

.au Policy
Review Panel

**Implementation of Second Level Domain
Name Registrations (Direct Registration)**

Issues Paper
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.auDA
.AU DOMAIN ADMINISTRATION LTD

www.auda.org.au

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TERMS OF REFERENCE

The auDA Board has convened the Policy Review Panel to make recommendations on:

- (1) the development of an implementation policy for direct registration; and
- (2) policy reform, of the policies set out in Annexure "A".

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

- a) establishing mechanisms to ensure auDA is responsive and accountable to the supply and demand sides of the Australian Internet Community;
- b) promotion of fair trading;
- c) promotion of consumer protection; and
- d) adopting open and transparent procedures which are inclusive of all parties having an interest in use of the domain name system in Australia.¹

Chair

John Swinson, Partner King & Wood Mallesons as the Chair.

Members

The Panel comprises the Chair and the following members:

Brett Fenton	Supply class
Ned O'Meara	Demand class
Professor Andrew Christie	Academic
Paul Zawa ACCC	Government Regulator
Narelle Clark ACCAN	Consumer protection
	Business representative

Consultation

The Panel will undertake at least two public consultations on each stage of the policy reform process, and may use a range of consultation mechanisms, including working groups and online and face to face forums.

The Chair will provide regular progress reports to the auDA Board. auDA will provide secretariat and other operational support to the Panel.

¹ Constitution of .au Domain Administration Ltd, cl 3.2

QUESTIONS

1. What date should be chosen as the cut-off date for determining registrant eligibility for priority registration of the second level domain name, and why?
2. Should registrants of domain names at the fourth level within edu.au and gov.au be eligible for priority registration? If so, what rules should apply?
3. What process should be implemented to resolve competing claims to the same .au name and why? Should registrants whose claim is unsuccessful be given priority to register another second level domain name?
4. How much time should priority registrants have to exercise their right to register the matching second level name before it is made available to the public for registration?
5. Should certain names be reserved for future use as 2LDs? Please indicate which names and why they should be reserved as future 2LDs?
6. Are there names whose use is not prohibited at law that should be reserved?
7. Should names that are potentially confusing or misleading when registered at the second level be reserved (ie not available for registration)?
8. Should names that are a deliberate misspelling of the existing 2LDs be prohibited from being registered at the second level?
9. Should direct registration be implemented in .au using a staged process or concurrent reservation and open availability process, and why?
10. Should other registrants or rights holders be given priority during the landrush or reservation period to register a second level domain name (trademark owners)?

Introduction

1. .au is changing. On 18 April 2016, the Board of .au Domain Administration Limited (auDA) approved second level domain name registration in .au, known as direct registration. Direct registration will give Australian users of the Internet the choice of registering a name directly before the dot in .au, for example, yourname.au. The existing 2LDs will continue to operate as dedicated domains for businesses, not for profits, government, education and individuals. Direct registration will not only provide Australian users with additional choice but will also signal that Australia is a digital economy moving with the times.
2. The Policy Review Panel has been asked to examine and make recommendations on the implementation of direct registration and policy reform. The policy reform process will ensure that all domain names in .au are subject to a uniform regulatory regime that is robust and responsive to emerging issues.
3. The Policy Review Panel ('the Panel') is undertaking its work program in two phases:
 - Phase 1: implementation of direct registration; and
 - Phase 2: policy reform.
4. The first phase will be examining and developing a transitional policy for the implementation of direct registration. It is intended that direct registration will be implemented under the new policies (determined in Phase 2) not the existing suite of policies. However, the existing policies will have an indirect effect in determining which registrants would be eligible for priority registration of a second level domain name. Any imperfections with those policy rules, which will be addressed only during the second phase, will have impact in the sunrise period for direct registration. While a registrant may be eligible for priority registration rights, they would still be required to meet any eligibility and other requirements for the second level domain name (Phase 2). It is intended that the new policies (Phase 2) and direct registration (Phase 1) will be launched at the same time.
5. In the second phase, the Panel will examine and develop the policy rules which apply to second level domain name registration as part of its review of existing auDA published policies. This approach reflects the 2015 Names Policy Panel Final Report recommendation that the existing suite of auDA Published Policies should apply to direct registration, including the 2LD eligibility and allocation rules. All domains registered directly in the .au space will be subject to auDA Published Policies. The Panel draws stakeholder attention to the fact that these policies may change as part of the policy reform process being undertaken during Phase 2, and this will also impact direct registration.
6. All auDA Published Policies will apply to registration of a domain name at the second, third and fourth levels.

Purpose

7. The Panel is consulting stakeholders on the development of an implementation policy for direct registration (Phase 1). The Terms of Reference require the Panel in making recommendations to the Board to have regard to:
 - a) the 2015 Names Policy Panel Final Report recommendations,
 - b) promotion of fair trade and consumer protection,
 - c) establishing mechanisms to ensure auDA is responsive and accountable to the supply and demand sides of the Australian Internet Community; and

- d) 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 is not revisiting the merits of direct registration.²

8. The Panel is considering two issues raised by the 2015 Names Policy Panel Final Report:

- (1) giving existing registrants across all 2LDs priority to register the exact matching second level domain name;³ and
- (2) reserving certain names for use as new 2LDs or other purposes.⁴

9. The 2015 Names Policy Panel Final Report did not make any formal recommendations on priority registration rights for existing registrants and the creation of new 2LDs.

Stakeholder input

10. The Panel is inviting stakeholder input on three key implementation issues:

- priority registration rights for existing registrants to the matching .au name, and allocation method;
- reservation of names for future use as 2LDs or other purposes; and
- mechanisms for implementing direct registration.

11. The Panel has identified options for addressing key implementation issues as a technique to focus stakeholder discussion. Stakeholders are welcome to propose alternative options.

