

auDA Policy Review Panel Interim Report

15 May 2018

1 Introduction

The auDA Board convened the Policy Review Panel (**'Panel'**) on 6 October 2017 to make recommendations on:

- (a) the development of an implementation policy for direct registration; and
- (b) reform of the policies set out in **Annexure A** to this Report.

As the first ever holistic review of the policies for the Australian domain name space, the task is substantial. There are many issues that need careful consideration.

The Panel is, in my view, considering all issues carefully, while taking into account the interests of the Australian internet community. I am pleased to report that the Panel is making steady and positive progress.

I present to the auDA Board this Interim Report that sets out the progress made to date, conclusions reached, the process undertaken and the work still to be done.

This is an interim report, and further consultation will be undertaken to confirm and refine the conclusions reached by the Panel to date.

2 Purpose and role of this Panel

The Constitution of .au Domain Administration Ltd (the '**auDA constitution**') enables the auDA Board to appoint advisory panels, like this Panel. The auDA constitution clearly sets out the possible functions of such advisory panels. Clause 24.8 of the auDA constitution provides that the Directors may provide an advisory panel with '*a brief to investigate, analyse and advise or report to the Directors regarding a particular issue or objective*'.

Under the auDA constitution, an advisory panel is not a decision-making body. The auDA Board may accept and implement the recommendations of the Panel, in whole or part. This is something that I, along with my fellow panellists, needed frequently to reinforce to members of the Australian internet community during public consultations. The purpose of this Panel is to provide recommendations to the auDA Board.

The Panel has been tasked by the auDA Board:

- (a) to recommend an implementation policy for direct registration following the decision of the auDA Board to accept the recommendation of the 2015 Names Policy Panel to implement direct registration (but this Panel is not to consider whether to implement direct registration); and
- (b) to review, simplify, and consolidate existing published policies (see Annexure A) into the following three policies:
 - a Registrant Policy;
 - a Registrar Policy; and
 - a Complaints Policy.

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

- establishing mechanisms to ensure auDA is responsive and accountable to the supply and demand sides of the Australian internet community;
- promotion of fair trading;
- promotion of consumer protection; and
- adopting open and transparent procedures which are inclusive of all parties having an interest in use of the domain name system in Australia.

The Panel's task does not include a review of the .au Dispute Resolution Policy (the 'auDRP').

In executing this task, the Panel strives to represent the interests of all members of the Australian internet community and, more broadly, of all Australians. An important objective of the Panel's ongoing stakeholder engagement process, which comprises both written submissions and public consultation, is to ensure that the Panel is serving the interests of all Australians, not just the interests of a vocal or well-resourced minority within the Australian internet community.

The public consultation process has been as geographically inclusive as logistically possible. The public forums have been well-attended. The Panel is looking forward to further engagement with the Australian internet community during the next round of public consultations later in 2018.

The auDA Board was aware of many of the problems with the existing published policies prior to the appointment of this Panel. In brief, the existing policies are old, difficult to interpret, and sometimes contradictory. There are policies to assist in the interpretation of other policies. The existing policies have not fully adapted as the industry changed. Instead of being flexible, 'living' documents, for the most part they are reflective of a point in time in the past. Some policies have unintended loopholes. To add further complication, there are many policies.

Despite the issues with the existing published policies, the Panel is conscious that the Australian internet community has become familiar with the intricacies of these documents. With this in mind, the Panel will not be recommending change just for the sake of change. All of the Panel's recommendations have been carefully considered and weighed up against the status quo.

3 Statement of activities to date

3.1 Selection of Policy Review Panel

In response to an expression of interest request, I was appointed Chair of the Panel in July 2017. I then had the role of selecting members for the Panel.

In my view, it is important to have a Panel comprised of experts who have various relevant experiences and backgrounds. I also consider it important to have Panel members who have differing views, to ensure that all relevant issues could be canvassed and considered. I also did not want an overly large panel. In my view, some past panels were too unwieldy with around 20 members.

After receiving a good number of expressions of interest to join the Panel, I selected five initial panel members.

In addition to me, the Panel contains representatives from government, academia, consumer protection, the supply class, and the demand class.

The initial Panel consisted of: John Swinson (Chair), Paul Zawa (Government Representative), Professor Andrew Christie (Academic Representative), Narelle Clark (Consumer Protection

Representative), Brett Fenton (Supply Class Member), and Ned O'Meara (Demand Class Member).

No representative of a peak business body submitted an expression of interest to join the Panel. I contacted a number of peak business bodies in 2017, but none were able or willing to assist.

The Panel membership has undergone some changes. Ned O'Meara stepped down from his position in November 2017, when he was elected to the auDA Board. Mr O'Meara was replaced by Luke Summers as the Demand Class Member. However, Mr Summers resigned on 7 April 2018. Mr Summers was replaced with Ian Halson as the Demand Class Member.

Mr Paul Zawa resigned on 23 March 2018 due to work commitments. The ACCC was asked for a replacement for Mr Zawa, but was unable to assist. I have asked Mr Cameron Boardman (auDA CEO) to assist the Panel in sourcing a replacement Government Representative for Mr Zawa. At the present time, this position regrettably remains open.

Professor Andrew Christie resigned on 11 April 2018 for personal reasons. He was replaced with Professor Dan Hunter as the Academic Representative.

In April 2018, in response to comments from auDA members that the Panel did not have sufficient representation from business, I appointed Nicola Seaton to the Panel as Business Representative.

The current Panel consists of: John Swinson (Chair), Professor Dan Hunter (Academic Representative), Narelle Clark (Consumer Protection Representative), Brett Fenton (Supply Class Member), Ian Halson (Demand Class Member), and Nicola Seaton (Business Representative).

As stated above, at this time, the Panel has been unable to find a replacement Government Representative and is also still seeking a Peak Business Body Representative.

The Federal Government (Department of Communications and the Arts) has a representative observer of the Panel. Presently, that representative is Parris Burtenshaw. The Federal Government Representative is invited to attend Panel meetings, and has attended two meetings. I am informed by auDA that the Government Representative actively views the Panel's online discussion forum.

Importantly, all current Panel members are working to a common purpose. That purpose is to advise the auDA Board regarding a number of improvements and changes to the domain name policy for Australia. All Panel members believe that improvements and changes are necessary and that it is critical to modernise the policy framework for the Australian domain name space. Because the Panel members are looking at these issues from differing perspectives, the answers and priorities are not always easily forthcoming. However, to date, the Panel has been making good, constructive progress, which is discussed in further detail below.

3.2 Panel meetings

The Panel held its first meeting on 27 September 2017 and has subsequently met on 13 October 2017, 17 November 2017, 29 November 2017, 14 December 2017, 1 February 2018, 16 March 2018, 27 March 2018 and 1 May 2018.

The minutes of all Panel meetings are published.

