



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

Dear Panel

Thank you for the opportunity to comment on the auDA Policy Review Panel's (Panel) *Public Consultation Paper: Reform of Existing Policies & Implementation of Direct Registration* (Consultation Paper).

The Digital Transformation Agency (DTA) acts as registrar for the gov.au 2LD through a sub-sponsorship agreement with .au Domain Administration Ltd (auDA). We are responding in this capacity to the following questions raised in the Consultation Paper.

Question 5.1.4 – Eligibility and allocation – grandfathering considerations

Grandfathering provisions should only apply in circumstances where a domain licence was, and is, compliant with previous policies. In other words, there should not be blanket protection for domains that were incorrectly registered because they did not comply with the policies that were in place at the time of registration.

Question 5.1.6 – Licence conditions – licence suspension and cancellation

We agree that the meaning of “law enforcement agency” should be clarified and could potentially have the same meaning as “criminal law-enforcement agency” in the *Telecommunications (Interception and Access) Act 1979*, section 110A.

Question 5.1.7 – Prohibition on misspellings

We strongly agree that the Prohibited Misspellings List be retained.

The details proposed in the Consultation Paper, to be included on the Prohibited Misspellings List (date blocked, complainant identity, rights relied on), are sufficient.

Government inclusions on the Prohibited Misspellings List should be able to refer to legislation or registered trademarks as the right relied on to block the word (see Reserved Names response).

We suggest auDA consider publishing the Prohibited Misspellings List in an open-source format, allowing interested parties to:

- readily access the latest version of the list in a machine-readable fashion
- note changes and the reasons for changes
- subscribe to updates.

Question 5.1.8 – Reserved names

Under the *Australian Government Domain Name Policy*, non-corporate Commonwealth entities must use a gov.au domain to support their website/s, and not use non-gov.au domain names (unless granted an exemption). The intent of this policy is to convey that a website on a gov.au domain can be trusted as an authoritative Australian government website. Research has indicated that gov.au domains form an important element of trust in government websites and digital services.

As gov.au is a closed 2LD it has not been necessary for government entities to register variations of their primary domain in order to ‘protect’ their name or brand. The gov.au Eligibility and Allocation Policy¹ ensures that the Registrant is a government body and that gov.au domain names can only be used for the official business of the Registrant.

Legislation and Reserved Names

The Reserved Names List should be retained and revised, noting that some restrictions mentioned by legislation are outside the jurisdiction of the .au registry (for example, familyrelationshipcentre.net) and others may appear in controlled 2LDs (for example, familyrelationships.gov.au).

We agree that the onus is on the relevant Australian government department or agency (including those from states and territories) to notify auDA of any words or phrases that are restricted by law and should be added to the Reserved Names List.

Whilst not strictly a misspelling, reserved names should also include both anglicised and Americanised spellings of restricted words (for example, World Trade Organization/Organisation, International Sugar Organization/Organisation).

Typosquatting

Our primary concern with the policies proposed in the Consultation Paper is the potential for ‘gov’ to be illegitimately used as a suffix in direct registrations.

Under the proposed arrangement, domains may be registered using a ‘gov’ (or ‘csiro’) suffix before .au, so that they appear similar to existing gov.au (or csiro.au) domains. For example, pmgov.au or pm-gov.au could easily be misread as pm.gov.au.

Sophisticated internet users may be able to distinguish these subtle differences, however government websites are used by a broad audience, many of whom do not have the same level of understanding or online experience. preceding .au (for example, passportgov.au or researchcsiro.au).

¹ gov.au Eligibility and Allocation Policy

<https://www.domainname.gov.au/domain-policies/eligibility-and-allocation-policy>

This approach is similar to provisions under Section 4.2 (g) of the [Prohibition on Misspellings Policy](#)², enforcing a prohibition on domain names prefixed by 'www'.

Implementing this prohibition may mitigate some of the risks to the gov.au domain space associated with the implementation of direct registration.

We note that a similar issue applies to other .au 2LDs under the proposed direct registration implementation policy. For example, the registrant of telstra.com.au would be entitled to participate in the priority allocation and conflict resolution process for the corresponding telstra.au domain, however the policy, in its current form, may not prevent the registration of telstracom.au by another entity.

Reserving Future 2LDs

Under the Australian system of government, there are several institutions, such as museums, libraries and national parks, that are either separate to, or operate at 'arms-length' from, executive government. In many cases there are equivalent state and territory institutions.

We propose that access to direct registration domain names operate in a similar fashion to the existing gov.au domain space to reflect federal hierarchy. For example, the 2LD would support a Commonwealth domain (such as election.au) with 3LDs created to support the state and territory equivalents (nsw.election.au).