12. Stakeholders are invited to make submissions on any of the material contained in this discussion paper, including background material and analysis. The Panel is interested in the impact on stakeholders' businesses or service delivery and on consumers and the public should any of the options be implemented.

13. The Panel will undertake a second round of public consultation after reviewing the submissions, which may involve the publication of a preferred options paper or draft policy.

Making a submission

14. The Panel invites written submissions by close of business on Friday 10 November 2017.

Submissions can be emailed to policy.review@auda.org.au or by post to:

Policy Review Panel
c/o .au Domain Administration Ltd
PO Box 18315
MELBOURNE VIC 3001

15. All submissions will be made publicly available on the auDA website <www.auda.org.au/policies/panels-and-committees/2017-policy-review-panel>, unless marked confidential. In the absence of a clear indication that the submission is confidential, the Policy Review Panel will treat the submission as public. The Policy Review Panel will not consider nor publish anonymous submissions.

² The auDA Board at its meeting of 18 April 2016 approved the introduction of direct registration without reservation, and requested the development of an implementation plan <https://www.auda.org.au/about-auda/our-org/board-meetings/>. The Policy Review Panel Terms of Reference require the Panel to develop an implementation policy for direct registration. It is not within the scope of the Panel's TORs to revisit the merits of direct registration.

³ 2015 Names Policy Panel, 2015 Names Policy Panel Final Report (December 2015) 9

⁴ Ibid

Background

.au ccTLD

16. .au is the country code Top Level Domain (ccTLD) for Australia. The .au ccTLD is administered by .au Domain Administration Limited (auDA) under agreements with the Australian Government and the Internet Corporation for Assigned Names and Numbers (ICANN) for the benefit of the Australian community.
17. The role of auDA is to be the administrator of, and self-regulatory policy body for, the .au ccTLD and its associated second level domains (2LDs).⁵ As a self-regulatory policy body, auDA sets the policy rules for the registration, renewal and cancellation of .au domain name licences. These policy rules are developed after consultation with the Australian Internet Community.
18. The Australian Internet Community means the users and suppliers of services via the Internet, based in Australia.⁶ This broad definition includes consumers, businesses, government, not for profits, educational service providers and associations.

Advisory Panels

19. The auDA Board uses advisory panels to provide independent and objective advice on developing and implementing policies to regulate .au. An advisory panel has no binding decision making authority. The auDA Board may accept and implement the recommendations of an advisory panel, in whole or part.
20. An advisory panel's remit is set out in the auDA Constitution and terms of reference. Advisory panels are required to develop policies that promote consumer protection, fair trade and competition and are inclusive of all parties having an interest in the use of the domain name system in Australia. Information on the Policy Review Panel and previous panels can be found on the auDA Panels and Committees webpage.

.au Domain Name System

General principles

21. Currently, there are three fundamental principles that underpin the .au domain name registration system: (1) no proprietary rights in a domain name, (2) no hierarchy of rights and (3) first come, first served.
 - (1) No propriety rights in a domain name. A registrant does not 'own' a domain name but has a licence to use and dispose of the domain name for a specified period and subject to certain terms and conditions.⁷ A registrant may dispose of the domain name by transferring it to a third party, cancelling the licence or failing to renew the licence.

A licence to use and dispose of a domain name gives a registrant exclusive use of the domain name in the 2LD in which it is registered. The same name may be registered by another registrant in a different 2LD.
 - (2) No hierarchy of rights. A trademark owner has no better entitlement to a domain name than a business name owner. A registrant of a domain name in one 2LD has no greater entitlement to the same name in another 2LD than a third party or another 2LD registrant.

⁵ Constitution of .au Domain Administration, cl 31.1

⁶ Ibid, definitions

⁷ auDA Published Policies set out the terms and conditions of the licence to use and dispose of a domain name. A copy of the Published Policies can be found at < <https://www.ada.org.au/policies/>>

- (3) First come, first served. The first person that applies to register a domain name will be entitled to register the domain name, subject to the availability of the domain name and eligibility criteria.

.au Structure

22. Currently, all domain names in .au are registered at the third and fourth levels (Fig 1).



Figure 1: Domain Levels

23. Domain names must be registered in a 2LD. There are nine 2LDs that are organised into six special purpose categories with distinct eligibility requirements (Table 1).
24. The 2LDS are also structured into open, restrictive and closed domains. The open domains are 'open' to the public to register a domain name, subject to meeting the relevant eligibility criteria. The open domains are com.au, net.au, org.au, asn.au, and id.au.
25. The restrictive domains 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 or a special committee of the local council. For example, the Carlton Neighbourhood Learning Centre has registered the domain name carlton.vic.au and created a website to provide information and news to the local community.
26. The closed 2LDs are csiro.au, gov.au and edu.au. These domains are closed communities of interest, whose membership is managed by the Australian, State and Territory Governments under agreements with auDA.⁸ The government and education 2LDs are divided into sub-domains, which reflect the federal system of government. For example, Australian Government entities register domain names at the third level (pmc.gov.au), while State and Territory Government entities must register domain names at the fourth level after the third level State or Territory signifier (dpc.vic.gov.au).
27. The conf.au 2LD is a legacy 2LD used by Linux to advertise national conferences. This 2LD is closed to new registrations.

⁸ auDA Published Policies, Governance Arrangements for the edu.au 2LD (01/07/2015); csiro.au is a legacy 2LD that is not subject to an auDA agreement.

