

***Information Paper for Focus Group Participants***  
***Reform of Existing Policies & Implementation of Direct Registration***  
February 2019

**.auDA**  
.AU DOMAIN ADMINISTRATION LTD

[www.auda.org.au](http://www.auda.org.au)

PO Box 18315  
Melbourne VIC 3001  
[info@auda.org.au](mailto:info@auda.org.au)

## 1. Purpose of this Information Paper

In December 2015, the 2015 Names Policy Panel (**Names Panel**) presented its final report to the auDA Board. The Names Panel made seven recommendations to auDA relating to the introduction of direct registration at the second level, in addition to other potential policy reforms. Specifically, the Names Panel recommended:

*RECOMMENDATION 1A: The Panel recommends in principle that .au should be opened up to direct registrations.*

*RECOMMENDATION 1B: The Panel recommends that the same policy rules which currently apply in the existing 2LDs should also apply to direct registrations.*

The auDA Board considered the Names Panel's report and recommendations at its February 2016 meeting and recorded that it was "receptive" to both recommendations. It instructed auDA staff to conduct further review and consideration of the demand for direct registration and to report back at its April 2016 meeting.

Following this analysis, the Board at its 18 April 2016 meeting "accept(ed) Recommendation 1A and instructs auDA staff to prepare an implementation plan for Board approval before the end of 2016" and that the Board "notes Recommendation 1B, but agrees that policy rules for direct registrations will be determined as part of the implementation planning process".

Throughout 2016 and into 2017, auDA considered the recommendations of the Names Panel, in addition to evaluating all of auDA's published policies and considered that a holistic, comprehensive and fulsome review of auDA's policies was required to concurrently determine what an appropriate implementation model for direct registration could be.

Subsequently, in October 2017 the auDA Board appointed the 2017 Policy Review Panel (**Panel**) to consider and evaluate the model for direct registration, in addition to reviewing auDA's current published policies with a view to modernising and consolidating. The Board appointed senior lawyer, John Swinson, to chair this Panel.

Over the last 16 months, the Panel has worked diligently to identify how existing policies should be reformed and the most efficient and effective model to introduce direct registration of .au at the second level. The Panel has issued two previous public discussion papers on these matters, held numerous public consultations nationally, and received many submissions from industry, the internet community and the public.

The attached **Public Consultation Paper: Reform of Existing Policies & Implementation of Director Registration (Paper)** is the Panel's recommendations for the last stage of consultation, before its final report and recommendations to the auDA Board.

This final phase of consultation on this important reform to the Australian domain name space is to be conducted in two parts:

1. Focus groups based on the successful November 2018 model; and
2. Extensive, targeted public consultation on the proposed implementation model and policy reforms.

To assist in its final deliberations, the Panel has commissioned [ACIL Allen Consulting](#) to conduct a cost-benefit analysis of direct registration and [OmniPoll Pty Ltd](#) to conduct a Consumer Sentiment Survey. This work is being conducted concurrently, with reports from both expected by the end of February 2019. The commissioning of this work is consistent with the Names Panel's recommendations.

It is anticipated that the Panel will make recommendations to the auDA Board for the last stage of public consultation by March 2019, following feedback from the focus groups, with a view to public consultation commencing subsequently.

This covering note is provided as background and context to participants of the March 2019 focus groups. These groups have been established to review, analyse and provide feedback and suggestions on the recommendations of the Panel, relating to the proposed implementation model for direct registration, and more generally reform of auDA's current published policies.

## 2. What is .au?

.au is Australia's internet country code. It is the code that sits at the end of Australian-regulated domain names, just like +61 is the international phone prefix for Australian mobile phone numbers and AUD is the abbreviation for the Australian dollar.

To date, Australians have not been able to register domain names directly under the Top Level Domain (**TLD**) of .au – for example auDA.au. All domains have had to be registered under the Second Level Domain (**2LD**) – for example auDA.com.au, auDA.net.au, auDA.org.au.

.au Domain Administration Ltd (**auDA**) is the administrator of, and industry self-regulatory body for, the .au country-code Top Level Domain (**ccTLD**) name space. It is responsible not only for the *operational stability* of .au, but also responsible for its *utility* to enhance the benefits of the Internet to the wider Australian community.

## 3. Australia's digital economy

In an era of significant technological change, reform is constantly required to ensure that platforms, technology and products remain competitive and attractive to consumers.

