

**CHANGES TO DOMAIN NAME ELIGIBILITY
AND ALLOCATION POLICIES IN
.AU SECOND LEVEL DOMAINS**

Second Public Consultation Report

auDA Name Policy Advisory Panel

February 2001

PREFACE FROM THE CHAIR OF THE NAME POLICY ADVISORY PANEL

The Second Public Consultation Report – What Does it Do?

In the Panel's second public consultation report, we have aimed to apply the following principles:

- ❑ keep the current Australian hierarchical domain name system (DNS), based on use of second level domains (2LDs);
- ❑ relax the level of regulation;
- ❑ apply the same rules as consistently as possible across all 2LDs;
- ❑ devise a DNS which minimises cyber-squatting and speculation in domain names and maximises the integrity of the system;
- ❑ make the system as simple as possible to administer, and where possible automatable; and
- ❑ ensure that the system is useful to all Australians.

This preface is to highlight the main areas of the report, and particularly those areas which we think will be of greatest interest.

- ❑ **Eligibility.** To answer the very fundamental question – who is eligible to obtain an Australian domain name? – a single set of eligibility criteria has been proposed, to apply (in varying degrees) across all 2LDs. These criteria include trade marks, for the first time, which will allow domain names to be based on product names as well as entity names. See section 3 of the report.
- ❑ **Allocation.** We have proposed some simplification of name allocation, and in particular we have sought to ensure checks should be able to be undertaken in as automatic manner as possible. However, there are two matters in the report which need to be highlighted. See section 4.
- ❑ **Connection between entity and domain name.** Some current rules require that domain names be *derived* from the name of the domain name licence holder. The Panel strongly supported retaining a connection between the two, mainly as a barrier to cybersquatting, but it has proposed loosening the current rules. See section 4.1. This will make it necessary to retain manual decision-making in many cases. We invite your comments on the desirability of derivation or connection, and how it might be best implemented.
- ❑ **Generic names.** Opinion is divided on whether the current prohibition on use of generic names in com.au should be abolished, retained in commercial domains, or extended to non-commercial domains as well. See section 4.3.1, where the Panel recommends that we retain the current rule in a fairly simple form, but leave open the possibility of future change.
- ❑ **Geographic names.** Opinion is divided on this issue in the same way as it is on generic names. Many people have also expressed the view that geographic names should have their own 2LD. See section 4.3.2
- ❑ **New 2LDs.** The Panel recommends that a limited range of new 2LDs be introduced fairly soon, in particular in order to improve the utility of the DNS. Many people suggested this in our earlier consultation, and we now plan to consider the best way

of doing this as an extension to our Terms of Reference – including a discussion of existing 2LDs. See section 5.

- **Implementation.** As we did previously, the Panel has recommended that changes not have retrospective effect for current domain names and domain name licence holders; and that a robust uniform dispute resolution procedure for all open 2LDs be adopted as a precondition of any other changes being implemented.

For our second report, we have attempted to clearly indicate the type of policy change we are recommending, by labeling each recommendation as:

- new policy;
- current policy clarified; or
- current policy simplified.

We are aware that this approach may over-simplify the proposed changes to policy, given the inconsistent nature of the current 2LD policies. However, it was felt that these labels would make it easier for people to understand how the Panel's recommendations differ from the current domain name policy environment.

We have also been coordinating our considerations with those of the Competition Model Advisory Panel, and reports of the two bodies are being released at the same time.

We look forward to your comments, submissions and suggestions on the above matters, and everything else in the report.

Derek Whitehead
Chair
Name Policy Advisory Panel

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1. INTRODUCTION

Review of domain name policies in Australia

In June 2000, the au Domain Administration (auDA) board established the Name Policy Advisory Panel to review and recommend changes to existing domain name eligibility and allocation policies for .au Second Level Domains (2LDs).

The Panel's Terms of Reference and membership are at Appendices 1 and 2. Panel activities to date, including minutes from all meetings, are archived on the auDA website.¹

Public Consultation Report, November 2000

The Panel released its first public consultation report on 15 November 2000. The report outlined, and invited comment on, a number of proposed changes to domain name policies, including:

- number of domain names that an entity or individual is allowed to license;
- eligibility criteria for licensing a domain name;
- connection between a domain name and the name of the licence holder;
- licensing and use of generic, geographic and objectionable names; and
- introduction of new 2LDs.

The Panel received around 30 public submissions, most of which are available on the auDA website.² Public discussion of the November 2000 report also took place on the DNS and Link email lists.³

The Panel was pleased to note a number of well-considered, substantive responses to the November 2000 report. The Panel has considered all comments in revising its report for a second round of consultation.

Next steps

Following a period of public consultation on this report, the Panel expects to deliver its final recommendations to the auDA board in April 2001.

auDA has also established a Competition Model Advisory Panel to investigate and recommend a model for the introduction of competition in domain name registration services in the .au domain space. This Panel is expected to complete its Terms of Reference by mid-2001.⁴

It is likely that any changes to domain name policy will be implemented in conjunction with the introduction of competition, during the second half of 2001.