Purpose	2LD	Number of Domain Names ⁹	Eligibility ¹⁰
commercial	com.au	2,750,678	Australian registered company, registered business name holder, Australian partnership or sole trader, registered foreign company, registered Australian Trade Mark holder or applicant for a Trade Mark, incorporated association, Australian commercial statutory body
	net.au	281,065	
Non-commercial	org.au	69,533	Incorporated association, political party, trade union, employer associations, sporting or special interest clubs, charities and not for profits
	asn.au	3,461	
Individuals	id.au	12,559	Australian citizen or resident
Community Groups	State and Territory	241	Local community group endorsed by the local Council
	Community Geographic Domain Names		
Education	edu.au, including childzones (nsw.edu.au; act.edu.au, tas.edu.au, sa.edu.au, wa.edu.au, vic.edu.au, ed.edu.au, catholic.edu.au)	16,499	Education institutions regulated under Commonwealth or State and Territory legislation, and whose eligibility is approved by eDAC
	government	4,718 ¹¹	Australian, State and Territory Government bodies and local government instrumentalities
Conferences	conf.au	1	Conferences

Table 1: 2LDs by purpose, number of domain names and eligibility

⁹ AusRegistry EOM Report for General Release High-Level Scorecard (July 2017)

¹⁰ All registrants must satisfy the Australian nexus requirement, such as an Australian citizen or resident, political party registered with the Australian Electoral Commission, and a registered Australian or foreign company under the *Australian Securities and Investment Commission Act 2001* (Cth).

¹¹ The number does not include tas.gov.au and nt.gov.au as they are not managed by AusRegistry (Data extracted from AusRegistry on 22 August 2017)

Domain Name Market

28. There are currently 3.2 million domain names registered in .au (Table 1). This number fluctuates on an hourly basis due to new registrations and drop offs (Table 2). Drop offs include the domain names that expired without renewal or were deleted.¹²

Process	July 2015	July 2016	July 2017
New Registrations	53,255	49,576	48,170
Renewals	80,949	84,269	87,628
Registrant Transfers	1,451	1,574	1,354
Drop Offs	41,793	46,110	42,138

Table 2: Fluctuation in Domain Names During the Month of July 2015-17

29. The domain name market comprises the primary and secondary markets.

Primary market

30. The primary market is where domain names are created. A business or individual may apply to a Registrar or Reseller to register an available domain name. The Register or reseller will register the domain name on receipt of the licence fee. A domain name licence is for 2 years.

31. There is no prescribed licence fee for a domain name. The wholesale price for a domain name is set by auDA. The current wholesale price across all 2LDS for a domain name is \$19.25 (Table 3).

2LD	AusRegistry fee (GST inc)	auDA fee (GST inc)	Total "wholesale" price (GST inc)
com.au	\$15.40	\$3.85	\$19.25
net.au	\$15.40	\$3.85	\$19.25
asn.au	\$15.40	\$3.85	\$19.25
id.au	\$15.40	\$3.85	\$19.25
org.au	\$15.40	\$3.85	\$19.25

Table 3: Current wholesale price for domain name licence.

32. Registrars and resellers set the retail price for 2LD domain name licences.

33. Registrars and resellers may offer additional services for a fee, such as web hosting services. These services are not regulated by auDA.

¹² AusRegistry, AusRegistry EOM Report for General Release: Definitions (July 2017) 5

Secondary market

34. The secondary market comprises mutually agreed transfers of registered domain name licences for a price, and drop list auctions.
35. Drop list auctions are auctions of domain name registrations that have expired or that have been cancelled or deleted under auDA policy. Approximately 400,000 domain names drop each calendar year. The drop list is publicly available on the auDA website and the AusRegistry website.
36. Without the necessary knowledge or technology, it can be quite difficult for the general public to pick up these names that drop. A drop catching service allows a person to lodge a pre-application for a domain name before it is due to drop, and then uses a special software program to attempt to “catch” the domain name at the registry as soon as it drops.
37. There usually is a fee for using a drop catching service, in addition to the domain name registration fee that the registrant will be charged if the service is successful in catching the domain name. Another feature of many drop catching services is that, if more than one person is interested in a domain name, there will be an online auction and the highest bidder will win the right to be the sole applicant for the domain name through that particular drop catching service. While employing the services of a drop catcher improves one’s chances of picking up a domain name, it does not guarantee it as there could be several domain catchers competing to pick up the same name that is about to be dropped.
38. The value of a domain name in the secondary market is determined by how much a person is willing to pay for it. There is no visibility of the prices paid for the transfer of a domain name licence due to the confidential nature of these arrangements. However, registrars that provide a drop catching service often report the prices paid at auction for a domain name. In 2017, the prices for a domain name varied considerably, for example, from \$132,000 for fetch.com.au to \$10 for lipreading.com.au.

Previous stakeholder consultation

2015 Names Policy Panel

39. The 2015 Names Policy Panel was tasked to examine whether .au should be opened-up to direct registrations and what, if any, policy rules should apply, among other matters. The 2015 Names Policy Panel was prohibited under its terms of reference from considering implementation issues.
40. The 2015 Names Policy Panel Final Report (majority report) identified a range of issues raised by stakeholders that warrant consideration in developing a direct registration implementation policy. These issues are:
 - existing registrants across all 2LDs (open and closed) should have equal access to the matching .au name through an appropriate allocation method
 - same allocation and eligibility policy rules which currently apply in existing 2LDs should apply to direct registrations
 - domain monetization should be allowed in direct registrations
 - some names should be withheld or excluded prior to the release of direct registrations, for potential future use as new 2LDs; such as courts.au

- registrant of a direct .au name should not be permitted to use it as a *defacto* new 2LD by setting up a private registry
- auDA should undertake further stakeholder communication and consultation to determine the most suitable method of implementation; and
- there must be a widespread education and awareness campaign leading up to the release of direct registrations

41. The 2015 Names Policy Panel Final Report is available at <https://www.auda.org.au/policies/panels-and-committees/2017-policy-review-panel>

Qualitative and Quantitative Research

42. auDA contracted Helme Consulting to undertake research on industry attitudes to direct registration, using in-depth interviews with key stakeholders and a survey instrument on the core elements of a direct registration model. The survey (2017 Stakeholder Survey) was distributed to 209,050 registrants across the open 2LDs (com.au, org.au, asn.au, net.au and id.au) and special interest groups through social media and the website, and regulatory authorities.