3.3 Online discussion forum

auDA has provided the Panel with an online discussion forum, using the Confluence platform. This is actively used by Panel members to communicate and discuss ideas between Panel meetings.

3.4 First Issues Paper and written submissions

The Panel released its first Issues Paper titled 'Implementation of Second Level Domain Name Registrations (Direct Registration)' in October 2017. Submissions in relation to the paper closed on 10 November 2017.

The Panel received 51 public submissions in response to this issues paper. Submissions were received from a broad range of stakeholders, including registrars, registrants, consumer and end-user representative organisations, and the education sector.

3.5 Second Issues Paper and written submissions

A second Issues Paper titled 'Registrant Policy: Enabling Australia's Digital Economy and Society' ('**Registrant Policy Issues Paper**') was released in January 2018. Submissions in relation to the paper closed on 13 March 2018. This issues paper looked at many policy areas involving the registration of domain names in the Australian name space, including issues around the structure of the .au name space, reserved or prohibited domain names, and eligibility for and allocation of domain names including what rules should apply to direct registration of .au domain names.

The Panel received 60 public submissions in response to this issues paper. The Panel also received some confidential submissions. Submissions were received from a broad range of stakeholders, including registrars, registrants, consumer and end-user representative organisations, and government agencies.

3.6 Public consultations

The Panel has held four full-day public forums.

The public forums were held in Perth (5 February 2018), Sydney (9 February), Melbourne (14 February) and Brisbane (16 February).

At least three Panel members attended and actively participated in each public forum. At least two auDA representatives attended and assisted in the logistics for each forum.

Approximately 85 people attended the public forums, broken down as follows: Melbourne (34), Perth (12), Brisbane (19) and Sydney (20). The attendees came from a wide range of backgrounds, with different levels of knowledge regarding the current policy framework.

The purposes for the public forums were:

- Educational, regarding the operation, history and current policy issues for the Australian domain name space.
- Informational, regarding the issues that the Panel is considering, and the process that the Panel is following to devise new policies.
- Consultative, to gain feedback in relation to the implementation of direct registration and broader domain name policy issues. The Panel proposed a 'straw person' implementation model at the public forums – that if there were conflicting applications for a domain name directly registered under .au then the conflict should be resolved by a random draw – and obtained constructive and helpful feedback as a result. The Panel also discussed some of the issues that were considered in the Registrant Policy Issues Paper to gain initial feedback in relation to those issues and to encourage the making of written submissions to the Panel.

The Panel also held a closed consultation forum with Federal and State government domain name management representatives.

3.7 The importance of consultation and the success to date of such consultation

As touched on above, the Panel desires input and feedback from as many Australians as possible, particularly those Australians who believe they will be affected by any of the topics or proposals in the two issues papers.

The Panel wants this to be a real and meaningful consultation process. It has sought to achieve this through providing options for stakeholders to engage with the process, either through written submissions or by attending the public forums. It has offered public forums in as many capital cities as logistically possible, given time and cost constraints and the availability of the panellists.

The Panel takes time at the beginning of every public consultation to explain its remit and the questions that it has been asked to answer. This is a very important framing exercise, as there has been some confusion amongst members of the public around the Panel's role and powers. Some members of the public believe that there is still a decision to be made around the introduction of the .au name space, and that the Panel has the ability to make that decision.

During the public forums, the Panel has met people with real concerns regarding some of the changes that have been discussed or proposed. I have been impressed with the way that all panellists have dealt with these concerns. Panellists do not dismiss any concerns raised by members of the public. The panellists acknowledge the issues raised and engage in constructive dialogue with the relevant individual, or individuals. Through these conversations, the Panel has been alerted to issues it had not previously considered, and has updated and refined its proposals to incorporate its learnings. For example, in relation to competing claims for a .au domain name, the Panel proposed a lottery model as a 'straw person' for discussion in the public forums. In response to the Panel's conversations with concerned individuals during public forums (as supplemented by the concerns expressed in written submissions), the Panel has now changed its proposal to a 'lock-down' model discussed in further detail below.

Businesses have been the most engaged in providing information and feedback to the Panel. The Panel has been disappointed in the low volume of submissions received from government, educational institutes, and charities.

Real and meaningful engagement is a slower process, but the Panel believes it is essential for success. The Panel also believes that this engagement with the Australian public is working. It is certainly helping the Panel to formulate proposals that reflect the concerns of those that will be most affected by any changes.

The Panel looks forward to continuing its dialogue with the Australian public during the future consultation process, as detailed below.

4 Implementation of direct registration

4.1 Introduction

Overview of Second Level Domains

Currently, there are nine second level domains ('2LDs') with different eligibility requirements. The 2LDs are also structured as open, closed or restrictive.

The open 2LDs are those within which the public may register a domain name, provided they meet the relevant eligibility criteria. The open 2LDs are com.au, net.au, org.au, asn.au and id.au.

The closed 2LDs are csiro.au, gov.au and edu.au. These domains are closed communities of interest, whose membership is managed by the Federal, State and Territory Governments under agreements with auDA.

The restrictive 2LDs are the State and Territory 2LDs, also known as Community Geographic

Domain Names. These domains are reserved for use by geographically defined communities to create community websites. They can only be registered on behalf of the local community by a not-for-profit organisation or a special committee of the local council.

Direct Registration Background

In December 2014, the auDA Board established the Names Policy Panel to consider, among other issues, whether the .au name space should be opened up to direct registrations. Direct registration will allow Australians to register domain names directly under .au (for example, yourname.au). The Names Policy Panel was also asked to consider what, if any, policy rules should apply to direct registration.

In December 2015, following 10 months of deliberations and two six-week public consultations, the Names Policy Panel made an in-principle recommendation to the auDA Board that direct registration should be made available. The Names Policy Panel also recommended that the same eligibility and allocation rules which apply to the open 2LDs should also apply to direct registrations; that is, the domain name must be an exact match, abbreviation or acronym of the registrant's name or trade mark, or there must be a close and substantial connection between the registrant and the domain name. The Names Policy Panel acknowledged the challenges inherent in implementing these recommendations and flagged the following issues for consideration by auDA:

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

Implementation was not within the Names Policy Panel's terms of reference.

Establishment of this Panel

In April 2016, the auDA Board announced that it had accepted the recommendation of the Names Policy Panel and would introduce direct registrations in .au. It did so following the completion of some independent market research which auDA commissioned to test the Names Policy Panel's assertions regarding the likely level of market demand for direct registration. According to the auDA Board, the independent market research supported the feedback received by the Names Policy Panel. The auDA Board decided to accept the Names Policy Panel's recommendation on this basis.

As stated above, this Panel is tasked, in part, with recommending an implementation policy for direct registration. It is important to be aware that it is not within this Panel's terms of reference to revisit the recommendation made by the Names Policy Panel. That is, this Panel is not considering *whether* to implement direct registration, but is considering *how* to implement direct registration.