¹ See <http://www.ada.org.au/panel/name/>

² See <http://www.ada.org.au/panel/name/submissions.html>

³ See the DNS list archive at <http://listmaster.iinet.net.au/list/dns> and the Link list archive <http://sunsite.anu.edu.au/link/>

⁴ See <http://www.ada.org.au/panel/competition>

2. PUBLIC CONSULTATION PROCESS

This is the Panel's second and final public consultation report. It outlines the recommendations that the Panel proposes to deliver to the auDA Board in April 2001, subject to the outcomes of the second round of public consultation.

The Panel encourages everyone with an interest in the Australian domain name system (DNS), including the allocation of domain names, to make a submission.

People wishing to comment on the recommendations or any other matters contained in the Panel's second public consultation report should send their submission to:

Ms Jo Lim
Secretariat
auDA Name Policy Advisory Panel

email: jo.lim@auda.org.au
fax: 03 9226 9499
postal: GPO Box 1545P, Melbourne VIC 3001

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

The closing date for submissions is **Friday 16 March 2001**.

3. DOMAIN NAME LICENCE ELIGIBILITY

This section deals with issues of who is eligible to apply for and hold a licence to use a domain name in the .au domain space. It roughly corresponds to section 4.1 of the November 2000 report.

As explained in the Panel's November 2000 report, the Panel has divided the .au domain space into two categories:

- 'open' 2LDs – those 2LDs that are basically open to all users, subject to some eligibility criteria (asn.au, com.au, id.au, net.au, org.au); and
- 'closed' 2LDs – those 2LDs with a defined community of interest (csiro.au, edu.au, gov.au).

[Schedule A](#) sets out the different purposes and proposed eligibility criteria for open and closed 2LDs.

Recommendation 3.1:

3.1.1 There should be no restriction on the number of domain name licences that may be held by a single entity or individual.

3.1.2 All domain name licences should be subject to a renewal period, to be specified by auDA, or by the relevant 2LD administrator subject to ratification by auDA. The domain name licence holder should be required to provide evidence of continued eligibility to hold the licence at the time of renewal.

3.1.3 In order to license a domain name in the .au domain space, the following conditions should be satisfied:

- a. The domain name licence applicant must be an Australian entity.
- b. The proposed use of the domain name licence must fit the purpose envisaged by the relevant 2LD. [Schedule A](#) lists the existing .au 2LDs and their purposes as currently stated.
- c. There must be a declaration of a bona fide intention to use the domain name licence for the purpose envisaged by the relevant 2LD.
- d. A bona fide intention to use the domain name licence for the purpose envisaged by the relevant 2LD, should be demonstrated in accordance with the rules applicable in that 2LD. [Schedule A](#) lists the eligibility criteria for the current 2LDs.
- e. Purposes that would not be considered bona fide include but are not limited to:
 - i. licensing a domain name for the sole purpose of selling it;
 - ii. licensing a domain name for the purpose of diverting trade from another business or website;
 - iii. deliberately licensing misspellings of another trader's company or brand name in order to trade on the reputation of another trader's goodwill; and
 - iv. licensing and then passively holding a domain name licence for the sole

purpose of preventing another (eg. an Australian Registered Trade Mark owner) from licensing it.

f. The domain name licence applicant must acknowledge at the time of application that their entitlement to a domain name may be challenged by a third party with superior legal rights in the words forming the domain name.

g. The domain name licence applicant must agree to be bound by any Dispute Resolution Procedure specified by auDA.

Explanatory Notes:

3.1.1 There should be no restriction on the number of domain name licences that may be held by a single entity or individual.

[NEW POLICY]

The Panel notes that public submissions in response to the November 2000 report were overwhelmingly in favour of removing the restriction on the number of domain names per entity or individual. The Panel is of the view that it is unnecessary to impose a quota on the number of domain names per entity or individual.

3.1.2 All domain name licences should be subject to a renewal period, to be specified by auDA, or by the relevant 2LD administrator subject to ratification by auDA. The domain name licence holder should be required to provide evidence of continued eligibility to hold the licence at the time of renewal.

[NEW POLICY]

There was general support for the Panel's proposal that all .au domain names, regardless of 2LD, should be licensed for a specified period, requiring all domain name licence holders to renew their licence from time to time. Licence periods act as a constraint on people who license a domain name without intending to use it, and also serve as a mechanism to assist in keeping the DNS up-to-date and free of redundant domain names.

The Panel notes concerns that this proposal would impose an unnecessary cost and administrative burden on domain name licence holders, particularly in the small business sector. The Panel also notes that, in the closed 2LDs, entities are relatively stable so there is less need for them to regularly provide evidence of continued eligibility to hold the domain name licence.

The Panel also considers that, in future, domain name licence periods may be a point of competitive difference between registrars in the open 2LDs.