43. The research found:

- concern about confusion as to the identity of the domain name registrant arising from .au (government, charity, commercial or individual)
- support for closed 2LDs (gov.au and edu.au) to be protected under direct registration
- prioritization of existing domain name owners to register the matching .au domain name
- competing claims to be resolved in favour of the longest continuous registrant
- implementation timeframe of 6-12 months from announcement of the priority rights period for existing domain name licence holders; and
- support for variable licences of 1-5 years

44. A copy of the report can be found at < <https://www.auda.org.au/policies/panels-and-committees/2017-policy-review-panel> >

International experience

45. Many ccTLDs when launching direct registration have granted existing third level domain name registrants priority to register the matching second level domain name. However, there is no uniform approach to resolving competing claims, as each ccTLD has developed a process that reflects the size and structure of the domain and the socio-economic, political and legal environment in which they operate. This means that the processes adopted by other ccTLDs may not be directly applicable or transferable to the .au context. The United Kingdom (.uk) experience illustrates this.

United Kingdom

46. Direct registration was launched in .uk on 10 June 2014. At that time, there were approximately 10.4 million domain names under management by the ccTLD administrator, Nominet. The .uk domain is structured into 14 specific purpose 2LDs. (Table 4)

2LD	Purpose	Unrestricted, restricted, or closed 2LD	Eligible for direct registration
co.uk	Commercial entities and purposes	Unrestricted	yes
org.uk	Not for profit entities	Unrestricted	yes
me.uk	Personal names	Unrestricted	yes
ltd.uk	Private limited companies	Restricted	yes
plc.uk	Public limited companies	Restricted	yes
net.uk	Internet Service Providers' infrastructure	Restricted	yes
ac.uk	Higher and further education and research institution	Closed	no
gov.uk	National, regional and local government bodies and agencies	Closed	no
mod.uk	Military and related purposes	closed	no
mil.uk	Military and related purposes	closed	no
nhs.uk	National Health Service	closed	no
police.uk	Police Forces	closed	no
nic.uk	Network use only	closed	no
sch.uk	Schools	closed	no

Table 4: 2LDs in the .uk domain and direct registration eligibility

47. The unrestricted 2LDs (co.uk, org.uk, and me.uk) are open to any legal person that wants to register a domain name for the specified purpose (commercial, not for profit, and individual use). There is no requirement for the person to have a territorial or citizenship nexus with the UK. This policy is intended to reduce barriers to entry for persons wanting to provide services and products to the UK market by making it easy to register a co.uk. The UK is the world's fifth largest economy and part of the European common market.

48. The restricted 2LDs are reserved for commercial entities and Internet Service Providers that are regulated under UK law. There are strict eligibility and allocation rules for domain names in these 2LDs, which reduces the potential for the same name to be registered in more than one 2LD. The closed 2LDs are closed communities of interest whose membership is managed by the UK government or related entities.
49. Direct registration was restricted to registrants of six 2LDs: co.uk, org.uk, me.uk, net.uk, plc.uk and ltd.uk. Registrants of these 2LDs were eligible for priority registration rights if the domain name was registered prior to the cut-off date. The UK chose a cut-off date immediately prior to the public announcement of direct registration to reduce the risk of businesses and individuals profiteering from the announcement by registering third level domain names that would be attractive to buyers at the second level. This limits the potential number of competing claims for the same second level domain name.
50. All registrants of names registered only in one 2LD were automatically given priority to register the matching second level domain.¹³ This accounted for 95% of domain names under Nominet management.¹⁴ The remaining 5% or approximately 500,000 domain names were conflicted, where the same name was registered in more than one 2LD.¹⁵ All conflicted names were between co.uk, org.uk and me.uk registrants.¹⁶
51. Competing claims were resolved in the following order of priority: (1) co.uk registrant, (2) org.uk registrant and (3) me.uk registrant. This means that where the conflict is between registrants of a co.uk and org.uk, then the co.uk registrant will be given priority to register the second level domain name and so on. This reflects the original policy intent that .uk is a space designed for business.

¹³ During the first round of consultation, the UK proposed that second level domain name registrations be restricted to businesses. Priority registration would be given to co.uk over ltd.uk and plc.uk. As a result of stakeholder feedback the UK decided that direct registration should be available to all existing registrants of certain 2LDs, with competing claims being decided in favour of the co.uk registrant.

¹⁴ Nominet, Second Level Domain Registration in .uk. Nominet Background Document (1 July 2013) 7

¹⁵ *ibid*

¹⁶ Nominet, Rules for the release of domain names at the second level in .uk (28 October 2013) 1

Issues and Options

Priority Registration Rights

52. The 2015 Names Policy Panel Final Report, 2017 Stakeholder survey and the qualitative research revealed widespread support, if not an expectation, that existing registrants would be given priority to register the exact matching second level domain name, subject to a competing claims resolution process. There was no consensus across these sources as to the process for allocating or resolving competing claims for the same second level domain name, except that it is fair and transparent.
53. Given the extensive stakeholder consultation already undertaken on whether existing registrants should be given priority registration rights, the Panel has decided not to revisit this issue but to focus on developing a priority registration policy. The development of a priority registration policy requires consideration of the following issues:
- cut-off date for determining registrant eligibility for priority registration;
 - process for resolving competing claims to the same second level domain name; and
 - the priority registration period in which registrants will have exclusive rights to register the second level domain name.
54. The Panel notes that priority registration rights will be determined under the current suite of policies, however a registrant with priority registration rights will also be required to satisfy the eligibility and allocation rules that apply to second level domain names at time of registration.