Early in its discussions, this Panel decided that if direct registration could not be implemented in a fair and efficient manner, then the Panel would make this clear in any recommendation it made to the auDA Board. The Panel presently believes that implementation of direct registration in a fair and efficient manner is possible. This does not mean that the Panel or its individual members agree or disagree with the recommendation made by the Names Policy

Panel, or with the decision of the auDA Board, to implement direct registration. That decision is not within the scope of this Panel's remit.

To inform the Panel's discussions on the best way to implement direct registration, the Panel has considered the purpose and benefits of direct registration to Australians. The Panel wishes to ensure that any implementation policy it recommends fully captures those benefits.

Panel's views on direct registration

The Panel considers that some of the key benefits of direct registration in the .au name space are as follows:

- **Choice:** Direct registration will provide consumers, businesses, not-for-profit organisations and new entrants to the Australian domain name space with more choice.
- **Fewer restrictions:** The Panel proposes that .au would be an unbounded space. The Panel proposes that domain names directly registered under .au will have no eligibility or allocation criteria, other than an Australian presence requirement. This will allow users to define their own purpose for their domain name, rather than being constrained by eligibility and allocation rules of the current spaces.
- **Desirability:** Shorter, snappier domain names are generally considered more desirable as they are easier for consumers to type and remember. Domain names directly registered under .au will be shorter than an existing 2LD counterpart.
- **Trustworthy:** The existing 2LDs in the .au name space are considered highly trustworthy. They signify a uniquely Australian source, which is subject to Australian regulation, jurisdiction and enforcement. Domain names registered directly under .au will also have a strong Australian connection.
- **Competitiveness overseas:** Direct registration will help to promote the .au brand outside of Australia. This assists Australian businesses who market or supply their goods and services outside of Australia.
- **Value to existing 2LDs:** The existing 2LDs in the .au name space each have a defined purpose. This aspect of existing 2LDs will not change with the introduction of direct registration. Having fewer restrictions associated with domain names registered directly in .au (see above) will make the purpose of the existing 2LDs more clear. The expectation is that registrants who do not neatly meet eligibility or allocation requirements of an existing 2LD space will instead choose to register a domain name directly under .au.

With the broader choice now available through new generic TLDs Australians may wish to opt for a stronger statement of their Australian connection through direct registration.

As with any change, there are possible negative impacts. The Panel has received many submissions from various stakeholders that unfair implementation of direct registration would cause serious damage to an existing business, or to its brand or marketing. These submissions were reinforced by feedback provided at the public forums. (The Panel notes that a large number of submissions from stakeholders who discussed negative impacts of the implementation of direct registration provided only high level statements, with little evidence or examples, and so were less useful to the Panel than some of the more detailed submissions.)

The Panel recognises that a fair allocation method is critically important to the success of the implementation of direct registration, and has spent significant time on this issue.

The Panel wishes to devise an implementation model which reflects the possible benefits of direct registration while at the same time protects existing domain name registrants from unnecessary harm. This principle (the 'do no harm' principle) is very important. The Panel

acknowledges that this is a key concern for many stakeholders and, despite a lack of evidence regarding the basis for this concern, the Panel has taken this into account in refining its proposed implementation policy.

Additionally, the Panel strongly believes no existing domain name licensee should be required to give up or stop using their existing domain name because of the existence or implementation of direct registration. No existing domain name licensee should be forced to migrate to a new domain name or to take up a direct registration domain name.

4.2 Implementation Issues

At this point in time, a substantial part of the Panel's discussions, and feedback received and considered by the Panel, have focussed on the process to allocate .au domain names at the second level ('SLDs') where there presently exists more than one domain name having the same name at lower levels. For example, if Company X owns yourname.com.au and Charity Y owns yourname.org.au, and both wish to register yourname.au, who should be allocated yourname.au?

However, this is only one aspect of the implementation of direct registration. More generally, the Panel's proposed implementation model must take into account allocation of domain names registered directly at the second level in circumstances where:

- there is no relevant existing registration (for example, where there is no corresponding domain name registered at the third, fourth or fifth levels in the Australian domain name space);
- there is one relevant existing registration (for example, in respect of yourname.au, where there is an existing domain name licence for yourname.com.au, but no other corresponding domain name registered at the third, fourth or fifth levels in the Australian domain name space); and
- there are two or more existing 'conflicting' registrations (for example, in respect of yourname.au, where there are existing domain name licences for yourname.com.au, yourname.gov.au and yourname.org.au).

At an international level, many ccTLDs when launching direct registration have granted existing domain name registrants priority to register the matching SLD. However, there has not been a uniform approach to resolving competing claims. Each country has developed a process that reflects the size, history, usage and structure of their relevant domain name space and the socio-economic, political and legal environment. This has meant that the processes adopted in other countries may not be the most suitable for an Australian context.

4.3 Possible models for resolving conflict as to allocation

A number of implementation models have been considered by the Panel where there are two or more existing 'conflicting' registrations. These models include:

- **Order of priority:** Priority could be given to existing domain name registrants of conflicting names based on an order of priority taking into account the existing 2LD (or some other factor). For example, under this model, the registrant of the corresponding com.au domain name at the cut-off date may have priority over the registrant of the corresponding net.au domain name at the cut-off date. There is some stakeholder support for an order of priority model favouring com.au registrants.

In short, the Panel has decided against this model because:

- It is difficult to determine a fair and logical order of priority. Even if it is agreed, for example, that a .com.au registrant should have first priority, what then is the priority order where there is no .com.au? For example, should .edu.au have priority over .gov.au? Should .org.au have priority over .net.au? Should

Commonwealth Government domain names have priority over State Government domain names? More generally, who should come first in the priority list, and why? (Registrants in each space put forward arguments why they should be first if this model was implemented.) The Panel was unable to provide logical and equitable answers to these questions.