The Panel therefore recommends that domain name licence periods in the open 2LDs should be set by auDA, to ensure that the obligation to renew is not an onerous one for registrars and domain name licence holders alike. In the closed 2LDs, the relevant authority will set domain name licence periods, subject to ratification by auDA.

3.1.3 In order to license a domain name in the .au domain space, the following conditions should be satisfied:

**a. The domain name licence applicant must be an Australian entity.
[CURRENT POLICY CLARIFIED]**

Although not explicitly stated in the November 2000 report, it is the Panel's intention to continue the requirement for a .au domain name to be licensed to an Australian entity. An 'Australian entity' would include, for example, a business registered in Australia, an Australian citizen or resident, or other entity specified for the purposes of the relevant 2LD (see [Schedule A](#)). It would also include an owner of an Australian Registered Trade Mark, although the owner might in fact be a foreign business or individual.

**b. The proposed use of the domain name licence must fit the purpose envisaged by the relevant 2LD. [Schedule A](#) lists the existing .au 2LDs and their purposes as currently stated.
[CURRENT POLICY CLARIFIED]**

There was general support for the Panel's proposal that open and closed 2LDs be treated differently with regard to domain name licensing, as outlined in [Schedule A](#).

**c. There must be a declaration of a bona fide intention to use the domain name licence for the purpose envisaged by the relevant 2LD.
[NEW POLICY]**

As stated in the Panel's November 2000 report, there was a consensus within the Panel that, as a basic principle, a domain name should be appropriate to the entity or individual licensing and using it. This principle is based on the notion that an entity or individual should have a bona fide interest in a domain name relating to conducting a business or other activity under or by reference to the name in Australia. Public comments on this proposal were generally supportive.

**d. A bona fide intention to use the domain name licence for the purpose envisaged by the relevant 2LD, should be demonstrated in accordance with the rules applicable in that 2LD. [Schedule A](#) lists the eligibility criteria for the current 2LDs.
[NEW POLICY]**

The Panel notes that there was general support for a list of eligibility criteria. There was general support in submissions for the Panel's proposal to extend domain name licence eligibility criteria to include Australian Registered Trade Marks in the commercial 2LDs, com.au and net.au. An effect of this recommended change is that in commercial 2LDs, a product name may be the basis for a domain name.

Although there were some notable exceptions, on balance, the Panel considers that submissions were also supportive of the proposal to include an *application* for a Registered Trade Mark as an eligibility criterion in the commercial 2LDs. The Panel notes that, according to the requirement under Recommendation 4.1.2 to provide evidence of continued eligibility to hold the domain name licence, a domain name licence holder who relied on an application for a Registered Trade Mark to license the

domain name, would need to show that the application had been approved when the domain name licence came up for renewal.

- e. Purposes that would not be considered bona fide include but are not limited to:**
- i. licensing a domain name for the sole purpose of selling it;**
 - ii. licensing a domain name for the purpose of diverting trade from another business or website;**
 - iii. deliberately licensing misspellings of another trader's company or brand name in order to trade on the reputation of another trader's goodwill; and**
 - iv. licensing and then passively holding a domain name licence for the sole purpose of preventing another (eg. an Australian Registered Trade Mark owner) from licensing it.**

[NEW POLICY]

This proposal was initially intended to guard against cyber-squatting, however the Panel notes that there are a number of other potentially harmful activities that should be prevented as far as possible. The Panel notes that this list is not exclusive, and that auDA may choose to specify other purposes that would not be considered bona fide with regard to licensing domain names.

- f. The domain name licence applicant must acknowledge at the time of application that their entitlement to a domain name may be challenged by a third party with superior legal rights in the words forming the domain name.**

[NEW POLICY]

There was support for the Panel's proposal that the onus to ensure that the licensing of a domain name does not contravene any third party's rights, such as trade mark rights, should be left in the hands of the domain name licence applicant.

The Panel considers that it is not necessary to strengthen the proposal with a requirement that domain name licence applicants provide a more formal *warranty* that the domain name does not infringe trade mark rights. In non-commercial 2LDs, trade marks are unlikely to confer superior legal rights, since trade marks by their nature infer a commercial function.

- g. The domain name licence applicant must agree to be bound by any Dispute Resolution Procedure specified by auDA.**

[NEW POLICY]

In its November 2000 report, the Panel outlined the requirements for a dispute resolution procedure, modeled on the Internet Corporation for Assigned Names and Numbers (ICANN) Uniform Dispute Resolution Procedure (UDRP). The Panel notes that there was overwhelming support for the adoption of an Australian version of the UDRP at the same time as (or ahead of) any changes to domain name policy.

The Panel considers that dispute resolution procedures should apply to all open 2LDs, and to closed 2LDs on an opt-in basis, with appropriate modifications if necessary. An Australian UDRP should be devised and implemented by auDA before or at the same time as any changes to domain name policy.

This issue is also discussed in section 6.2 of this report.

4. DOMAIN NAME ALLOCATION POLICY

This section deals with the issue of what domain names may be licensed, and whether there are domain names that should not be used in some or all of the .au 2LDs. It roughly corresponds to section 4.2 of the November 2000 report.

