

auDA PUBLISHED POLICY**Policy Title:** TRANSFERS (CHANGE OF REGISTRANT) POLICY**Policy No:** 2004-03**Publication Date:** 12/07/2004**Status:** Replaced by Policy No 2008-08**1. BACKGROUND**

- 1.1 This document sets out auDA's policy on the transfer of a domain name licence from one registrant to a proposed new registrant, which has the effect of changing the name of the registrant as listed in the registry database.
- 1.2 One of the fundamental policy principles in the .au domain is that domain names are allocated on a 'first come, first served' basis to registrants that meet the relevant eligibility criteria. If a registrant is not entitled to hold their domain name licence (either under auDA policy or applicable rules of law), or has no further use for the domain name, then the registrant should delete the domain name and make it available for registration by another eligible registrant on a first come, first served basis.
- 1.3 However, auDA recognises that the normal deletion process is not appropriate where the registrant is required to transfer their domain name licence to another party, by operation of law or for reasons of commercial expediency. This document sets out a limited set of circumstances under which a registrant may transfer their domain name licence.
- 1.4 This document does not detail the technical steps required to change the registrant in the registry database. This information is made available to all auDA accredited registrars by the registry.

2. TERMINOLOGY

- 2.1 This policy uses the following terms:
 - a) "proposed new registrant" means the entity or person to whom the registrant proposes to transfer their domain name licence; and
 - b) "written request for transfer" means a request for transfer submitted to the registrar by letter or facsimile that is signed by the registrant contact (request by telephone or email is not acceptable).

3. CIRCUMSTANCES OF TRANSFER

- 3.1 A registrant may transfer their domain name licence to a proposed new registrant if:
 - a) (i) the registrant sells part or all of their business operations or assets to the proposed new registrant, and the Deed of Sale includes the transfer of the domain name licence; or
 - (ii) the registrant assigns part or all of their intellectual property rights to the proposed new registrant, and the Deed of Assignment includes the transfer of the domain name licence;
 - (iii) where the registrant is a legal entity, the registrant is liquidated or enters into administration and the liquidator or administrator authorises

the transfer of the domain name licence to the proposed new registrant;
or

- (iv) the registrant and the proposed new registrant are legal entities belonging to the same group of related entities, eg. where a parent company transfers its domain name licence to a subsidiary;
- (v) the registrant is holding the domain name licence in their capacity as an agent of the proposed new registrant, and at the time of registration the registrant had entered into an agreement to transfer the domain name licence to the proposed new registrant at a future date, eg. where a web designer, ISP, lawyer, accountant or other service provider registers a domain name on behalf of a client;
- (vi) where the registrant is an individual, the registrant dies or becomes insane and the executor or power of attorney authorises the transfer of the domain name licence to the proposed new registrant; or
- (vii) a competent arbitrator, tribunal, court or legislative body orders the registrant to transfer their domain name licence to the proposed new registrant, eg. in the case of a proceeding under the .au Dispute Resolution Policy (auDRP); or
- (viii) the registrant has entered into an agreement to transfer their domain name licence to the proposed new registrant in settlement of a dispute between the parties, and the Deed of Settlement includes the transfer of the domain name licence, eg. where a trade mark infringement dispute is settled out of court.

AND

- b) the proposed new registrant is eligible to hold the domain name according to the relevant eligibility and allocation rules;

AND

- c) the transfer does not constitute a breach of the prohibition on sale of a domain name by a registrant (auDA Published Policy 2005-05).

3.2 A request for transfer of a domain name licence that does not qualify under paragraph 3.1 must be denied by the registrar. In the event that the registrant is unable or no longer eligible to hold the domain name, then the licence must be surrendered and the domain name deleted from the registry under the normal deletion process.

3.3 Where a request for transfer has been denied, the registrant has recourse to auDA's normal complaints-handling process (auDA Published Policy 2002-21).

4. TRANSFER PROCESS

- 4.1 To process the transfer of a domain name licence, the registrar must:
 - a) receive a written request for transfer that explains the circumstances of the transfer and is signed by the registrant contact (a request by telephone or email is not acceptable);
 - b) obtain a statutory declaration signed by the proposed new registrant, or an authorised representative of the proposed new registrant, in the standard format provided at Schedule A; and
 - c) obtain confirmation of the request for transfer from both the registrant contact and the proposed new registrant, or an authorised representative of the proposed new registrant.