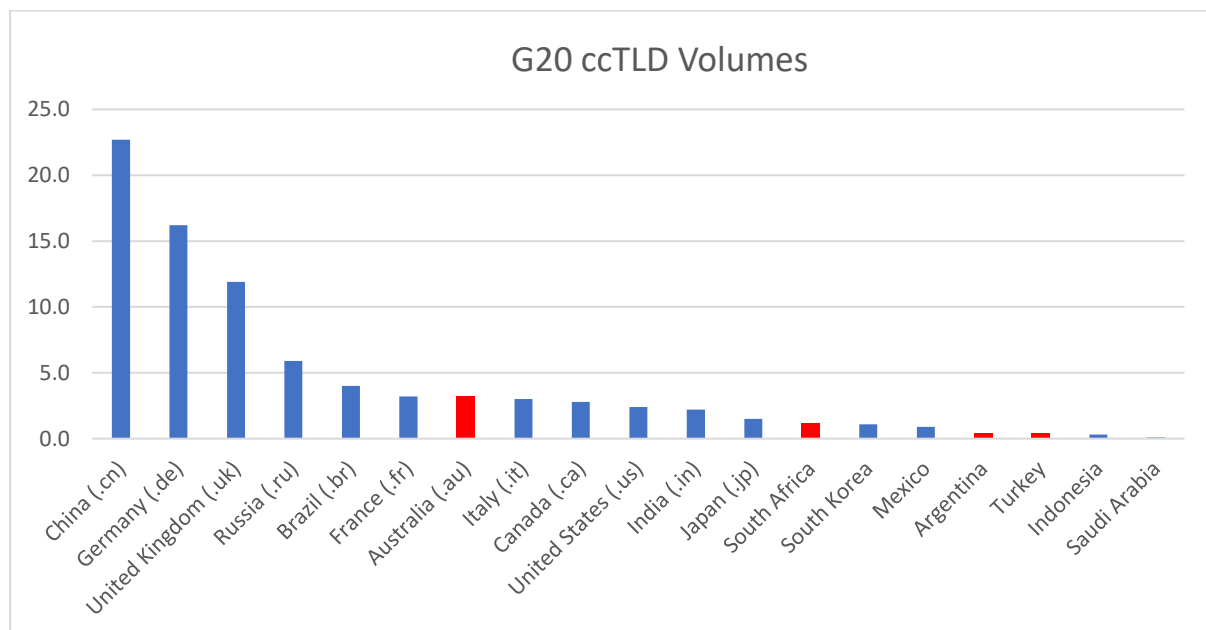
The system for the Australian domain name space was developed approximately 30 years ago. Only third level domain names are currently for registration available in Australia, for example: telstra.com.au, auda.org.au, abc.net.au, asu.asn.au, anu.edu.au, larkin.id.au and

ato.gov.au. CSIRO (csiro.au) is the only organisation that is using its own second level domain name.<sup>1</sup>

