplementary information to support a recommendation. The Committee Chair must provide that information to the Board at its next meeting.

42. Where the Board has accepted a recommendation, auDA will prepare a policy implementation plan for consideration by the Board. auDA management will be responsible for drafting the detail of a final policy to give effect to the Committee's recommendations, where accepted by the Board.

#### auDA managed policy development

43. auDA management will be responsible for:

- i. developing new policy proposals;
- ii. managing minor policy amendments, where the change is required for administrative, technical or legal reasons; and
- iii. drafting the policy to give effect to recommendations of an Advisory Committee, approved by the Board.

#### Process

44. auDA will prepare a draft policy and explanatory statement. auDA will submit the draft policy and statement to the Board and seek approval to:

- i. publish the draft policy and explanatory statement on the auDA website; and
  - ii. have a public consultation period of 21 calendar days for policies amended for technical, administrative or legal reasons; and
  - iii. a consultation period of not less than 28 calendar days for policies or amendments that result from Committee recommendations.
45. auDA must publish all public submissions on the auDA website.
46. auDA will undertake further public consultation where significant changes have been made to the draft policy in response to stakeholder submissions. auDA must publish:
  - i. a redline version of the changes to the draft policy; and
  - ii. a statement setting out why the changes have been made.
47. The consultation period must not be less than 20 business days. All submissions must be made available on the auDA website unless marked confidential.
48. auDA is not required to undertake any further public consultation where the policy change is to comply with legislative requirements or is technical in nature.
49. auDA must advise the Board of the subject matter of the submissions and the rationale for accepting or rejecting stakeholder comments. Any changes to the draft policy and explanatory statement need to be brought to the attention of the Board.
50. The auDA Board must approve or reject the draft policy and explanatory statement and determine the date on which the policies come into effect.
51. If the Board rejects a draft policy giving effect to a Committee recommendation due to significant stakeholder concerns, the Board may:
  - i. request the Committee to reconsider the issue and to report to the Board with a substitute recommendation; or
  - ii. instruct auDA management to change the draft policy to reflect stakeholder concerns and undertake further public consultation.
52. The Board commits to only rejecting policies where the concerns of stakeholders reflect the Australian Internet Community, as a whole, and not sectoral interests.

### Board Approval of Published Policies

53. The Board is committed to transparency and accountability in its decision making. The Board in deciding to accept a Committee recommendation or approve a policy change or draft policy must be satisfied that:
  - i. the Committee recommendation or draft policy achieves the core policy objectives and complies with the Principles set out in this document
  - ii. effective stakeholder engagement and consultation was undertaken, and stakeholders represent a broad cross-section of the Australian Internet Community
  - iii. the policy development process was transparent and accountable; and
  - iv. the policy or Committee recommendation delivers the greatest net benefit to the Australian Internet Community as a whole, and not a sector.

54. The Board must by resolution approve:

- i. A Committee recommendation and instruct auDA to develop a draft policy; or
- ii. Approve a draft policy as a Published Policy and instruct auDA to publish the policy on its website.

### Publication

55. At a minimum, the Board must publish the amended policy and statement on the auDA website for a period of 30 calendar days before the policy can come into effect. The Board may waive this period where amendments to the policy are urgent to comply with the law or protect the integrity, stability or security of the Australian DNS.

### Version Control

<b>Title</b>	Process for the Development and Review of auDA Published Policies			
<b>Description</b>	Corporate Policy			
<b>Created By</b>	Manager Policy and Strategy			
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<b>Maintained By</b>	Manager Policy and Strategy			
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