We agree with the recommended list of reserved names for new 2LDs in section 3.11.2 and propose the following additions (subject to agreement by the appropriate authority):

- nationalpark.au
- nationalparks.au
- archive.au
- archives.au
- museum.au
- museums.au
- library.au
- libraries.au
- election.au
- elections.au
- highcourt.au
- minister.au
- governor.au

Prior to the implementation of direct registration, we propose that a period of at least six months be allowed for additional 2LDs (both open and closed) to be considered. With the names reserved during the assessment process.

Where a name reserved as a potential 2LD conflicts with one or more existing 3LDs (for example, mil.com.au and parliament.com.au), affected 3LD registrants should be notified by auDA of their ineligibility for direct registration.

² <https://www.auda.org.au/policies/index-of-published-policies/2008/2008-09/>

Partial automation of conformance checks

We strongly encourage auDA to provide .au registrars with technical advice and assistance for implementing automated checks against the Reserved Names List at registration and renewal points.

This has the potential to reduce:

- the burden on registrars and registrants of conforming with the Reserved Names List
- the need for government agencies and closed zone registrants to continually police the open .au zones for breaches
- requests that auDA perform an audit of the registry.

This would not remove the need for current or prospective registrants to obtain legal advice regarding their domain. But it could provide registrants with a warning that they may not be eligible for a domain, or that they need consent or additional evidence to justify their claim to a domain before paying for a registration or renewal. Much like auDA's automatic lock on the transfer of reserved names.

auDA may also consider providing the Reserved Names List in an open-source, machine-readable format, as suggested for the Prohibited Misspellings List.

Agencies notifying auDA of words or phrases to add to the Reserved Names List

We think we can help auDA to educate relevant agencies and departments by:

- promoting the existence and purpose of the Reserved Names List
- ensuring relevant organisations can incorporate potential Reserved Names into legislative drafting, review and publication processes
- promoting to agencies the need to notify auDA of legislative changes or formal complaints that may affect the Reserved Names List.

Public Interest Test

We note that the 2015 Names Policy Panel recommended that the same policy rules which currently apply in the existing 2LDs should also apply to direct registrations. Given that the 2017 Policy Review Panel is now proposing that there should be no eligibility or allocation rules for .au (other than the Australian presence requirement), we request that the Panel reconsider its intention not to recommend that the Reserved List be expanded to include a public interest test.

We believe adding a public interest test will mitigate risks to the operational stability and utility of the .au domain, because it takes a long time to enact legislation that would address these issues.

For example, "prime minister" does not currently appear in the Reserved Names List and is unlikely to be added to legislation in the short term. However, it would likely meet a public interest test for inclusion on the Reserved Names List.

Question 5.2.1 – Priority Allocation Period

We agree that there be a priority allocation period for the registration of corresponding .au domains by registrants of existing domain names (except for names reserved for potential future 2LD name spaces – refer Question 5.1.8).

We think a six-month priority allocation period would only be reasonable if supported by an extensive information campaign, directly to registrants, by auDA.

Question 5.2.2 – Conflict Resolution Process

We think the proposed lock down process is the fairest of the methods that have been considered for circumstances where there are competing claims for a SLD.

We think the lock down period should be indefinite.

Question 5.2.3 – Cut-off Date

As per our previous submissions, we request that the cut-off for determining eligibility for priority allocation be a date after the implementation policy has been finalised and announced.

We have concerns with the principle of a retrospective cut-off date that reflects a time when several implementation models were being considered but did not include the model currently being proposed.

The proposed 4 February 2018 cut-off date will result in over 300 gov.au domains being ineligible to participate in the priority allocation and conflict resolution process for direct registration. This is because they were registered between 5 February 2018 and now.

While acknowledging there may be potential for industry insiders to benefit from a later cut-off date, we believe that this could be mitigated through scrutiny of applications and adherence to existing domain policies.

If a later cut-off date is not implemented, we propose that all gov.au and csiro.au domains registered between the cut-off date and the commencement of the priority allocation period be granted an exemption.

Refer also to comments at Question 5.2.4 regarding creation dates associated with the potential transfer of .csiro.au 3LDs and .nt.gov.au and .tas.gov.au 4LDs into the central .au registry.

Question 5.2.4 – Contestable Levels

All holders of domain licences in the central .au registry, regardless of the level the domain is registered at, should be entitled to participate in the priority allocation and conflict resolution process for direct registration.

Further, there should be an opportunity for domain names that are currently managed outside of the central .au registry (.csiro.au, .nt.gov.au and .tas.gov.au) to be transferred into the .au registry prior to the start of direct registration. The creation date should reflect the date the domains were first registered in their respective systems, and therefore be entitled to participate in the priority allocation and conflict resolution process for direct registration.

However, under the prohibition on misspellings (above), concatenated forms of fourth- and fifth-level domains in the .gov.au zone (for example, servicensw.gov.au, imagesdpcvic.gov.au) should be considered ineligible for registration.

Please do not hesitate to contact me if you have any queries in relation to this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gordon Grace', with a long horizontal flourish extending to the right.

Gordon Grace
Product Owner, DomainName.gov.au
Digital Transformation Agency (DTA)