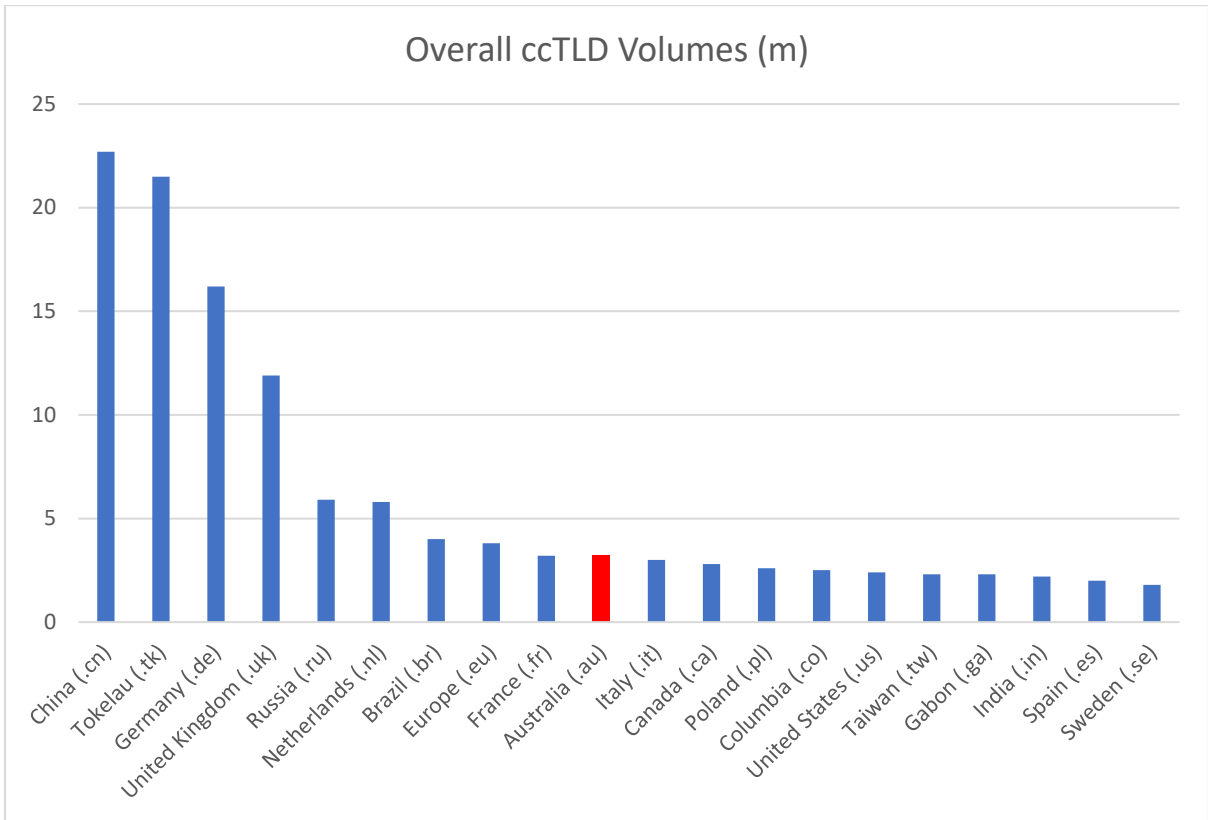
Australia is one of the only countries in the OECD that has not opened up direct registration at the second level. Of the 36 OECD member countries only Australia, Israel and Turkey do not have domain names with the country code at the second level (in the case of Australia, au).

Do		Don't
Austria	Latvia	Australia
Belgium	Lithuania	Israel
Canada	Luxembourg	Turkey
Chile	Mexico	
Czech Republic	Netherlands	
Denmark	New Zealand	
Estonia	Norway	
Finland	Poland	
France	Portugal	
Germany	Slovak Republic	
Greece	Slovenia	
Hungary	Spain	
Iceland	Sweden	
Ireland	Switzerland	
Italy	United Kingdom	
Japan	United States	
Korea		

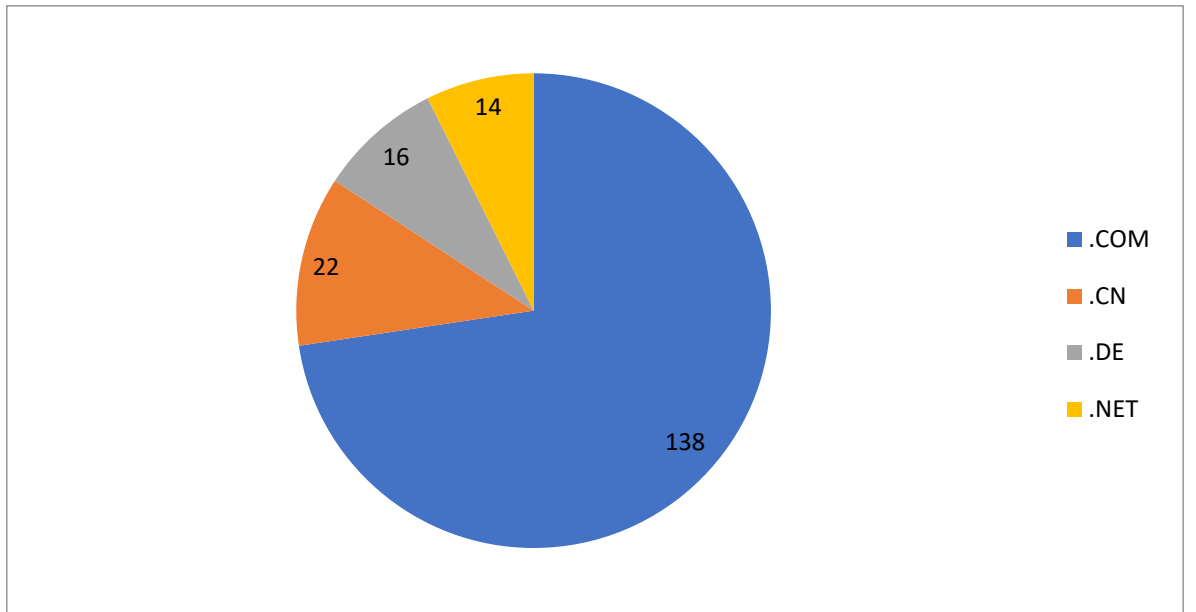
Similarly, when an analysis of ccTLDs and TLDs by volume and market size is conducted, there is disparity internationally between those TLDs that have opened up direct registration (in blue) at the second level and those that had not (in red) which is depicted as follows (see figures below).