Recommendation 4.1:

4.1.1 There must be a substantial and close connection between the domain name and the domain name licence holder.

4.1.2 A connection between the domain name and the domain name licence holder can be demonstrated if the domain name:

- a. exactly matches the name on which the domain name licence application is based (eg. company name, trade mark, etc); or**
- b. is a name by which the domain name licence holder is generally known (eg. an acronym, abbreviation, nickname or alias) or is otherwise derived from the name on which the domain name licence application is based.**

Explanatory Notes:

**4.1.1 There must be a substantial and close connection between the domain name and the domain name licence holder.
[CURRENT POLICY SIMPLIFIED]**

The Panel notes that its proposal to retain the so-called 'derivation rule' attracted a significant amount of criticism, particularly on the grounds that it would not be possible for such a rule to be applied objectively or fairly. Whilst acknowledging this argument, the Panel continues to assert its belief that a domain name must be in some way connected to the domain name holder, in order to preserve the integrity of the .au domain space and guard against activities such as cyber-squatting and domain name hoarding.

4.1.2 A connection between the domain name and the domain name licence holder can be demonstrated if the domain name:

- a. exactly matches the name on which the domain name licence application is based (eg. company name, trade mark, etc); or**
- b. is a name by which the domain name licence holder is generally known (eg. an acronym, abbreviation, nickname or alias) or is otherwise derived from the name on which the domain name licence application is based.**

[CURRENT POLICY SIMPLIFIED]

The Panel has given a lot of consideration to translating the broad principle in Recommendation 4.1.1 into a workable rule. It acknowledges that the principle of derivation will be applied in different ways across the different 2LDs. The Panel also recognises that it would be unfair if a person were not permitted to license a domain name solely because their exact business (or other) name had already been licensed, quite legitimately, by someone else with the same name. The Panel concedes that it is

probably not possible to formulate a derivation rule that can be applied automatically or objectively but still provides a limited degree of flexibility.

Therefore, Recommendation 4.1.2 has been drafted to allow for a connection between a domain name and a domain name licence holder, other than an exact match. Although a decision that a domain name is 'otherwise substantially and closely derived from the name on which the domain name licence is based' is a subjective one, the Panel maintains that in most cases there is a very clear difference between 'substantially and closely derived from' and 'not substantially and closely derived from', and it should be possible to apply the rule sensibly. To address the cost implications, the Panel suggests that a domain name licence applicant who seeks to license a domain name under 4.1.2 b. might be charged a higher fee than one who seeks to licence a domain name under 4.1.2 a.

If necessary, auDA could formulate guidelines for the application of 4.1.2 b.

Recommendation 4.2:

4.2.1 Domain names that begin with a number should be allowed.

4.2.2 Two character alpha domain names that match existing or new country code top level domains (ccTLDs) should not be allowed. Domain name licence applicants should be advised that if they license a two character alpha domain name that is subsequently allocated as a ccTLD, then the licence may be revoked.

Explanatory Notes:

**4.2.1 Domain names that begin with a number should be allowed.
[NEW POLICY]**

The Panel considers that domain names beginning with a number should be allowed, as per the Internet Engineering Task Force (IETF) Request for Comment (RFC) 1123. This proposal was supported by all respondents who commented on it.

**4.2.2 Two character alpha domain names that match existing or new ccTLDs should not be allowed. Domain name licence applicants should be advised that if they license a two character alpha domain name that is subsequently allocated as a ccTLD, then the licence may be revoked.
[NEW POLICY]**

As noted in the Panel's November 2000 report, RFC 1535 points out that domain names with two alpha characters (eg. au.com.au) could 'trick' some types of client software, thereby giving rise to possible security problems where the domain name is the same as a ccTLD. Potentially, a domain name that is the same as a generic top level domain (gTLD) (eg. com.net.au) could be misused in the same manner. The Panel therefore proposed, in the November 2000 report, to impose a restriction on all two character alpha domain names and domain names which match existing or new gTLDs.

Submissions on this proposal were overwhelmingly against prohibiting two character alpha domain names and domain names that match existing or new gTLDs, on the basis that they are currently permitted and already exist. The Panel has therefore amended this proposal to limit the prohibition to two character alpha domain names that are the same as ccTLDs.

Recommendation 4.3:

4.3.1 Until an appropriate licence allocation method has been devised, the licensing of generic domain names should be prohibited and following 'reserved list' approach should be adopted:

- a. a definition of the term 'generic' will be developed;**
- b. domain names that have to date been rejected by the current registrars for being generic will be placed on a reserved list;**
- c. new applications for domain names that may be considered generic will be referred to auDA;**
- d. if the domain name is determined by auDA to be generic then it will be added to the reserved list; and**
- e. applicants may challenge domain names on the reserved list, and auDA will determine whether the name should remain on the reserved list or whether changed circumstances mean the name can be licensed.**

4.3.2 Until an appropriate licence allocation method has been devised, the licensing of geographic domain names should be prohibited, using the same reserved list approach outlined in 4.3.1 (substituting 'geographic' for 'generic').