Cut-off date

55. It is important to set a cut-off date for determining which registrants have priority to register the matching second level domain name. The cut-off date will impact on the following:
- the number of conflicted names,
 - risk of industry insiders profiteering from the launch of direct registration, and
 - registrants that register a .au domain name after cut-off.
56. The UK and NZ set the cut-off date for determining registrant eligibility for priority registration as the date of the formal announcement by the Board that direct registration would be introduced. Registrants that had registered a third level domain name prior to this date would be given priority to register the matching second level domain name, subject to a competing claims resolution process. The rationale for this approach was to prevent individuals and businesses from profiteering by registering third level domain names that would be attractive to buyers at the second level. The UK offered registrants of third level domain names registered after the cut-off date and before the launch date, the opportunity to register the domain name after all priority registrants had exercised their right of first refusal.
57. On 18 April 2016, the auDA Board formally announced the introduction of direct registration. This date and a nominal date of 1 September 2017 were used to calculate the number of conflicted names at these two points in time (Table 5). A conflicted name is where the same name or string occurs in more than one zone or 2LD (regardless of whether or not the registrant is the same or different for each name). For example, the name or string 'yourname' may occur across two zones, such as yourname.com.au and yourname.net.au. The registrants of yourname.com.au and yourname.net.au (if different registrants) will have competing claims to the same second level domain name, yourname.au.

Zones	Names or Strings 18 April 2016	Domain Names 18 April 2016	Names or Strings 1 September 2017	Domain Names 1 September 2017
1	191	191	192	192
2	193 645	387290	255 909	511 818
3	14654	43962	19933	59799
4	2342	9368	3045	12180
5	443	2215	621	3105
6	76	456	111	666
7	3	21	8	56
Total	211,354	443503	279819	587816

Table 5: Conflicted names and number of domain names effected as at the cut-off date¹⁷

58. The 2LD structure of the .au domain means that the same name may be registered by the same or different registrant in multiple 2LDs or zones. For example, as at 18 April 2016, there were 193,645 names that had been registered across two zones or 2LDs, such as yourname.com.au and yourname.org.au. As the same name is registered in two zones or 2LDs there will be 387,290 domain names effected.
59. There are fewer conflicted names across all zones when a cut-off date of 18 April 2016 is chosen. Whether the increase in conflicted names between 18 April 2016 and 1 September 2017 can be attributed to industry insiders attempting to profit from the introduction of direct registration is difficult to determine with any certainty. It is interesting to note that irrespective of the cut-off date chosen, 87% of conflicted names occur where the same name is registered across two zones and 90% of these conflicts are between com.au and net.au registrants. (These conflicts may not be real conflicts, because the registrants of the conflicted domains may in fact be the same person, or related people, e.g. parent company and subsidiary company, or founder and company.)
60. Choosing the 18 April 2016 Board announcement as the cut-off date for determining priority registrant rights will disadvantage registrants that have registered a third level domain name after this date. Given the uncertainty around the launch date for direct registration, low awareness among the public about direct registration and the passage of more than 18 months since the announcement, it may be more equitable to select a cut-off date sometime in the future. The NZ and UK cut-off date was between 3- 6 months before the launch date. A later cut-off date may increase the number of conflicted names.

¹⁷ gov.au and edu.au have multiple sub-domains in which a fourth level domain name can be registered, such as wa.gov.au, and nsw.edu.au. This means that the same name may be held multiple times within gov.au and edu.au or within one zone.

61. The method for resolving competing claims may also impact the choice of cut-off date. For example, if the longest continuous registrant approach is adopted to resolve competing claims, the choice of a later cut-off date will have less impact than if the lottery approach is adopted.

Question

What date should be chosen as the cut-off date for determining registrant eligibility for priority registration of the second level domain name, and why?

Competing claims resolution process

62. The Panel is working on the assumption registrants of domain names across all 2LDs registered at the cut-off date will be eligible for priority registration.
63. The majority of domain name registrants across all 2LDs that are eligible at the cut-off date will be able to register the matching second level domain name without participating in a competing claims process. Approximately 14% of domain names eligible for priority registration at the cut-off date of 18 April 2016 and 18% of domain names eligible as of 1 September 2017 will be subject to a competing claims process.
64. A significant proportion of conflicted names may be defensive registrations, where the same registrant has registered the same name in multiple zones or 2LDs, such as auDA.org.au, auDA.net.au, auDA.asn.au and auDA.com.au. A preliminary analysis of conflicted names across two zones suggests that approximately 50% of conflicted domain names are registered to the same registrant.

edu.au and gov.au 2LD

65. The edu.au and gov.au 2LDs present a unique challenge in developing a competing claims process due to the hierarchical structure within these 2LDs. A domain name can be registered at the third level ([yourname.gov.au](#)) or at the fourth level in one of the subdomains corresponding to a State or Territory (yourname.vic.gov.au). Domain names registered at the third level are used exclusively by the Australian Government in respect of gov.au and Australian Government regulated tertiary institutions in edu.au. The fourth level domain names are reserved for State and Territory entities or regulated educational institutions.
66. The potential for conflicts between third and fourth level domain names within a single zone or 2LD is illustrated by the conflicted names data, where there are 192 names held multiple times within the one zone.¹⁸ There is also potential for conflicts between domain names at the fourth level in the gov.au and edu.au 2LD and third level domain names in other 2LDs, such as yourname.nsw.edu.au, yourname.com.au and yourname.org.au. This probably accounts for some of the names that occur in multiple zones, especially where the same name is registered in five or more zones. This raises the issue of whether fourth level registrants should be given priority registration rights or whether priority registration should be restricted to third level registrants.
67. The fundamental principles that underpin the .au registration system means that a fourth level domain name registrant has the same entitlement to the matching second level domain name as a registrant of a third level domain name. The requirement for registrants to register a domain name at the fourth level reflects regulatory arrangements within the federal system of

¹⁸ Conflicted names as at 1 September 2017.

government. These regulatory arrangements are redundant at the second level where any legal person that satisfies the eligibility requirements of a 2LD will be eligible to register a second level domain name.