- Each order of priority devised may cause harm to registrants lower down the priority list.
- The same eligibility rules apply to more than one existing 2LD (for example, com.au and net.au), so it would be difficult to justify giving priority to one over the other.
- This model contradicts the hierarchy of rights principle, which says that no person or rights holder has a better entitlement to a domain name than any other person.
- **Longest continuous registration:** Competing claims could be resolved in favour of the longest continuous registration (oldest creation date) of a domain name. This would prioritise registrants of legacy domain names. However, this model disadvantages recent market entrants. For example, this model would give priority to the owner of a long registered but inactive domain name over a more recent well-known and actively used domain name. Further, it is not certain that creation date data in the registry for some of the oldest domain names is accurate.
- **Longest continuous registrant:** Priority could be given to the registrant who has held the domain name licence for the longest period of time. This approach assumes that registrants who have continuously held a domain name licence may have invested significant resources in their online presence. However, this approach would disadvantage registrants that have recently acquired a domain name licence on the secondary market or through the purchase of a business, and new market entrants.
- **Consensus approach:** Persons or entities with competing claims to the matching .au name could agree amongst themselves who should have priority. If there is no agreement, then a more formal dispute resolution process could be undertaken. This model was initially regarded as attractive by the Panel, and to some extent, has been built into the current preferred model in an informal way. It is noted that this model, if implemented incorrectly, could result in a slow and possibly costly process. It was also considered to be potentially unfair to less sophisticated domain name licensees, who may be taken advantage of or not understand the consequences of decisions being made.
- **Auction:** Registrants with conflicting names could bid at auction for the matching SLD, with the highest bidder winning the right to register the SLD. This would favour registrants with the 'deepest pockets'. This model could disadvantage charities, government bodies and educational institutions.
- **Lottery / Random:** This model allocates the SLD on a random basis. For example, a lottery system would require registrants interested in registering the SLD to purchase a lottery ticket. A registrant would be able to purchase a lottery ticket for each domain name licence held by them. For example, the Australian Broadcasting Corporation would be able to purchase a lottery ticket for abc.net.au and abc.com.au. The winner of the lottery would have the right to register the SLD. Where only one registrant purchased a ticket for any given lottery that registrant would automatically be given the right to register the SLD. The benefit of this approach is that all registrants who purchase a lottery ticket will have an equal chance of winning the lottery.

A version of this model was proposed as a 'straw person' model at public forums, and received some support, but also harsh criticism. Accordingly, the Panel has decided against this model because:

- Although a lottery is perceived to be fair, many domain names may not be allocated to the 'best' or most logical owner of the domain name.
- Across the space as a whole, a holder of a large portfolio of inactive domain names would have more chances (and thus be allocated more SLDs) than a business that actively uses a single domain name.
- The Panel noted suggestions raised at the public forums that an appropriate system for the implementation of direct registration would be 'least harm for maximum benefit'. The Panel notes concerns that the lottery approach for contested domains may create 'random harm'.

It is important to note that dealing with conflicts is only one aspect of the implementation process. Evidence suggests that there will be fewer than 90,000 possible conflicts, out of over 3 million domain names registered.

4.4 Key principles of proposed implementation model

The Panel proposes an implementation model which has been termed a 'lock-down' model. The proposed implementation model has the following key features:

Timing

- The implementation process should not be drawn out, and should be completed in less than a year. The Panel has reviewed the timeframes of international implementations, some of which have taken over three years and are still ongoing. The Panel has also reviewed the submissions of, and spoken with, members of the Australian internet community who were concerned that they may be looking down the barrel of a long period of uncertainty. The Panel is of the view that a prolonged period for formally resolving conflicting rights would not produce positive outcomes for the Australian internet community.

Access

- There should be no hierarchy of rights. For example, a registered trade mark does not confer any better entitlement to a domain name than a business name. Where there is no conflict, domain name licences in the .au space will be allocated on a 'first come, first served' basis. Provided that the relevant eligibility rules are satisfied (i.e. that there is an Australian connection), and subject to the conflict resolution process outlined above, the first applicant to apply for a particular domain name will be permitted to license that domain name. This principle extends to the rights of existing domain name registrants. There will be no hierarchy within spaces (e.g. between 2LDs such as .com and .net) or between levels (e.g. between .org.au and yourname.org.au).
- Where there is no person or entity with an equivalent domain name licence registered at the third, fourth or fifth level, the .au domain should be open for general registration as soon as possible. Persons and entities who want to use the new space should be able to do so immediately upon launch. This will also allow for the development of use cases.

Priority Allocation and Conflict Resolution

- Where there is only one person or entity with a corresponding domain name at the third, fourth or fifth level in respect of a new domain name, the holder of the existing registration will have a six month priority registration period in which to register the .au equivalent. Following this priority period, if the SLD is not registered by the existing holder of the corresponding domain name, the domain name will be available on a first come, first served basis.

- Where there is more than one corresponding domain name at the third, fourth or fifth level in respect of a new domain name, the corresponding SLD will be locked. During the six month priority registration period referred to above, the persons or entities with existing registrations will be able to acquire a token to indicate that they wish to obtain a corresponding .au registration. If only one person acquires a token, this indicates that there is in fact no conflict, and the token holder will be entitled to the SLD. However, if more than one token is issued in respect of a SLD, that SLD will remain locked indefinitely while the conflict remains (that is, while multiple tokens exist).
- The token will be associated with an existing corresponding domain name at the third, fourth or fifth level. Thus, the token is transferred if the corresponding domain name is transferred. The token expires if the corresponding domain name registration is not renewed or is cancelled.
- The lock on the SLD will be lifted once there is only one token in existence in respect of the .au domain name. This may occur, for example, if the tokens held by all but one of the persons or entities with existing rights expire or are cancelled.
- Names on the Reserved List will not be available for registration, unless the name is on the list due to a requirement of law and the applicant can demonstrate that it meets all of the legal requirements.
- All auDA policies will apply to SLDs (noting that there will be substantially fewer policies in existence soon).
- The auDRP will apply to all SLDs.

The above is summarised in greater detail in **Annexure B**. Please note that Annexure B is a high level outline, and not a draft policy, and that the model is subject to further community consultation and review.

The advantages of this model are that where there is no conflict, the SLD domain name will be able to be registered and used at the earliest possible stage. A key part of the model is to determine if a real conflict actually exists. If there is conflict, which is expected to be the case in respect of fewer than 90,000 SLDs, the licensees involved can try to resolve the conflict themselves in their own time and their own way; but until the conflict is resolved, then no one can use the corresponding SLD. Thus, in conflict situations, the status quo is preserved, there are no winners or losers, and importantly no one is harmed.

In short, the Panel considers that (even in the worst-case scenario of the most possible unresolved conflicts) it is acceptable to indefinitely lock-up a maximum of around 90,000 SLDs to protect existing domain name licensees, while allowing the rest of the space to be used thus possibly benefiting many more than 90,000 new licensees of SLDs. Thus, there is possible benefit and no harm. It is expected that in fact there will be fewer than 90,000 SLDs locked, and over time, the locks will be lifted as conflicts are resolved.

It has been drawn to the Panel's attention that the principles outlined above and the process set out in Annexure B are quite similar to the model that has been adopted and used in Malta. The Panel did not discover this until after it has devised the proposed process. The Panel intends to consult with Malta regarding the lessons learnt from their process.

As discussed below, the Panel also recommends that the .au space should be open and inclusive, without any eligibility or allocation rules, other than Australian connection. This will allow for many different use cases, ranging from large international organisations with an Australian connection to small businesses, local charities, hobbyists, families, and bloggers.