4.3.3 The licensing of objectionable domain names should be prohibited, using the same reserved list approach outlined in 5.3.1 (substituting 'objectionable' for 'generic').

Explanatory Notes:

4.3.1 Until an appropriate licence allocation method has been devised, the licensing of generic domain names should be prohibited and the following 'reserved list' approach should be adopted:

- a. a definition of the term 'generic' will be developed;**
- b. domain names that have to date been rejected by the current registrars for being generic will be placed on a reserved list;**
- c. new applications for domain names that may be considered generic will be referred to auDA;**
- d. if the domain name is determined by auDA to be generic then it will be added to the reserved list; and**
- e. applicants may challenge domain names on the reserved list, and auDA will determine whether the name should remain on the reserved list or whether changed circumstances mean the name can be licensed.**

[CURRENT POLICY SIMPLIFIED]

Generic words are currently inaccessible to people wishing to license a domain name in com.au on the grounds that such names confer an unfair commercial advantage to the holder.

Many respondents commented on the Panel's proposals in relation to generic domain names. Interestingly, there was a significant division of opinion on the subject, with several submissions arguing in support of lifting the restriction on generic domain names, and several arguing against it.

The Panel believes that generic domain names are a potentially valuable asset. However, the Panel has not yet formed a consensus view as to whether that value should continue to be protected against possible commercial exploitation, or made available for use in an appropriate manner. In the latter case, the Panel is in agreement that lifting the restriction poses some significant transitional problems.

Until these problems have been more fully investigated, and an appropriate licence allocation method has been devised, the Panel sees no alternative but to continue the restriction on generic domain names. However, the Panel considers that Recommendation 4.3.1 will significantly improve and simplify the current policy by providing greater transparency and some certainty and guidance to domain name licence applicants about which domain names are likely to be rejected for being generic.

The Panel will consider possible allocation methods for generic domain names and the ways in which transition to a new policy may be managed, at its next meeting at the end of March 2001.

**4.3.2 Until an appropriate licence allocation method has been devised, the licensing of geographic domain names should be prohibited, using the same reserved list approach outlined in 4.3.1 (substituting 'geographic' for 'generic').
[CURRENT POLICY SIMPLIFIED]**

Geographic domain names are currently prohibited in the com.au 2LD. The reason for this is that they are considered overly representative, in that no one person can demonstrate legitimate claim to a domain name for an entire geographical area.

The Panel recognises that geographic domain names are a potentially valuable community asset and development tool, especially in regional and rural Australia. The Panel believes that it is worth further exploring how geographic domain names could be allocated in order to maximise community outcomes.

In the meantime, as with generic domain names, the Panel sees no alternative but to continue the restriction on geographic domain names. The Panel believes there is merit in using the reserved list approach outlined in Recommendation 4.3.1, for the same reasons mentioned above in relation to generic domain names.

The Panel will consider possible allocation methods for geographic domain names and the ways in which transition to a new policy may be managed, at its next meeting at the end of March 2001.

4.3.3 The licensing of objectionable domain names should be prohibited, using the same reserved list approach outlined in 4.3.1 (substituting 'objectionable' for 'generic').

[CURRENT POLICY SIMPLIFIED]

The Panel recognises that, in practical and public policy terms, the use of objectionable terms as domain names needs to be regulated in the same way as use of objectionable terms is regulated in other social contexts. In order to ensure that the policy is applied consistently across multiple registrars, the Panel recommends that a reserved list approach be adopted.

5. INTRODUCTION OF NEW SECOND LEVEL DOMAINS IN .AU

This section deals with the introduction of a number of new 2LDs in the .au domain. It roughly corresponds to section 4.3 of the November 2000 report.

Recommendation 5.1:

5.1.1 A limited number of new 2LDs should be introduced in the .au domain space.

5.1.2 The Name Policy Advisory Panel will undertake a separate public consultation process to determine what the new 2LDs should be, and how they should be managed.

Explanatory Notes:

5.1.1 A limited number of new 2LDs should be introduced in the .au domain space. [NEW POLICY]

In its November 2000 report, the Panel proposed the creation of new 2LDs within the Australian DNS, subject to ICANN's experience in introducing new gTLDs.

There was general support for this proposal. Moreover, it is the Panel's view that many of the difficulties people have had with the current domain name system, could be alleviated by judicious creation of new 2LDs. For example, for those who believe that the commercial 2LDs have crowded out use of the DNS by individuals and informal groups for non-commercial purposes, the creation of new non-commercial 2LDs might be a solution. It is clear to the Panel that creating new 2LDs would make the Australian DNS more effective.

