

Submission on AUDA .au Licensing Rules Review 2025

Retention of Legacy au Domains

31 March 2026

Submitted to: AUDA Licensing Rules Review Panel

---Contact details removed for privacy---

Signatories

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31 March 2026

The Chair

AUDA AU Licensing Rules Review 2025

Dear sir,

Executive Summary

Current commercial .au rules force cancellation of domains when registrants retire or cease trading, reversing the original 1998 policy intent established in Senator Alston’s office, which recognized domains as anchors of digital identity and email continuity. This creates disproportionate bureaucratic harm to individuals and small businesses, with no clear public benefit. Automatic cancellation also exposes domains to opportunistic re-registration, creating serious risks of consumer confusion, impersonation, phishing, and identity theft. Introducing a “legacy registrant” or retired category would protect historical rights, prevent harm, and align the .au namespace with international practice.

Historical Foundation and Policy Intent

The principle that domain names provide continuity of identity is longstanding. Around 1998, this issue was directly considered in Senator Alston’s office at Parliament House, Canberra. At that time, email portability and the risks of losing contact identity through reliance on service providers were key concerns.

The agreed direction was clear: domain name ownership would allow individuals and businesses to retain control over their identity—particularly email addresses—independent of infrastructure providers. This established an enduring policy understanding that domains were not merely commercial instruments, but anchors of digital identity and continuity.

Current policy settings diverge from that foundation. By requiring relinquishment of a .au domain upon retirement or cessation of business activity, the rules reverse the very protection domain ownership was intended to provide.

International Precedent

Comparable domain regimes internationally do not impose equivalent post-retirement forfeiture. In most jurisdictions, domain names—once validly registered—may be retained irrespective of ongoing trading status, provided they are not used in bad faith or to mislead.

This approach recognizes that:

- Domain names carry accumulated goodwill and identity value;
- Continuity reduces consumer confusion;
- Enforcement should focus on misuse, not status changes.

The .au namespace, by contrast, imposes a stricter linkage between eligibility and active commerce, placing Australian registrants at a disadvantage relative to global norms.

Bureaucratic and Consumer Harm

The current framework creates a cascade of administrative consequences disconnected from any demonstrable public benefit.

For example, the Australian Taxation Office may cancel an ABN as a routine result of retirement. This action, appropriate in a taxation context, can trigger an AUDA eligibility review, ultimately resulting in forced domain cancellation.

Such outcomes produce:

- Loss of long-held digital identity with no misconduct involved;
- Exposure to opportunistic re-registration, creating risks of consumer confusion, impersonation, phishing, or identity theft;
- Emotional and practical harm to individuals who relied on domain continuity;
- No measurable gain to government, consumers, or the namespace.

A neutral administrative update should not automatically trigger punitive consequences for registrants acting in good faith.

Legal Framing: Administrative Harm, Reliance, and Reasonableness

While Australian High Court precedents indicate that statutory licences (including domain registrations) may not constitute “property” for constitutional acquisition purposes (e.g., *ICM Agriculture Pty Ltd v Commonwealth*), administrative law principles remain highly relevant. Decisions by regulators can be challenged if they are unreasonably harsh, fail to consider reliance, or disproportionately harm legitimate parties (e.g., *Kioa v West*; *Minister for Immigration v Li*).

Long-term domain holders have historically relied on the expectation that ownership confers continuity of digital identity. Automatic cancellation following retirement or ABN cessation, absent any evidence of misuse or consumer harm, represents a disproportionate administrative outcome. In these terms, it may strengthen the case for creating a “legacy registrant” category while avoiding over claiming constitutional rights.

Core Issues

- Disproportionate outcomes: Retirement triggers the same consequence as bad faith use—loss of domain.
 - Erosion of trust: Long-term registrants lose confidence in the stability of the namespace.
 - Policy misalignment: Current rules contradict the original intent of domain-based identity control.
 - Unnecessary risk creation: Re-released domains may be misused, including for identity theft or fraud.
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Proposed Reform

Introduce a “legacy registrant” or “retired status” category allowing continued domain holding where:

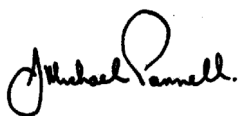
- The domain was validly registered under prior rules;
- The registrant has ceased trading or retired;
- There is no evidence of misleading, deceptive, or fraudulent use;
- Accurate registrant details are maintained;
- ABN cancellation alone does not trigger automatic ineligibility without a proportionality assessment. Optional use limitations (e.g., non-commercial or archival use) may be considered if necessary.
- While other options exist, the ASIC record of the cancelled ABN is an enduring record for the domain with this status.

Conclusion

The current approach imposes real harm on private individuals and small business while delivering no corresponding public or regulatory benefit. It departs from both the historical rationale underpinning domain ownership and from established international practice. Introducing a legacy or retired category would restore balance, protect legitimate registrants, and reinforce trust in the .au namespace as a stable, fair, and secure system that mitigates identity theft and consumer risk.

This subject is too serious a matter to be addressed and determined solely in this form. If our submission fails, we request AUDA to further canvas this issue and if necessary, call a special general meeting to address and resolve the problem created by existing rules.

Yours Faithfully



Michael Parnell ISP

ANNEX: Summary

Current au rules force cancellation of domains when registrants retire or cease trading, reversing the original policy intent that domains preserve digital identity. This creates disproportionate harm with no public benefit and exposes domains to re-registration risks including impersonation, phishing and identity theft. A legacy registrant category is required.

Historical Foundation

1998 discussions recognised domains as anchors of identity and email continuity. Current rules reverse that intent.

International Practice

- Most jurisdictions allow retention if no bad-faith use
- Focus is on misuse, not status

Bureaucratic Harm

- ABN cancellation can trigger domain loss
- No misconduct required
- No public benefit

Consumer & Security Risks

- Impersonation and phishing
- Identity theft risk
- Loss of goodwill leads to fraud exposure

Legal Reasoning

- Procedural fairness required
- Reliance must be considered
- Decisions must be proportionate

Proposed Reform

- Introduce legacy registrant category
- Do not cancel solely due to ABN loss
- Allow non-commercial retention

Conclusion

Reform is necessary to prevent unnecessary harm and align with both original policy intent and international norms.