4.5 Cut-off date for eligibility to participate in the priority allocation and conflict resolution process

A cut-off date for eligibility as a priority applicant (i.e. a person or entity with a corresponding Australian domain name licence at the third, fourth or fifth level) is important as it affects the following:

- the number of conflicting domain names;
- the risk of industry insiders profiteering from the launch of direct registration; and
- registrants who register a .au domain name after cut-off.

The Panel believes that a cut-off date is sensible because there is some (limited) evidence that domain names have been registered primarily for the purpose of obtaining a preference in relation to any conflicting names process that this Panel may recommend.

However, a cut-off date prevents new businesses that are established after the cut-off date from receiving the benefits of the priority registration and conflicting names process.

The Panel is also conscious that a cut-off date in certain circumstances gives preference to older registrations over new registrations.

The Panel originally proposed a cut-off date of 18 April 2016. This was when the auDA Board announced its approval of, and intention to implement, direct registration. This is the approach that was adopted in the United Kingdom and New Zealand.

However, if direct registration is not implemented until late 2019 or 2020, there is then a long period of time between the cut-off date and the launch date. This may unacceptably hurt a significant number of new businesses, especially those that are unaware that direct registration is coming.

Following discussions with the public, the Panel accepts that a more recent date may be appropriate. Dates that were considered include the date of the release of the first issues paper by this Panel and the date the Panel convened for the first time.

After much discussion, both within the Panel, and with the public, the Panel has determined that a cut-off date of 4 February 2018 is appropriate. This is when the Panel began its public consultations in relation to the implementation of direct registration, and first publicly discussed the Panel's views as to various implementation models.

However, if direct registration is not actually implemented until later than currently anticipated by this Panel, then the Panel recommends that the auDA Board revisit the cut-off date.

4.6 Domain Names at the Fifth Level

This report and Schedule 2 refer to corresponding domain names at the third, fourth or fifth level as being eligible to participate in the priority and conflicting names process discussed above. However, the Panel is still considering whether to include domain names at the fifth level in this process. Panel members have differing views as to this issue. It is believed will primarily impact schools.

Few submissions were received in respect of this issue.

The fact that domain names at the fifth level are included in the discussion above does not signify that the Panel has reached a final conclusion on this issue.

The Panel may decide to exclude domain names at the fifth level from the priority and conflicting names process.

The Panel will seek further consultation and data as to this issue.

4.7 Other comments regarding direct registration

Fees and Costs: The Panel has no jurisdiction to set or determine fees or costs. However, the Panel's view is that any fees charged in relation to the implementation of direct registration (for example, to acquire a token) should be on a cost recovery basis only.

Awareness: Similar to the recommendation of the Names Policy Panel, this Panel strongly recommends that there must be a widespread education and awareness campaign leading up to the release of direct registrations. Such a campaign should also publicise the details of the priority registration and conflicting names process.

Further Public Consultation: As stated above, this is an interim report, and the Panel will undertake further public consultation in respect of the priority registration and conflicting names process that is discussed in this interim report. The proposed model may change as a result of such consultation.

Impact Analysis: The Panel recommends that prior to deciding to adopt the priority registration and conflicting names process that is recommended by this Panel, the auDA Board should commission an impact analysis.

5 Registrant Policy

5.1 Overview

As stated above, one task assigned to the Panel is to review and simplify the existing policies listed in Annexure A (other than the auDRP), and to consolidate those existing policies into the following three policies:

- a Registrant Policy;
- a Registrar Policy; and
- a Complaints Policy.

The Registrant Policy Issues Paper, released in January 2018, sought comment from stakeholders in relation to a number of different policy areas, including issues around the structure of the .au name space, reserved or prohibited domain names, and eligibility for and allocation of domain names including what rules should apply to direct registration of .au domain names.

The submissions received in response to the Registrant Policy Issues Paper and the discussions at the public forums have helped to shape the Panel's consideration of the various policy areas. The Panel has made significant progress in relation to many of the questions raised in the Registrant Policy Issues Paper, as set out in more detail below.

This section of this interim report sets out the Registrant Policy issues that have been considered by the Panel, and the Panel's current views in relation to such issues. Further work and consultation is needed to finalise the Panel's views in respect of the Registrant Policy.

5.2 .au structure

(a) *Should the .au Domain name space be a 'general purpose' domain for all Australians allowing use for any purpose?*

ccTLDs in other jurisdictions that have introduced direct registration have categorised the relevant second level domain name space as a 'general purpose' or 'mixed use' space. This means that an eligible entity or person may register any domain name in that space for any purpose, subject to naming restrictions.

The Panel considers that the utility of a .au domain name space requires it to provide 'something more' than the existing 2LD name spaces. The 2015 Names Policy Panel Final Report recommended that the .au domain name space be for 'all Australians,' subject to meeting the eligibility and allocation criteria for an existing 2LD name space.

The Panel is tasked with recommending eligibility and allocation rules for the .au name space. In determining what recommendation to make, one issue to consider is whether to differentiate the .au name space from the existing 2LD name spaces to maximise utility and to preserve and strengthen the integrity of, and trust in, the existing 2LD name spaces.

As mentioned above, the Panel recommends that the .au space should be open and inclusive, without any eligibility or allocation rules, other than an Australian connection. That is, any Australian person or business can register any domain name directly in the second level. This will allow for many different use cases, ranging from large international organisations with an Australian connection to small businesses, local charities, hobbyists, families and bloggers.

- (b) *Should the net.au name space be closed to new registrations? If so, should existing net.au registrants be permitted to continue to renew their domain name indefinitely?***

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

The Panel has spent considerable time exploring the purpose of the net.au and asn.au name spaces.

The net.au name space was initially created for use by internet related businesses, such as Internet Service Providers. auDA removed this policy requirement in May 2002 to expand the pool of domain names available to commercial entities, particularly where a desired .com.au name was unavailable. However, as at November 2017, domain name registrations in net.au accounted for only nine percent of domain name registrations across both the net.au and com.au name spaces. The Panel is aware that there is a public perception that net.au has less market value and recognition than a com.au or .com.

The asn.au name space was created for associations. The 2004 Names Policy Panel recommended that the eligibility criteria for org.au and asn.au should be combined and applied to both 2LDs. Since that time, asn.au has been open to eligible associations and non-commercial entities. As of December 2017, asn.au accounted for 4.6 percent of domain names registered across both the asn.au and org.au name spaces.

The Panel acknowledges the stakeholder feedback and proposals it has received through submissions and public consultations on these name spaces. At this time, the Panel has agreed that it will not recommend any further specific policy changes regarding these name spaces, apart from those caused by recommended changes to other policies which the Panel is tasked with reviewing.