It has also been suggested that Australia might adopt the common practice of licensing all domain names directly in the .au domain (eg. bhp.au, telstra.au, etc). Many countries, for example Germany and Canada, have flat domain naming structures that do not use intermediate 2LDs in the same way as Australia. The Panel considers that a change to a flat structure in the .au domain space is not practicable or desirable, for two reasons:

- ❑ 2LDs segment the DNS in practical and useful ways, and as a result the Australian DNS has a high level of utility and comprehensibility; and
- ❑ the task of transitioning to a flat structure would be complex and lengthy, and in the absence of clear reasons to attempt it, one which should not be undertaken.

5.1.2 The Name Policy Advisory Panel will undertake a separate public consultation process to determine what the new 2LDs should be, and how they should be managed.

The auDA board has approved an extension to the Panel's Terms of Reference to enable it to consider the creation of new 2LDs as a means of remedying pressing problems in the Australian DNS. The Panel will commence this work in April 2001.

A discussion of new 2LDs must take place in the context of the existing .au 2LDs, and it is relevant to examine whether these are still appropriate for users of the Australian

DNS. For example, are there 2LDs that are no longer needed, or have not been used? The Panel proposes to address these issues when it looks at new 2LDs in more detail in a separate public consultation process under its extended Terms of Reference.

In the meantime, the Panel has taken into account comments made in public responses to the November 2000 report, and considers that the following kinds of new 2LD might make a major contribution to the effectiveness of the Australian DNS:

- a new 2LD for individuals that is simple to use and will be amenable to operation by competing registrars;
- a 2LD which meets the needs of informal associations and groupings, hobbies and interests which are essentially non-commercial;
- an 'open slather' 2LD with no eligibility requirements whatsoever;
- a geographic names 2LD, or perhaps a separate 2LD for each state and territory, which provides a structure for regional clusters or directories of domain names;
- gateways have been proposed, either as a single 2LD with a directory structure, or as a series of new 2LDs (this approach would also be considered by the Panel in its work on how to lift the restriction on generic names);
- new 2LDs which simply parallel com.au and perform the same commercial function, while making possible a wider range of users for names which are widely sought;
- a new 2LD for indigenous Australians.

6. IMPLEMENTATION ISSUES

This section deals with some issues that will arise in the adoption of the recommended changes to domain name policy. It roughly corresponds to section 4.5 of the November 2000 report.

Recommendation 6.1:

6.1.1 Changes to domain name eligibility and allocation policies should not have retrospective effect for current domain name licence holders, and should only apply to existing domain name licences if the licence is re-registered to a different entity, or when the existing licence holder's licence expires.

Explanatory Notes:

6.1.1 Changes to domain name eligibility and allocation policies should not have retrospective effect for current domain name licence holders, and should only apply to existing domain name licences if the licence is re-registered to a different entity, or when the existing licence holder's licence expires.

There was general support in submissions for maintaining the existing rights of domain name licence holders, and the Panel therefore re-states its previous conclusion regarding retrospectivity.

Recommendation 6.2:

6.2.1 Dispute resolution procedures should apply to all open 2LDs, and to closed 2LDs on an opt-in basis, with appropriate modifications if necessary.

6.2.2 Uniform dispute resolution procedures should be devised and implemented by auDA for all 2LDs before or at the same time as the recommendations of this Panel are implemented.

Explanatory Notes:

**6.2.1 Dispute resolution procedures should apply to all open 2LDs, and to closed 2LDs on an opt-in basis, with appropriate modifications if necessary.
[NEW POLICY]**

As noted in section 3 of this report, there was unanimous support for the implementation of a Dispute Resolution Procedure at the same time as, or ahead of, any change to the DNS. The point was often made that the Australian procedures should be as closely identical as possible to the ICANN UDRP.

6.2.2 Uniform dispute resolution procedures should be devised and implemented by auDA for all 2LDs before or at the same time as the recommendations of this Panel are implemented.

In its November 2000 report, the Panel proposed some detailed requirements for an Australian version of the UDRP to handle disputes about domain name policy. The Panel recognises that disputes also occur in relation to domain name registration services, but that this type of dispute falls outside the Panel's Terms of Reference.

The Panel believes that, rather than recommending a dispute resolution procedure that deals with only one type of dispute, it would be better for auDA to put in place a dispute resolution framework to address the full range of disputes that may arise in relation to domain name registration.

The Panel recognises that, from the perspective of domain name licence holders, an essential element of the domain name policy and service environment is an effective and robust complaints handling mechanism. This view is shared by the Competition Panel. The importance of a 'one stop shop' approach to complaints handling from a consumers' perspective has also been noted. A multiple complaints handling environment can be inefficient, burdensome and frequently frustrating for consumers. The Panel notes that the Telecommunications Industry Ombudsman dispute scheme has provided a free and timely forum for the redress of consumer complaints, in contrast to costly and time-consuming action in courts or consumer tribunals. The Panel recognises that customer complaint and dispute resolution procedures and mechanisms should be accessible, fair, accountable, efficient and effective.

SCHEDULE A

.AU SECOND LEVEL DOMAINS - PURPOSE AND ELIGIBILITY CRITERIA

Open 2LDs

In the .au domain space, open 2LDs are characterised by a first come, first served approach with comparatively low barriers to entry for domain name applicants. Generally speaking, any person or entity can apply for a domain name in an open 2LD provided they meet the purpose of the 2LD.