68. Depending on the option chosen for resolving competing claims, it may be necessary to develop special rules for resolving conflicts between registrants of the same name held multiple times within a 2LD. For example, if competing claims were resolved using a lottery system then there will be no requirement for special rules for the edu.au and gov.au 2LDs as third level and fourth level domain name registrants will have an equal chance of winning the lottery.

Question

Should registrants of domain names at the fourth level within edu.au and gov.au be eligible for priority registration?

If so, what rules should apply?

Options for Resolving Competing Claims to Conflicted Names

69. This paper briefly canvasses a range of options for resolving competing claims in respect of conflicted names. These options are used as a mechanism to illustrate the complexity of the .au domain and focus stakeholder discussion on key issues that impact on the development and implementation of a competing claims resolution process. The options canvassed are not exhaustive, and stakeholders are encouraged to propose alternative processes.

70. The non-exhaustive options discussed below are:

- order of priority;
- longest continuous registration;
- longest continuous registrant;
- lottery or random allocation;
- auction; or
- a combination of any of the above.

Order of priority

71. Priority could be given to existing domain name registrants of conflicted names based on an order of priority taking into account the 2LD or some other factor. For example, the registrant of the .com.au domain name at the cut-off date could take priority over the registrant of the .net.au domain name at the cut-off date.
72. The UK established an order of priority for resolving competing claims between eligible third level domain name registrants in co.uk, org.uk and me.uk. There were no conflicted names across the net.uk, plc.uk or ltd.uk 2LDs. The order of priority was co.uk, and if there was no co.uk then org.uk and if no org.uk than me.uk. There was no cascading effect if the registrant with priority decided to not exercise the right to register the second level domain name.

73. There is stakeholder support for an order of priority model, with competing claims being resolved in favour of the com.au registrant in the first instance.¹⁹ Some stakeholders have marketed the com.au as the premium domain extension for Australia, although this has not been auDA policy.
74. An order of priority model is problematic in the .au context due to (1) the same eligibility rules applying to more than one 2LD, and (2) the policy justification for prioritising registrants of one 2LD over another.
75. The same eligibility rules apply to the registration of a domain name in com.au and net.au, and in org.au and asn.au. One could conclude that the com.au and net.au registrants should be treated as a single registrant class, and the same for org.au and asn.au registrants. However, this approach does not resolve competing claims between com.au and net.au registrants or org.au and asn.au registrants to the same second level name. The conflicted names data indicated that 90% of name conflicts across two zones were between the com.au and net.au registrants. Given that both com.au and net.au are used for commercial purposes it would be difficult to justify giving priority to one over another.
76. The hierarchy of rights principle means that no person or rights holder has a better entitlement to a domain name than any other person. The 2LD structure is based on special purpose categories which serve different needs within the Australian community. An order of priority requires that 2LDs are ranked according to some form criteria, for example, of socio-economic criteria. The following examples illustrate the complexity of trying to determine an appropriate and fair ranking:
- In 2016-17 financial year, Australian Government (gov.au) spent \$450 billion on a range of activities, including welfare, health, policing and courts.
 - In 2015, the Australian charities sector (org.au) generated a total income of \$134.5 billion and employed 1,222,676 staff.²⁰ Charities provide essential services to disadvantaged Australians.
 - In 2014-15 financial year, international education is one of Australia's fastest growing exports and was estimated to have contributed \$17.1 billion to the Australian economy.
77. An order of priority may also need to apply to all 2LDs, including the gov.au and edu.au sub-domains. This would require a political unpalatable decision as to the ranking of the State and Territory sub-domains.

Longest continuous registration

78. Competing claims could be resolved in favour of the longest continuous registration or creation date of a domain name. This approach was adopted by the .mx ccTLD administrator as it provided an objective date, which eliminated the need for a factual assessment of the merits of competing claims.
79. The disadvantage of this process is that registrants of legacy domain names will be prioritised over registrants that have used the domain name to establish an online presence with its own consumer base. This may also be the case where domain names are regularly traded as a

¹⁹ 2015 Names Policy Panel, 2015 Names Policy Panel Final Report (Dec 2015) 9, Helme Consulting, Qualitative Exploration Phase 1. Perceptions of implementation policy for open domain name registrations. Executive Summary (March 2017) 3

²⁰ Australian Charities and Not for profit Commission, Australian Charities Report 2015 (December 2016) 10.

commodity as the creation date will be the date it was first registered and not the transfer date. For registrants that have purchased a domain name licence from a drop list auction, the creation date is the date that they registered the domain name, and not the date it was first registered.

80. Where two conflicted names have the same creation date, the conflict will be resolved by reference to the time stamp of when the domain name was created. However, for some domain names registered prior to 2002, the creation date may be unreliable.
81. This option may give priority to the owner of a long registered but inactive domain name over a more recent used and well-known domain name.

Longest continuous registrant

82. In this approach, priority is given to the registrant who has held the domain name licence for the longest period of time.
83. The longest continuous registrant approach assumes that registrants who have continuously registered the domain name may have invested significant resources in their online presence, search engine listing and other directory services to attract and engage with consumers or the public. It recognises that domain names are an essential part of a registrant's goodwill and reputation, irrespective of whether the registrant is a business, charity, organisation, government or individual.
84. This approach will disadvantage registrants that have recently acquired a domain name licence on the secondary market and domainers. A dispute resolution process may be required to deal with registrant claims that the date of registration is incorrect as a result of registrant contact details being wrong when first registered, change of registrant business name or on transfer.
85. This option will require a dispute resolution process where the registrant contact details have been updated as a result of the registrant contact changing jobs, a transfer between related corporate entities or incorrect registrant details being entered at registration.
86. This option also may not easily work where the licence date of the competing domain names is the same. It may also appear unfair where two competing claimants have both been using their domain names for a long period of time to give priority to one over the other. For some domain names registered prior to 2002, the registry information may be unreliable.
87. This option may give priority to a registrant that has continuously renewed the domain name licence but has never developed it over a more recent used and well-known domain name.