<sup>1</sup> This is because CSIRO were the [first Australian organisation to register an Australian domain name.](#)



Most domain names around the world are registered directly at the second level: more than 138 million names are registered directly in .com, 22 million in .cn (China), 16 million in .de (Germany) and 14 million in .net (see figure below).



\* Millions DuMS

The United Kingdom launched .uk in June 2014. More than 100,000 .uk domains were registered within the first month,<sup>2</sup> and 72 per cent of consumers now rank .uk domain endings as their first preference.<sup>3</sup>

Similarly, New Zealand ushered in the shorter, simpler .nz in September 2014. .nz domain names are now the second most popular behind the .co.nz and there were around 135,000 new active registrations by May 2018.<sup>4</sup>

The introduction of .au would align Australia with many other countries around the world.

The Australian Government's vision is *"That Australians enjoy an enhanced quality of life and share in the opportunities of a growing, globally competitive modern economy enabled by technology"*.

The digital economy is part of our everyday life. Ninety-four per cent of Australian adults use the internet to buy and sell, research, read the news, watch movies, bank and stay in touch.<sup>5</sup>

Australia's ability to harness technological advances will impact its future economic success and global competitiveness. Embracing technological change will improve businesses, create new products and markets and ensure that all Australians have the opportunity to thrive in the digital economy.

Uptake and use of digital technologies could contribute between \$140 billion to \$250 billion to Australia's GDP by 2025 according to a report by the Office of the Chief Economist released in December 2018.

Global ecommerce sales are projected to grow from 10 per cent of total retail to 40 per cent by 2026, according to the World Economic Forum. Australia will need to embrace new digital technologies to offer greater consumer choice and better experiences in order to remain competitive. There are three million names in the .au space, with only about half of Australian businesses having a website.<sup>6</sup> This hampers businesses' ability to trade.

Web hosting services and the domain industry generated \$677 million for the Australian economy in 2015-16 according to a Deloitte Access Economics report. This is expected to grow to \$811 million by 2020-2021. The introduction of .au into the domain name space could see that economic contribution increase by another \$122 million to reach \$933 million in 2020-2021.<sup>7</sup>

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<sup>2</sup> <https://www.nominet.uk/popularity-of-uk-domains-grows-new-uk-hits-100k-within-weeks-of-launch/>.

<sup>3</sup> <https://www.nominet.uk/uk-domains/>.

<sup>4</sup> <https://dnc.org.nz/the-commission/news/1682>.

<sup>5</sup> [The Digital Economy: Opening up the Conversation, page 21.](#)

<sup>6</sup> [The Digital Economy: Opening up the Conversation, page 25.](#)

<sup>7</sup> <https://www.auda.org.au/assets/DAE-auDA-final-report-201117.pdf>.

## 4. Policy Review Process

In considering the impact, benefits and implications of introducing direct registration at the second level, the Panel considered that some of the key benefits could be:<sup>8</sup>

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

The Panel's aim is to recommend an implementation process that achieves these benefits as best as possible.

Furthermore, it could be argued that opening up the .au name space for registrations aligns with Federal Government policy and sentiment in this space, with a December 2018 report stating: *"Our regulations provide essential safeguards for the Australian community ensuring the social, environmental and competition outcomes that underpin our way of life. Strong regulations also provide the confidence, both here and overseas, that Australian products and services are safe, consistent and reliable."*<sup>9</sup>

With this in mind, it is important to note that domain names without .au are not covered by Australian law and regulations and are more susceptible to cybersecurity concerns. The ACCC received reports of \$48.4 million in losses from online scams.<sup>10</sup> These are more likely to occur within domain name spaces outside of .au, where the domain name holders are generally not connected to Australia and where it is difficult for Australian law enforcement to hold those organisations accountable for their actions. Cybercrime is estimated to cost Australians more than \$1 billion each year.