Table A: Purpose of Open 2LDs

2LD	PURPOSE
asn.au	For 'associations'. Includes associations incorporated under specific state legislation, some incorporated bodies, political parties, trade unions, sporting and special interest clubs and 'partnerships' between disparate organisations.
com.au	For commercial entities, currently registered and trading in Australia.
conf.au	For short duration conferences and exhibitions.
id.au	For individuals.
info.au net.au	For major information resources. For entities that carry on, or propose to carry on, an Internet related business in Australia. Includes companies, registered Australian bodies, statutory corporations, building/friendly societies.
org.au	For 'organisations'. Includes companies, statutory authorities, partnerships, etc, are all acceptable, as is almost anything else that can reasonably be considered an organisation.

The Panel recommends that the same set of eligibility criteria should be applied to all open 2LDs:

- i. a decision by a court or other accredited tribunal;
- ii. an Australian Registered Trade Mark, or Trade Mark application;
- iii. proof of identity (eg. Australian passport, Australian drivers' licence);
- iv. an Australian Business Number;
- v. a Business Name or Company Number registered in Australia;
- vi. other appropriate evidence supported by a statutory declaration and proof of identity of the applicant.⁵

Although the same set of eligibility criteria would apply to all 2LDs, clearly there would be different orders of importance and varying degrees of relevance. This is demonstrated in Table B below.

⁵ The Panel expressed some concerns that a statutory declaration does not provide the same level of assurance as the other indicators on the list, which all require a formal registration/certification process. In particular, from a law enforcement perspective, the risk of someone swearing a false declaration was considered higher than someone falsely registering a business name or trade mark, for example. It was felt that these concerns could be addressed by requiring the person swearing the statutory declaration to provide proof of identity.

Table B: Possible Application of Eligibility Criteria to Open 2LDs

	asn.au	com.au	conf.au	id.au	info.au	net.au	org.au
i	✓	✓	✓	✓	✓	✓	✓
ii	✓	✓	✓		✓	✓	✓
iii				✓			
iv	✓	✓				✓	✓
v		✓				✓	
vi	✓	✓	✓	✓	✓	✓	✓

Closed 2LDs

In the .au domain space, closed 2LDs are those with defined communities of interest. Applicants must demonstrate that they belong to a well-defined class or sector in order to qualify for a domain name in a closed 2LD.

Due to the differing scope and purpose of the closed 2LDs, it is not possible to apply one common set of eligibility criteria. Therefore, it is proposed that the eligibility criteria in the closed 2LDs will continue to be determined by the relevant authority for the 2LD, subject to ratification by auDA.

Table C: Purpose and Eligibility Criteria of Closed 2LDs

2LD	PURPOSE	ELIGIBILITY
csiro.au	For exclusive use by the Commonwealth Scientific and Industrial Research Organisation.	Eligibility to licence a domain name is demonstrated if the applicant is an employee of CSIRO.
edu.au	For education-related bodies.	Eligibility to licence a domain name is demonstrated by sufficient evidence, as determined by the registrar, that the requesting body is education-related.
gov.au	For exclusive use by Australian governments.	Eligibility to licence a domain name is demonstrated by reference to an Act of Parliament or government regulation.

Review of Policies in .au Second Level Domains

AuDA Advisory Panel No. 1 Terms of Reference

Revision Date: 8 May 2000

This document is the Terms of Reference for the auDA Policy Advisory Panel Number 1, for Review of Policies in .au Second Level Domains.

1. Activity and outcome

This Policy Advisory Panel is set up to review two policy areas for .au second level domains:

- Applicant Eligibility Policy - Policy that determines which entities are eligible to apply for a domain name.
- Name Allocation Policy - Policy that determines which names are allowed to eligible entities applying for domain names.

The Policy Advisory Panel has two stages:

- Stage 1: Identify and document the existing policies in a format suitable for inclusion on the auDA website.
- Stage 2: Recommend changes, if any, to existing Eligibility and Allocation policies.

Prioritisation of work is at the discretion of the panel. However, consideration should be given to prioritising existing areas of user concern, including review of policies necessary to support introduction of competition between registrars in major second level domains. For second level domains not available to the general community (eg. .gov.au) the panel may consider passing the documentation and review task to the authority for that second level domain.

2. Duration

The estimated timeline for the panel is subject to change. The current estimate is:

Total Time	Elapsed Time Complete	Task
		TOR Confirmed
2 weeks	2 weeks	Call for panel participants
4 weeks	2 weeks	Panel participants confirmed
8 weeks	4 weeks	First panel meeting
20 weeks	12 weeks	Develop Stage 1 Working Paper
23 weeks	3 weeks	Develop Stage 2 Working Paper
27 weeks	4 weeks	Stage 2 Draft Paper issued for public consultation
		Develop Stage 2 Proposed Paper

29 weeks	2 weeks	Stage 2 Proposed Paper issued for public consultation
30 weeks	1 week	Develop Stage 2 Report
32 weeks	2 weeks	Stage 2 Report confirmed
44 weeks	12 weeks	Implementation of recommendations

3. Chair

The panel Chair is Derek Whitehead.