Consensus approach

88. A consensus approach is where registrants with competing claims to the matching .au name agree amongst themselves who should have priority. This approach was used by the .nz ccTLD administrator, Internet NZ, when implementing direct registration and is still ongoing. The process involved registrants with competing claims having three years to lodge with the .nz Domain Name Commission one of the following preferences:
 - you want to try and get a shorter version of your domain name
 - you don't think anyone should get it
 - you don't want it and don't care who gets it.
89. If the competing claims were not resolved at the preference stage, registrants would be referred to a facilitation service to assist them in reaching an agreement. If after 12 months, registrants were unable to reach agreement, then the .nz name would be made unavailable for registration.
90. This approach would be overly complex in the .au context given the number of conflicted names, and the potential for protracted negotiations between multiple registrants. Competing claims

for the same .nz name are still in the process of being resolved three years after direct registration was launched for public registrations. It may also disadvantage small businesses, individuals and not for profit organisations that may not have the financial resources to negotiate a settlement in their favour.

Lottery or Random allocation

91. ICANN has used a lottery system for awarding licences to operate gTLD registries. A lottery system would require registrants interested in registering the second level domain name 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. Alternatively, a single lottery ticket could be purchased by each eligible domain name licence holder, regardless of the number of domain name licences held. The winner of the lottery would have the right to register the second level domain name. Where only one registrant purchased a ticket for any given lottery that registrant would automatically be given the right to register the second level domain name.
92. The benefit of this approach is that all registrants who purchase a lottery ticket will have an equal chance of winning the lottery. There could be a nominal cost for the purchase of a lottery ticket to cover the cost of a third-party provider, making the process affordable for all registrants. A third-party provider would be responsible for organising and conducting the lottery.

Auction

93. Registrants with conflicted names could bid at auction for the exact matching second level domain name, with the highest bidder winning the right to register the second level domain name. A third party provider would be engaged to run the auction ensuring an independent and transparent process.
94. An auction would favour registrants with the 'deepest pockets' and disadvantage small not for profits, small businesses and individuals. It may also be perceived as inequitable as registrants of domain names that are not conflicted names will be able to register the second level domain name at the retail registration price, while conflicted names registrants will pay the market price at auction.

Combination Approach

95. There could be a combination of the above approaches. For example, the order of priority approach could be combined with the random approach. Here, for example, .com.au and .net.au could be given priority over other 2LDs, but for competing claims of .com.au and .net.au names, the selection could be carried out by random draw.

Question

What process should be implemented to resolve registrants competing claims to the same .au name, and why?

Should registrants whose claim is unsuccessful be given priority to register another second level domain name ?

Priority Registration Period

96. The priority registration period refers to the period in which a registrant has an exclusive right to register the second level domain name. The 2017 Stakeholder Survey found a majority believed

that 6 -12 months was sufficient time to allow priority registrants to register the matching second level domain name while balancing the demand of the sales channel.

97. The UK's reservation period was five years from launch date for direct registration. It appears that a five year period was considered appropriate given the approximately 500,000 conflicted names, international registrant population and the introduction of a new validation process for registrant address details. However, the five-year reservation period appears to have resulted in a slow uptake of second level domain names, as registrants have no incentive to register the domain name prior to the 2019 expiration date. As at May 2017, there were only 637,360 second level domain names registered given the 10,039,279 third level domain names under management.²¹
98. The NZ initially adopted a two-year reservation period but the lengthy and complex competing claims process has seen this blown out to four years, and it is still ongoing. The NZ experience demonstrates the need for an efficient competing claims process and certainty in the market place as to when reserved domain names will be available to the public for registration.
99. A shorter period may be more appropriate if there is significant publicity and advertising regarding the process.

Question

How much time should priority registrants have to exercise their right to register the matching second level domain name before it is made available to the public for registration?

New 2LDs

100. The 2015 Names Policy Panel Final Report suggested that certain names should be reserved for future use as 2LDs, such as parliament and courts. The 2015 Names Policy Panel made a persuasive argument that new 2LDs should be created for the courts and parliament due to the separation of powers doctrine. Courts and parliament are currently registered under the gov.au 2LD, such as hcourt.gov.au.
101. There may be other names that should also be reserved for future use as 2LDs, such as ltd.au, ptyltd.au, police.au, and the like.

Question

Should certain names be reserved for future use as 2LDs? Please indicate which names and why they should be reserved as future 2LDs.

Reserved Names

102. The auDA Reserve List Policy sets out a list of names that may not be used as domain names, except in certain circumstances. These names are:
- (1) words, phrases and abbreviations whose use is prohibited or restricted under Commonwealth legislation;

²¹ Nominet UK, .uk Register Statistics. Total Domains under Management at the end of the Month. <<https://www.nominet.uk/news/reports-statistics/uk-register-statistics-2017/>>

- (2) names and abbreviations of Australian states and territories and the name “Australia”; and
- (3) names that may pose a risk to the operational stability and utility of the .au domain.