It is also important to note that in the case of the .au namespace, client data is provided to an Australian organisation that can be held accountable under Australian privacy law rather than being captured and stored by overseas-based individuals and organisations that are not subject to any privacy laws. With 69 per cent of Australians more concerned about their online privacy than they were five years ago, this is an integral consideration.<sup>11</sup>

Furthermore, with the prevalence of gTLDs, social media and other open-sourced platforms, protection of Australian digital consumers and businesses has become a critical issue.

While opening up the .au for direct registrations at the second level offers many potential benefits for Australian digital users, consideration must be given to existing licence holders and suppliers of domain name space services.

The following Topics for Discussion have been extracted from the Public Consultation Paper and outline the recommendations made by the Panel, the potential implications, and the issues which the focus groups are asked to evaluate and consider.

Following the completion of the focus group exercise, the Panel will consider the feedback and advice provided and subsequently make final recommendations to the auDA Board in March 2019.

The auDA and the Panel would like to thank all focus group participants for their involvement and valuable contribution to this important task.

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<sup>9</sup> [Australia's Tech Future, page 45.](#)

<sup>10</sup> [The Digital Economy: Opening up the Conversation, page 20.](#)

<sup>11</sup> [The Digital Economy: Opening up the Conversation, page 24.](#)



## 5. Topics for Discussion

### 5.1 Reform of Existing Policies

#### 5.1.1 Eligibility and Allocation – the Australian presence requirement

**For all domain names ending in .au, it is proposed that the registrant must be an Australian citizen or permanent resident or entity established under Australian law. It is recommended that where an applicant is relying on a trade mark registration or application to establish an Australian connection, the trade mark must be an exact match to the domain name.**

- What are your views on the recommendation to introduce a single, simple Australian presence test for all domain name registrations in the .au name space (i.e. at the second and third levels of .au)?
- Should the ground of satisfying the Australian connection requirement be retained for holders of Australian trade mark registrations and applications that may be held by legal persons outside of Australia?
- If so, should this ground be limited to instances where the domain name is an exact match to the trade mark registration or application (e.g. Nike Innovate CV could hold a trade mark for the word Nike and register nike.com.au, but not be allowed to register runningshoes.com.au that does not match their trade mark)?

#### 5.1.2 Resale and warehousing

**It is proposed that stricter controls be put in place to ensure that domain names are not being registered solely for the purpose of resale or warehousing (ie. holding a large collection of domain licences for future resale when they become more valuable).**

- What are your views on the recommendation to retain and strengthen the resale and warehousing prohibition rule?
- What are your views on the proposal to strengthen this prohibition by introducing a list of factors indicating that a domain name is likely to have been registered primarily for resale or warehousing, thereby shifting the onus to the registrant to demonstrate that is not in fact the case? What factors should the Panel recommend be used?

#### 5.1.3 Eligibility and Allocation – “Close and Substantial Connection” Rule

**The “close and substantial connection” rule means the domain licence must be:**

- a product that the licence holder manufactures or sells; or
- a service that the licence holder provides; or
- an event that the licence holder organises or sponsors; or
- an activity that the licence holder facilitates, teaches or trains; or
- a venue that the licence holder operates or a profession that the licence holder's employees practise.

**It is proposed that this rule be expanded to recognise online directories (e.g. lawyer.com.au) and informational services that specifically relate to the subject matter denoted by the domain name.**

**It is also proposed that Domain Monetisation (ie. the use of a website which is automatically generated with paid advertising matching the subject of a domain licence e.g. books.com.au) no longer be a basis to meet the allocation criteria to register a domain name.**

- Should the close and substantial connection rule be retained?
- What are your views on the recommendation to replace the current Domain Monetisation test as a basis for establishing a close and substantial connection with a narrower test (recognising online directories and informational services that specifically and predominately relate to the subject matter signified by the domain name)?
- Should it be permissible to register a domain name under the close and substantial connection rule for the purpose of Domain Monetisation?

#### 5.1.4 Eligibility and allocation – Grandfathering considerations

**It is proposed that grandfathering provisions be introduced for existing licence holders.**

- What are your views on the recommendation to grandfather, or apply new policies from the point in time when the domain licence is renewed, rather than applying them with immediate effect?
- Should another grandfathering approach be used, and if so, why?

#### 5.1.5 Licence conditions – licence transfer

**It is proposed that if a domain licence is sold, the new licence holder should receive the benefit of the remaining licence period. (Currently, when a licence is sold a new licence period is created for one, two, three, four or five years and any remaining licence period is lost.)**

- What are your views on the recommendation to allow new licence holders to receive the benefit of the remaining licence period when a domain name is transferred?