4. Members

The panel should include representatives from the following areas of the community:

- Consumers
- General domain name users
- Registrars
- ISP & Web Hosting entities
- Intellectual Property

Panel membership will be limited to 30. auDA will issue a general invitation via the auDA members and dns discussion lists to interested parties to participate in the panel.

5. Operations and budget

Members of the panel will determine their method of operation. auDA will provide email list server, web site including archived comments provided to the panel, documentation of work, will arrange meeting venues, and provide teleconference support for meetings.

auDA Name Policy Advisory Panel

Chair

Mr Derek Whitehead
Director, Information Resources
Swinburne University of Technology

Members

Mr Philip Argy
Senior Partner
Mallesons Stephen Jaques (representing the
Australian Computer Society)

Mr Alan Chalmers
Numbering Team
Australian Communications Authority

Mr Mark Davidson
Partner
Marshall Marks Kennedy Lawyers

Mr Steve Fielding
General Manager
National Office for the Information Economy

Mr Brandon Gradstein
Student
Monash University

Mr Ian Halliday
Director
Melbourne Trading Post

Mr Keith Inman
Director, Electronic Enforcement
Australian Securities and Investment Commission

Mr Ian Johnston
Policy Consultant
Small Enterprise Telecommunications Centre Ltd

Mr Geoff Morrison
Assistant General Manager
Commonwealth Scientific and Industrial Research
Organisation

Mr Steve Pretzel
Managing Director
Pretzel Logic (representing the Australian Chamber of

Dr Evan Arthur
Assistant Secretary
Department of Education, Training and Youth
Affairs

Ms Sandra Davey
Consultant
SMS Consulting Group Ltd (representing the
Australian Interactive Multimedia Industry
Association)

Ms Kitty Davis
Executive Secretary
South Australian Internet Association

Ms Odette Gourley
Partner
Minter Ellison

Mr Rowan Groves
Project Coordinator
Australian Competition and Consumer Commission

Mr Tony Hill
Executive Director
Internet Society of Australia

Mr Ron Ipsen
Managing Director
Gippsland Internet Pty Ltd

Ms Cheryl Langdon-Orr
Managing Director
Hovtek Pty Ltd

Ms Christine Page-Hanify
Chief Executive Officer
Access Online (representing the Australian Digital
Alliance)

Mr David Purdue
President
Australian Unix Users' Group

Commerce and Industry)

Mr Cliff Reardon
General Manager
ClicknGo!

Mr Peter Reynolds
Chief Manager, Technology Strategy
Commonwealth Bank of Australia

Ms Leanne Schultz
Manager, Network Resources
connect.com.au

Ms Cathy Thawley
EC Business Advisor
Tradegate ECA

Mr Ross Wilson
Registrar of Trade Marks
IP Australia

Mr Daniel Rechtman
Consultant Solicitor (representing Melbourne IT)

Mr Joshua Rowe
E-Pay Project
Australia Post

Mr Tony Serong
Director
KPMG Legal (representing the Service Providers'
Action Network)

Mr Galen Townson
Western Australian Internet Association

Mr Michael Wolnizer
Partner
Davies Collison Cave (representing the Internet
Industry Association)

APPENDIX 3

GLOSSARY

TERM	DEFINITION
auDA	.au Domain Administration - the Australian body established by the Internet community to take over the administration of the .au domain
bona fide	good faith
ccTLD	country code Top Level Domain - in the global domain name hierarchy, all countries have been allocated their own top level country domain (eg. .au in Australia, .uk in the United Kingdom)
closed 2LD	a Second Level Domain that has a defined community of interest (eg. csiro.au, edu.au, gov.au)
domain name	provides a means for a user to access a computer on the Internet by using an easy to remember text name rather than numerical Internet address
domain name licence	the licence to use a domain name for a specified period of time
DNS	Domain Name System
entity	encompasses a company, organisation, association, statutory body etc
gTLD	generic Top Level Domain - in the global domain name hierarchy, there are a number of top level domains that operate in the same way as ccTLDs (eg. .com, .net, .org)
ICANN	Internet Corporation for Assigned Names and Numbers - the international domain name governing body
IETF	Internet Engineering Task Force
open 2LD	a Second Level Domain that is basically open to all users, subject to some eligibility criteria (eg. com.au, net.au, org.au)
Registered Trade Mark	a name, word or word/number combination that has been registered under the <i>Trade Marks Act</i>
registrar	an organisation that provides domain name registration services
registry	a database containing information about domain names and domain name licence holders
RFC	Request for Comment - the basis for official Internet standards
2LD	Second Level Domain - the next domain level in the global domain name hierarchy after the gTLD or ccTLD (eg. com.au)
UDRP	Uniform Dispute Resolution Procedure