- (c) *Should the State and Territory name spaces be used for other purposes? If yes, why and what are the purposes for which domain names should be registered under these name spaces?***

At present, the State and Territory 2LD name spaces, or Geographic Community Domain Names ('CGDNs'), are reserved for use by geographically defined communities to create community websites.

As at December 2017, there were 235 domain names registered across these 2LD name spaces. Given the low uptake of CGDNs, the Panel is considering other potential uses of these name spaces.

For example, while there are good arguments for the creation of new 2LD name spaces specifically for use by State and Territory courts or judiciary, Parliament and Governors, it may be more practical and useful for these bodies and representatives to be registered under the State and Territory name spaces.

The Panel is still considering this issue.

5.3 Reserved names

auDA currently maintains a reserved list of the following words, phrases, acronyms and abbreviations which are unavailable for registration:

- words and phrases that are restricted under Commonwealth legislation;
- names and abbreviations of Australian states and territories and the name “Australia”; and
- names that may pose a risk to the operational stability and utility of the .au domain.

The Panel is considering words, phrases, acronyms or abbreviations which should be unavailable for registration as domain names on the following grounds:

- use is restricted under Australian law;
- use is not in the public interest;
- use as potential future 2LD name spaces; or
- use poses a risk to the operational stability and utility of the .au domain.

The Panel is continuing to work through various issues in relation to the reserved list. auDA has a mandate to ensure its policies promote consumer protection and fair trading. Any names added to the reserved list, or which are blocked at the second level, must reflect this principle.

The Panel has suggested that the following categories of names could be reserved to prevent the use of misleading and confusing domain names where use is not in the public interest:

- words, phrases and acronyms prohibited by law; and
- names that threaten the integrity and stability of .au.

The second of these categories could include generic TLDs, ISO Country Codes and 2 letter words.

The Panel has also considered reserve list issues with:

- culturally important names;
- names of cultural significance to Aboriginal and Torres Strait Islander peoples; and
- geographical names and abbreviations.

The Panel believes that a reserved names list is appropriate, but is still considering this issue regarding the composition of and rules supporting a reserved names list.

5.4 Eligibility and allocation rules

- (a) ***How should the Australian presence requirements be defined? Should trademark applicants and registrants only be allowed to register a domain name that is an exact match to their Australian trademark application or registration when relying on the trademark application or registration to establish an Australian connection?***

The Panel has received overwhelming support for an Australian presence requirement.

The Panel considers that the Australian presence requirement needs to be defined carefully in the Policy. Generally, the Australian presence can be summarised as being a legal person or entity with an Australian connection and which is subject to Australian law. The draft Policy that will be prepared by the Panel will carefully define the Australian presence requirement, and the same test will apply across all open 2LDs and domain names registered directly at the second level.

The current eligibility and allocation rules provide an exception to the Australian presence requirement for holders of Australian registered trademarks and pending trademark applications. This exception allows an entity that holds an Australian trademark registration or has a pending Australian trademark application, which does not otherwise have an Australian connection, to register any domain name in the com.au and net.au name spaces. The Panel considered whether such a domain name holder should be limited to registering a domain name that is an exact match to their Australian trade mark application or registration.

The Panel will recommend that the trade mark applicant or owner should only be allowed to register a domain name that is an exact match to their Australian trademark application or registration, if the trade mark application or registration is the sole basis for their meeting of the Australian presence requirement. The Panel will also recommend restricting such trademark applications or registrations to word marks. This means that a logo trademark application or registration will not give rise to eligibility to register a domain name where the applicant or owner of the relevant trademark has no other Australian connection.

The Panel also will recommend that, if a trademark application or registration lapses, or if a trademark application is finally refused, then there is an automatic loss of eligibility for the corresponding domain name.

- (b) ***What eligibility and allocation rules should apply to the .au domain name space (direct registration) and the open 2LD name spaces, and why? Should the close and substantial connection rule be retained and why? Should allocation criteria be removed, and the focus be on registrant eligibility? Should domain monetisation continue to be permitted in the com.au and net.au 2LD and at the second level? How should domain monetisers interests be balanced against the needs of the broader Australian Internet Community?***

The Panel continues to consider possible eligibility and allocation rules for existing 2LD spaces.

The Registrant Policy Issues Paper identified three models as a tool for generating discussion on key eligibility and allocation rules. Those models are:

- **Model A:** Existing name space eligibility and allocation rules remain unchanged. The existing rules would continue to apply to each respective 2LD name space, and to the .au name space.
- **Model B:** Existing eligibility rules continue to apply to each respective 2LD name space and to the .au name space, but no allocation rules apply. There would be no mandated relationship between a registrant and the domain

name. Registrants would have the freedom to register any domain name in any name space for which they are eligible.

- **Model C:** The general eligibility criteria would be the Australian presence requirements. An additional set of eligibility criteria would need to be satisfied by all potential registrants, based upon the name space. Allocation criteria would restrict the domain names that could be registered.

Whether or not the close and substantial connection rule is retained and the future of domain monetisation heavily depends on the eligibility and allocation model which is chosen.

As stated above, based on feedback received by the Panel through public submissions and at the public forums, the Panel recommends that an Australian presence should be the sole criteria for eligibility for domain names registered directly in the .au name space, and no allocation rules should apply in this space.

The Panel continues to consider eligibility and allocation options for the existing 2LD name spaces. At present, the Panel considers that those rules should be tightened and clarified for .com.au and .net.au.

The Panel has received feedback that the existing monetisation rules for .com.au and .net.au are difficult to interpret, and have been applied in a way that is likely outside of the original intent of the policy. Further, the existing monetisation rules have enabled some domain name licensees to register and warehouse almost any domain name they desire for the primary purpose of resale. The current policy suite evidences the intention that domain names should not be warehoused and registered for resale purposes. However, the existing monetisation rules have allowed some registrants to do so. The Panel currently considers that the monetisation allocation rules should be repealed.

The Panel will recommend that current policy requirements that domain names in the .au name space should not be registered for the primary purpose of resale should be reinforced. However, the Panel is aware that the term 'primary' in this context would also need to be clearly and appropriately defined.

The Panel is still considering a number of outstanding issues regarding eligibility and allocation rules.

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

The introduction of internationalised domain names has received good take-up in some ccTLDs, but not in the gTLDs.

A number of serious issues need to be considered to avoid confusion and cybersquatting if internationalised domain names are to be successfully introduced.

The Panel does not recommend the introduction of internationalised domain names at this time.

The Panel will recommend that this issue be addressed by a future Policy Review Panel, and that a close watch be kept on any ICANN developments in the implementation of internationalised domain names, specifically in respect of consumer protection.