#### 5.1.6 Licence conditions – licence suspension and cancellation

**It is proposed that a process be developed to allow for the suspension of a domain name licence, rather than cancellation of a domain name licence, where there is a breach of a policy.**

- What are your views on the recommendation to clarify the definition of “law enforcement agency”?
- What are your views on the recommendation to create a procedure to allow auDA to suspend a domain name licence (as an alternative to cancellation)?
- Should the maximum period of suspension be set and, if so, should it be capped at one month or some other period of time (and should it be renewable)?

#### 5.1.7 Prohibition on Misspellings

**It is proposed that the Prohibition on Misspelling List be retained. This is important to prevent typosquatting – the deliberate registration of a domain name that is a misspelling of a brand name, entity or person for the purpose of misleading users of the misspelt domain name.**

**Such names can be monitored for compliance with the registration rules or blocked from registration.**

- Should the Prohibited Misspellings List be retained?
- What details should be published on the Prohibited Misspellings List? Should they include the date it was blocked, the identity of the complainant, and the rights that the complainant relied upon?
- What are the processes that auDA should be implementing to ensure that the Prohibited Misspellings List remains current, including dealing with complaints and requests to unblock a name on the list?

#### 5.1.8 Reserved names

**It is proposed that the Reserved Names List be retained, and revised to include additional categories. Currently, the list contains words and phrases restricted under Commonwealth legislation (e.g. ANZAC) that are blocked from registration at the central registry.**

- What are your views on the recommendation to retain and publish the Reserved Names List?
- Do you agree that the Reserved Names List should be expanded to include words and phrases that are restricted under State and Territory laws?
- Is it appropriate that the onus should be on the relevant government department or agency to notify auDA of any words or phrases that are restricted by law and should be added to the list?

## 5.2 Implementation of Direct Registration

### 5.2.1 Priority Allocation Period

**It is proposed that the holder of a domain licence at the third level of .au (e.g. telstra.com.au) will have priority to register the corresponding domain name at the second level of .au (e.g. telstra.au) for a six-month period from the Launch Date. There may be registrants at the third level with corresponding domain names.**

- Is it appropriate to have a priority allocation period for the registration of new second level domain names to give priority to the registrants of existing domain names in .au?
- Is a six-month priority allocation period fair to both existing registrants and potential new registrants?

### 5.2.2 Conflict Resolution Process

**It is proposed that if more than one corresponding domain name exists at the third level, it would be reserved or locked down from registration. For example, bsmc.com.au is used by a group of entrepreneurs and bsmc.net.au is used by a medical practice in Woodend, Victoria. In this scenario, the matching .au domain name (bsmc.au) would be locked down and both parties would receive a token. Token holders could negotiate with each other for the release of the .au domain name. If agreement could not be reached, then the .au domain name would remain reserved indefinitely and would not be made available for registration.**

- Is the lock down process a fair process to resolve conflicts when there are competing claims at a contestable level?
- Will you be harmed by the lock down process and, if so, how?
- Should the lock down period be: a) six months b) one year c) two years d) indefinite?
- If the lock down period is finite, what should happen to resolve any outstanding conflicts at the end of the lock down period?

### 5.2.3 Cut-off Date

**A cut-off date of 4 February 2018 is proposed, as this is when the Panel began its public consultation.**

- Is 4 February 2018 a fair and reasonable cut-off date for eligibility to participate in the conflict resolution process and the lock down process?
- If not, why?
- And if not, what date would you suggest and why?

### 5.2.4 Contestable Levels

**It is proposed that holders of domain licences stored in the central .au registry at the third level (e.g. ato.gov.au) and fourth level (e.g. dpc.nsw.gov.au) can participate in priority allocation and conflict resolution for direct registration (e.g. ato.au and dpc.au). The Tasmanian and Northern Territory Governments regulate their own domain names, which sit outside the central .au registry.**

- Is it appropriate to exclude domain names registered at the fifth level from participation in the priority allocation process and the lock down process (e.g. images.dpc.nsw.gov.au)?
- Is it appropriate to exclude domain names registered at the fourth level that are not registered in the central .au registry from participation in the priority allocation process and the lock down process (e.g. justice.tas.gov.au)?

### 5.2.5 The Draft Policy

See the proposed Draft Policy attached as Annexure E to this Discussion Paper.

- Is the wording of the draft Direct Registration Policy clear and understandable?
- Does the draft Direct Registration Policy correctly reflect the intent set out in this paper?
- Do you believe that you will benefit from Direct Registrations if implemented in accordance with the Direct Registration Policy?