- 4.2 The registrar must keep full records of the transfer for inspection by auDA on demand, including copies of the written request for transfer, the statutory declaration and the transfer confirmation. The registrar is not required to obtain copies of supporting documentary evidence for the transfer (eg. copy of Deed of Sale or Deed of Settlement).
- 4.3 The transfer will result in a new 2 year domain name licence being issued to the proposed new registrant. The registrant is not entitled to be reimbursed by the registrar for the unused portion of their domain name licence.

5. BREACH OF POLICY

- 5.1 auDA reserves the right to investigate any transfer of domain name licence under this policy, and to request that the registrant and/or the proposed new registrant provide supporting documentary evidence for the transfer.
- 5.2 Where a registrant or a proposed new registrant has breached auDA policy, or otherwise acted in bad faith in order to transfer a domain name licence, auDA reserves the right to reverse the transfer or to cancel the domain name licence and delete the domain name.

SCHEDULE A

STANDARD STATUTORY DECLARATION

Under paragraph 4.1 of the policy, the registrar must obtain a statutory declaration signed by the proposed new registrant in the format set out below.

Statutory Declaration by Proposed New Registrant

I, <insert name, address and occupation of person making the declaration>

do solemnly and sincerely declare:

1. That the transfer of <insert domain name> from <insert name of registrant> to <insert name of proposed new registrant> is pursuant to the circumstance indicated in the ticked box below:

(tick appropriate box)

- <insert name of registrant> has sold their business operations or assets to <insert name of proposed new registrant> and the Deed of Sale includes the transfer of the domain name licence;
- <insert name of registrant> has assigned their intellectual property rights to <insert name of proposed new registrant> and the Deed of Assignment includes the transfer of the domain name licence;
- <insert name of registrant> has been liquidated or is under administration and the liquidator or administrator has authorised the transfer of the domain name licence to <insert name of proposed new registrant>;
- <insert name of registrant> and <insert name of proposed new registrant> are legal entities belonging to the same group of related entities;
- <insert name of registrant> is holding the domain name licence in their capacity as an agent of <insert name of proposed new registrant>, and at the time of registration the registrant had entered into an agreement to transfer the domain name licence to <insert name of proposed new registrant> at a future date;
- <insert name of registrant> has died or become insane and the executor or power of attorney has authorised the transfer of the domain name licence to <insert name of proposed new registrant>;
- a competent arbitrator, tribunal, court or legislative body has ordered <insert name of registrant> to transfer their domain name licence to <insert name of proposed new registrant>;
- <insert name of registrant> has entered into an agreement to transfer their domain name licence to <insert name of proposed new registrant> in settlement of a dispute between the parties, and the Deed of Settlement includes the transfer of the domain name licence.

2. That the transfer of domain name licence described above does not constitute a breach of the prohibition on sale of a domain name by a registrant (auDA Published Policy 2005-05).

[see next page]

I make this solemn declaration by virtue of the *Statutory Declaration Act 1959* as amended and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements in this declaration to be true in every particular.

<insert signature of person making the declaration>

Declared at <insert address where declaration has been made>

on <insert date>

before me <insert signature of person before whom the declaration is made>

<insert name and title of person before whom the declaration is made>

NOTE 1.-A person who wilfully makes a false statement in a statutory declaration under the *Statutory Declarations Act 1959* as amended is guilty of an offence against that Act, the punishment for which is a fine not exceeding \$200 or imprisonment for a term not exceeding six months or both if the offence is prosecuted summarily, or imprisonment for a term not exceeding four years if the offence is prosecuted upon indictment.

NOTE 2.-A statutory declaration under the *Statutory Declarations Act 1959* as amended may be made only before a Chief, Police, Resident or Special Magistrate; Stipendiary Magistrate or any Magistrate in respect of whose office an annual salary is payable; a Justice of the Peace; a person authorised under any law in force in Australia or its Territories to take affidavits; a person appointed under the *Statutory Declarations Act 1959* as amended or under a State Act to be a Commissioner for Declarations; a person appointed as a Commissioner for Declarations under the *Statutory Declarations Act 1911*, or under that Act as amended, and holding office immediately before the commencement of the *Statutory Declarations Act 1959*; a Notary Public; a person before whom a statutory declaration may be made under the law of the State in which a declaration is made; or a person appointed to hold, or act in, the office in a country or place outside Australia of Australian Consul-General, Consul, Vice-Consul, Trade Commissioner, Consular Agent, Ambassador, High Commissioner, Minister, Head of Mission, Commissioner, Charge d'Affaires, or Counsellor, Secretary or Attaché at an Embassy, High Commissioner's office, Legation or other post.