5.5 Licence conditions

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

The Panel identified four issues for consideration in recommending whether a registrant should be able to sublease a domain name to another party:

- (i) Subleasing of a domain name acquired under the close and substantial connection test raises the issue of whether the registrant had a legitimate connection to the domain name.
- (ii) Subleasing may be used by foreign nationals or entities to circumvent the Australian connection requirement.
- (iii) An entity or person not otherwise eligible to register a domain name in a specific 2LD name space may be able to gain access to the 2LD by leasing a domain name.
- (iv) 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. Subleasing 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 Panel has encountered divergent views on whether subleasing of domain names should be permitted.

A number of submissions which addressed this issue noted that, in some circumstances, there are legitimate business reasons for subleasing domain name licences (for example, where agents or subsidiaries of a head company wish to make use of a domain licence which is held in the name of the head company).

The Panel considers that subleasing to related entities or agents is not expressly prevented under the current policy.

The Panel believes that it is important that the WHOIS details accurately reflect the entity in control of the domain name.

The Panel will recommend that subleasing of domain names should be prohibited.

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

The Panel has considered whether the transferee of an existing domain name licence should retain the rights to the remainder of the licence period.

This does not appear to be a controversial issue.

The Panel considers that any pre-payment of the registration fee should go to the benefit of the transferee, provided that the proposed transferee meets the relevant eligibility and allocation requirements prior to the transfer. This approach is consistent with international practice and ensures that only one fee is paid for the duration of the licence period. Registrars are compensated for any potential costs by payment of a transfer fee.

The Panel will recommend that a process be created which allows a domain name transferee to receive the benefit of any remaining licence period.

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

Under section 6 of the current Mandatory Terms and Conditions Applying to .au Domain Name Licences 2008-7 (1 June 2008), auDA may cancel a domain name in the following circumstances:

- (i) where the registrant breaches any auDA Published Policy;
- (ii) in order to comply with a request of a law enforcement agency, or an order of a court or under any applicable law, government rule or requirement, or under any dispute resolution process; or
- (iii) to protect the integrity and stability of the domain name system or the .au registry.

The Panel considers that it is appropriate for auDA to suspend a domain name licence (i.e prevent the domain name from resolving to the DNS) for breach of an auDA Published Policy. However, auDA should not have the power to cancel a domain name licence in these circumstances.

The Panel also considers that auDA's power to cancel a domain name licence in order to comply with a 'request of a law enforcement agency' needs to be clarified. At present, registrars have no guidance as to what constitutes a 'law enforcement agency'. Further, there is no requirement that the relevant request be lawful or enforceable. Similarly, the term 'government requirement' is vague and could refer simply to department policy.

The Panel is still considering this issue.

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

Based on a consideration of public submissions, the Panel considers that the current level of information in WHOIS search results is sufficient.

The Panel will recommend that no changes be made to the information that is made public in WHOIS search results.

5.6 Status of issues

As can be seen from the above summary, the Panel has made good progress in relation to the many issues regarding registrant policy settings. The Panel is continuing to work through the following issues:

- (a) Use of State and Territory name spaces.
- (b) The circumstances (if any) in which auDA should be allowed or required to add names to the reserved list.
- (c) The eligibility and allocation rules applying to the .au name space and the open 2LD name spaces.
- (d) auDA's power to suspend or cancel a domain name licence.

Other issues and sub-issues may arise during the course of the public consultation process that the Panel may also consider.

6 Next steps

6.1 Accounting for delays

The current governance issues being addressed by the auDA Board have shifted some focus and resources from the Panel's task. Additionally, the initial timetable was too aggressive, taking into account the work to be done and the public consultations needed. As a result, the timeline for the Panel's work has required updating. The Panel was originally due to report to the auDA Board by 31 August 2018. The Panel's final report is now due on 17 December 2018.

6.2 Expansion of Panel

There has been discussion recently over the size and composition of the Panel. As Chair of the Panel, I have listened to this feedback and believe the Panel will benefit from a further diversity of membership. There were many well-qualified individuals who submitted expressions of interest last year and I intend to reach out to these individuals to assess their ongoing interest. I anticipate making further announcements on new Panel members in the near future.

6.3 Panel meetings

Panel meetings are scheduled for the following dates: 8 June 2018, 12 July 2018, 9 August 2018, 6 September 2018, 16 October 2018, 25 October 2018 (if required) and 3 December 2018.

6.4 Registrar Policy

The Registrar Policy will be delegated to a Working Group led by Brett Fenton.

6.5 Direct Registration Policy

The Panel is currently working hard to finalise the drafting instructions for direct registration to be provided to the draftsman. The draftsman is scheduled to provide the draft policy to the Panel for review by 8 June 2018. The Panel will also prepare a supporting paper to accompany the draft policy.

The Panel will release the draft policy and the supporting paper for public comment in mid-June. There will then be a round of public consultation from 18 June 2018 to 20 July 2018. Following this, the Panel will review the submissions received and finalise the direct registration policy and supporting paper (from 23 July 2018 to 9 August 2018).

6.6 Registrant Policy

The Panel is currently reviewing the outstanding issues in relation to the Registrant Policy. The draftsman is scheduled to begin preparing the first draft of the new Registrant Policy in mid to late July 2018. The Panel will also prepare a supporting paper to accompany the draft policy.

The Panel will release the draft registrant policy and the supporting paper for public comment in mid to late October 2018.

6.7 Complaints Policy

Work on the Complaints Policy is in very early stages. The Panel considered establishing a working group for this policy, but decided against doing so.

The Complaints Policy is best considered once work on the other policies is further advanced.

6.8 Final public consultation for all policies

There will be a final round of public consultation in relation to all policies and supporting papers in November 2018. Following this, the Panel will review the submissions received and finalise all policies and supporting papers.

6.9 Report to the auDA Board

The Panel will provide its report to the auDA Board, which will include recommendations and draft policies, in mid-December 2018.

7 Acknowledgements

I thank those who have assisted in the process so far.

The most important thanks goes to the Australian internet community. The Panel values the contribution of every person who has taken the time to write to us or to attend our public forums. This is an ongoing and collective discussion. Please keep helping us to understand your concerns, and working with us to find solutions.

I would like to take this opportunity to thank my fellow panellists, both past and present, for the hard work, integrity and diligence they have displayed in discharging their duties. I have been impressed with the way each of them has engaged both with the task at hand, and with the Australian internet community.

I would also like to thank the auDA secretariat for the valuable administrative support it has provided to the Panel.

This Interim Report has been prepared by the Chair of the Policy Review Panel, John Swinson. It has been reviewed in draft by all current Panel members. It reflects the unanimous view of the Panel.