103. The auDA Reserve List contains a list of names whose use is prohibited under Commonwealth legislation, except in certain circumstances, such as Anzac, Red Cross, and Commonwealth. This list is not exhaustive and auDA has the right to reserve names prohibited under Commonwealth, State and Territory legislation at any time. auDA will exercise this right in the following circumstances:

- (1) words, phrases and abbreviations are prohibited under State or Territory legislation and that legislation has extraterritorial jurisdiction such as the *Australian Grand Prix Act 1994* (VIC); and
- (2) where the Commonwealth amends existing legislation, or passes new legislation prohibiting the use of certain words, phrase or abbreviations. For example, regulation 9A of the *Family Law Regulations 1984* prohibits the use of certain third level domain names, except by an authorised person, such as hips.org.au. The Australian Government may amend the regulations to include the equivalent second level domain name.

104. Any word, abbreviation or phrase prohibited under an Australian law will not be available for registration at the second level, except as permitted by law.

105. auDA currently reserves the names and abbreviations of Australian states and territories, and “Australia.” There may be other names that should be reserved in the public interest, such as Australian landmarks or icons.

Question

Are there names whose use is not prohibited at law that should be reserved?

106. auDA has the right to reserve names for use by the registry and names that may pose a risk to the operational stability and utility of the .au domain.²² auDA is proposing to reserve the following names:

- example.au
- whois.au
- RDDs.au
- www.au
- auDA.au
- au.au
- Australia.au
- nic.au

107. auDA may reserve at any time names that are added by ICANN to specification 5 of the Registry Agreement. A copy of the Registry Agreement and Specification 5 is at <https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html>

²² auDA, Reserved List Policy (2014-06)

108. The auDA Reserve List Policy may also need to be expanded to include names that are potentially misleading or confusing when registered at the second level and deliberate misspellings of 2LD categories, such as comm.au, nett.au or con.au. Names that end in “com”, “net”, “org”, “edu”, and “gov” (such as nabcom.au or abcnet.au) may also be misleading or lead to confusion if an Internet user mistypes an existing domain name. Names that may be potentially misleading or confusing may also include names that may be traditionally be associated by the public with the Commonwealth government such as government.au and health.au.

Question

Should names that are potentially confusing or misleading when registered at the second level be reserved (ie not available for registration)?

Should names that are a deliberate misspelling of the existing 2LDs be prohibited from being registered at the second level?

Implementation Process

109. Internationally, ccTLD launch policies for direct registration typically follow one of two processes: (1) a staged process or (2) a concurrent reservation period and general availability.

110. A registrant, even those with priority registration rights, will be required to satisfy the eligibility and allocation rules for registering a second level domain name in force at the time of registration. This means that all Phase 2 policies will apply to all second level domain name registrations.

Staged Process

111. All gTLD launch policies use the following staged process: sunrise period, land-rush period and general availability (Diagram 1). This process was used by .mx ccTLD when re-launching direct registration in 2009.



Diagram 1: Staged approach to direct registration launch.

112. The sunrise period (Stage 1) is where priority registrants are given the exclusive right to make an application to register the exact matching second level domain name. A priority registrant will be able to make an application to register the second level domain name during this period, subject to:

- availability of the domain name
- satisfying the eligibility and allocation rules for registering a second level domain name in force at the time of registration; and

- demonstrating continuing eligibility to hold the third or fourth level domain name under the existing suite of policies.

113. The duration of the sunrise period will depend on the complexity of the competing claims process, and the length of the reservation period. If the sunrise period or reservation period is too long it will delay when second level domain name registration is made available to the public.
114. The landrush period (Stage 2) provides registrants that were eligible but unsuccessful in being granted priority registration during the sunrise period, the opportunity to make an application to register an available second level domain name. A registrant will be able to register the second level domain name, subject to satisfying the eligibility and allocation rules.
115. General availability is where second level domain name registration is open to any person on a first come, first served basis.
116. A staged approach is attractive as it provides eligible registrants that missed out on priority registration the opportunity to register a second level domain name before the public. This will ameliorate to some extent the impact of the competing claims resolution process, as unsuccessful registrants will have the opportunity to register an alternative second level domain name. However, a staged approach will restrict new domain name growth and revenue streams for registrars as there will be considerable delay before direct registration is open to the public.

Concurrent reservation and general availability process

117. A concurrent reservation and general availability process is where second level domain name registrations are simultaneously made available to the public and priority registrants (Diagram 2).



Diagram 2: Concurrent reservation and general availability

118. This process requires all second level domain names that match a third level domain name at the cut-off date automatically being reserved for priority registration. Registrants that have priority registration will not be able to make an application to register the second level domain name until second level domain name registration is made available to the public. No one other than the priority registrant will be able to register the reserved second level domain name.
119. Priority registrants and the public will be able to apply to register a second level domain name on the direct registration launch date. This means that direct registration will be available to the public at the same time as priority registrants. Priority registrants will have a specified

time in which to apply to register the matching second level domain name before it is released for registration.

120. A concurrent process may provide the following benefits:

- ensures priority registrants have the first rights of refusal to the matching second level domain name;
- immediately opens up the .au domain to the public
- reduces public and industry confusion about the commencement of direct registration as there is one launch date
- stimulates immediate growth of the .au domain name space and financial revenue for registrars
- provides cost efficiencies as there will only need to be one marketing and education campaign

121. The disadvantages of a concurrent process are:

- significant lead time may be required to implement the automatic reservation process and
- requires sufficient time to run a public education and awareness program

Question

Should direct registration be implemented in .au using a staged process or concurrent reservation and open availability process, and why?

Should other registrants or rights holders be given priority during the landrush or reservation period to register a second level domain name (trademark owners)?

Annexure A

Schedule – Published Policies subject to review by the Policy Review Panel

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 Panelists
2011-03	Transfers (Change of Registrant) Policy
2010-07	Registrant Contact Information Policy
2010-03	Registrar Review Panel Rules List of auDA Review Panelists
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
2004-04	.au Domain Name Suppliers' Code of Practice
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