John Swinson

15 May 2018

Annexure A – List of published policies

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

Annexure B – Implementation of Second Level Domain Name Registrations (Direct Registration)

High Level Outline

15 May 2018

1. This outline is a summary of the rules to implement direct registration in the second level, for example, yourname.au. This outline will call such domain names **SLDs**.
2. The registration of SLDs will commence on the **Launch Day**, which is a day to be determined by the auDA Board.
3. There will be a **Priority Application Period** of six months commencing on the Launch Day and ending on the **Priority Application Completion Date**.
4. A **Priority Applicant** is a person who holds an Australian domain name licence for a domain name at a **Contestable Level** (which is the third level, fourth level or fifth level) on the Launch Day, and also held that licence on the **Cut Off Date** (being 4 February 2018, the date on which this panel commenced conducting in-person consultation regarding the implementation of direct registration), except if there has been a **Change of Registrant** after the Cut Off Date and the prior registrant held the domain name licence on the Cut Off Date.
5. On the Launch Day, there will be three possible scenarios in respect of each SLD:
 - a. there is no corresponding domain name at a Contestable Level;
 - b. there is only one corresponding domain name at a Contestable Level; or
 - c. there is more than one corresponding domain name a Contestable Level.
6. If there is no corresponding domain name at a Contestable Level in respect of the SLD on the Launch Day, any person may register that SLD on and from the Launch Day on a first-come-first-served basis, provided that:
 - a. the person meets the eligibility requirements for SLDs; and
 - b. the person pays the registration fee for the SLD.
7. If there are one or more corresponding domain names at a Contestable Level in respect of the SLD on the Launch Day, then that SLD will be locked from registration, subject to the rules set out below.
8. During the Priority Application Period, a Priority Applicant may purchase an **SLD Token** for an SLD that corresponds to the domain name at the Contestable Level for which the Priority Applicant holds the domain name licence at the time of purchase of the SLD Token, provided that the Priority Applicant also meets the eligibility requirements for SLDs at that time.
9. An SLD Token may not be purchased after the Priority Application Completion Date.

10. Any fee for the purchase of an SLD Token will be determined by the auDA Board.
11. A Priority Applicant must not purchase an SLD Token using a proxy or privacy service or primarily for the purposes of resale.
12. A Priority Applicant who purchases an SLD Token must (a) consent to this fact being published, (b) ensure that the Priority Applicant's name and contact details are correct in WHOIS for the underlying domain name on which the SLD Token is based, (c) provide a current and correct contact email or telephone number for the Priority Applicant, and (d) consent to that contact email or telephone number being made available to every other person who purchases an SLD Token for the same SLD.
13. A Priority Applicant may purchase one SLD Token per underlying domain name on which the SLD Token is based. For example, if a Priority Applicant owns both myname.com.au and myname.net.au, that Priority Applicant may purchase one SLD Token for myname.au on the basis of myname.com.au and another SLD Token for myname.au on the basis of myname.net.au.
14. A Priority Applicant must not transfer, assign, mortgage or lease an SLD Token, except if the domain name licence on which the SLD Token is based is transferred, in which case the SLD Token must also be transferred to the new licensee of the underlying domain name.
15. A Priority Applicant may at any time cancel an SLD Token issued to that Priority Applicant.
16. A SLD Token automatically expires if:
 - a. the domain name licence on which the SLD Token is based is not renewed or is cancelled; or
 - b. the holder of the SLD Token ceases to exist – e.g., the company that holds the SLD Token is deregistered or the entity otherwise ceases to exist.
17. If, on the Launch Day, there is only one corresponding domain name at a Contestable Level in respect of an SLD, the Priority Applicant who purchases the SLD Token for the SLD during the Priority Application Period will be immediately allocated the SLD, provided that the Priority Applicant continues to meet the eligibility requirements for the SLD and pays the registration fee for the SLD.
18. If, on the Launch Day, there is more than one corresponding domain name at a Contestable Level, then the resolution rules set out below will apply to determine what will occur at the end of the Priority Application Period.
19. On the Priority Application Completion Date, there may be three possible outcomes in respect of each contested SLD:
 - a. no Priority Applicant holds an SLD Token for the SLD;

- b. only one Priority Applicant holds an SLD Token for the SLD; or
 - c. more than one Priority Applicant holds an SLD Token for the SLD.
20. If, on the Priority Application Completion Date, no Priority Applicant holds an SLD Token for the SLD, then the lock will be lifted and any person may register that domain name as an SLD on a first-come-first-served basis from the Priority Application Completion Date, provided that the person meets the eligibility requirements for SLDs and pays the registration fee.
21. If, on the Priority Application Completion Date, only one Priority Applicant holds an SLD Token for the SLD, then the lock will be lifted and that Priority Applicant (and no one else) will be allocated the SLD on the Priority Application Completion Date provided that the Priority Applicant:
- a. continues to meet the eligibility requirements for the SLD; and
 - b. pays the registration fee for the SLD.
22. If, on the Priority Application Completion Date, more than one Priority Applicant holds an SLD Token for an SLD ("**Competing Priority Applicants**"), then the contested SLD will remain locked, and will be unable to be registered by any person. The lock may be lifted only in accordance with paragraph 24 below.
23. On the Priority Application Completion Date, each Competing Priority Applicant for an SLD will be provided with the contact details for each other Competing Priority Applicant.
24. If an SLD is locked on the Priority Application Completion Date, the lock will be lifted once there is only one SLD Token in existence in respect of the contested SLD. This may occur, for example, if the SLD Tokens held by all but one of the Competing Priority Applicants expire or are cancelled.
25. If paragraph 21 or 24 applies, then the remaining Competing Priority Applicant will have a priority period of six months to register the contested SLD from when the lock is lifted. If that Competing Priority Applicant does not register the contested SLD during that six-month period, then that SLD can be registered on a first-come-first-served basis by anyone who meet the eligibility requirements for SLDs at the end of that six-month period and pays the registration fee for the SLD.
26. A **Non-Priority Applicant** is a person who is not a Priority Applicant and who holds an Australian domain name licence for a domain name at a Contestable Level on the Launch Day.
27. The following two rules apply only if there are no Priority Applicants in respect of an SLD but if there are one or more Non-Priority Applicants in respect of that SLD:
- a. If there is only one Non-Priority Applicant on the Launch Day, that Non-Priority Applicant will be deemed to be a Priority Applicant for the purposes of these rules.

- b. If there are two or more Non-Priority Applicants on the Launch Day, the applicant who is the longest continuous registrant of the relevant domain name at the Contestable Level will be deemed to be a Priority Applicant for the purposes of these rules.

28. Notwithstanding the foregoing, names on the **Reserved Names List** will not be available for registration as SLDs, except if the name is on the Reserved Names List due to a requirement of law and the applicant can demonstrate that the applicant meets all legal requirements entitling the applicant to hold the corresponding domain name licence.

Note: The above refers to corresponding domain names at the third, fourth or fifth level. The Panel is considering whether to include domain names which are at the fifth level in the priority and conflicting names process discussed above. The fact that domain names at the fifth level are included above does not signify that the Panel has reached a final conclusion on this issue. Further public input is requested and data is to be examined by the Panel.