

auDA PUBLISHED POLICY**Policy Title:** REGISTRAR REVIEW PANEL RULES**Policy No:** 2010-03**Publication Date:** 12/07/2010**Status:** Current**1. BACKGROUND**

- 1.1 This document sets out the rules (Registrar Review Panel Rules) which govern the administrative proceedings, powers and discretions of the Registrar Review Panel.
- 1.2 Registrar Agreements signed on or after 12 July 2010 give registrars the right to apply to the Registrar Review Panel, to review a Reviewable Decision (both capitalised terms have the meanings given in the Registrar Agreement) of auDA.
- 1.3 Under the Registrar Agreement, once a registrar exercises its right to make such an application to the Registrar Review Panel:
 - a) the administrative proceeding to review the Reviewable Decision must be carried out according to the requirements of the procedural rules set out in this document; and
 - b) both auDA and the registrar are taken to be bound by, and must comply with, the procedural rules set out in this document.

2. APPLICATION OF THE REGISTRAR REVIEW PANEL RULES

- 2.1 This document does not, by itself, give registrars the right to apply to the Registrar Review Panel to review a Reviewable Decision of auDA. The right to make such an application is contained in clause 23A of auDA's standard form of Registrar Agreement (signed on or after 12 July 2010).
- 2.2 To make an application to the Registrar Review Panel to review a Reviewable Decision of auDA, the Registrar must comply with the requirements set out in clause 23A.2.2 of the Registrar Agreement, and the rules set out in this document.

3. TERMINOLOGY

- 3.1 This document uses the following terms:
 - a) "Application" means an application to the Registrar Review Panel under clause 23A.2.2 of the Registrar Agreement;
 - b) "Business Day" has the same meaning as in the Registrar Agreement;
 - c) "Event of Default" has the meaning given in the Registrar Agreement;
 - d) "Panel Chair" means the chair of the Registrar Review Panel;
 - e) "Panelist" means a member of the Registrar Review Panel, including its Panel Chair;
 - f) "Registrar" means a registrar who has made, or intends to make, an Application;

- g) "Registrar Agreement" means the registrar agreement which an accredited registrar enters into with auDA on or after 12 July 2010, which contains provisions giving an accredited registrar the right to apply to the Registrar Review Panel to review a Reviewable Decision of auDA;
- h) "Registrar Review Panel" has the same meaning given in the Registrar Agreement;
- i) "Registrar Review Panel Rules" means the rules and procedures set out in this document;
- j) "Reviewable Decision" has the meaning given in the Registrar Agreement.

4. COMMUNICATIONS

- 4.1 All communication to the Registrar Review Panel must be made by electronic mail using the following address: <chair.registrarreview@auda.org.au>.
- 4.2 The Registrar may update its contact details by notifying the Registrar Review Panel.
- 4.3 Except as otherwise provided in these Registrar Review Panel Rules, or decided by the Registrar Review Panel, all communications provided for under these Registrar Review Panel Rules are taken to have been made on the date that the communication was transmitted, provided that the date of transmission is verifiable.
- 4.4 Except as otherwise provided in these Registrar Review Panel Rules, all time periods calculated under these Registrar Review Panel Rules to begin when a communication is made, will begin to run on the date that the communication is taken to have been made in accordance with paragraph 4.3.
- 4.5 It is the responsibility of the sender to retain records of the fact and circumstances of sending, which must be available for inspection by the Registrar Review Panel and for reporting purposes.
- 4.6 In the event that a party sending a communication receives notification of non-delivery of the communication, the party must promptly notify the Registrar Review Panel of the circumstances of the notification. Further proceedings concerning the communication and any response must be as directed by the Registrar Review Panel.

5. APPLICATION TO REGISTRAR REVIEW PANEL

- 5.1 The prescribed notice to be given by the Registrar under clause 23A.2.2 of the Registrar Agreement, is a notice in writing submitted to both auDA and the Panel Chair in electronic form, and which:
 - a) requests the Registrar Review Panel to review the Reviewable Decision, and to make a decision in accordance with the Registrar Agreement;
 - b) provides the name, postal and email addresses, and the telephone and fax numbers of the Registrar and of any representative authorised to act for the Registrar in the administrative proceeding;
 - c) specifies a preferred method for communicating with the Registrar in the administrative proceeding;
 - d) describes the grounds on which the Registrar contends that auDA was not entitled to make the original Reviewable Decision, including (if applicable), the grounds on which the Registrar contends that auDA was not entitled to consider that there was an Event of Default (as defined under the Registrar Agreement);

- e) specifies the outcome sought by the Registrar, which outcome must be one that the Registrar Review Panel is entitled to make under the Registrar Agreement;
- f) identifies any other legal proceedings that have been commenced or terminated in connection with the original Reviewable Decision, that is the subject of the Application;
- g) concludes with the following statement followed by the signature of the Registrar or its authorised representative:

"Registrar waives all claims and remedies against the Registrar Review Panel (including its panel chair) arising from this application, except in the case of deliberate wrongdoing.

Registrar certifies that the information contained in this application is to the best of the Registrar's knowledge complete and accurate, that this application is not being presented for any improper purpose, such as to harass, and that the assertions in this application are warranted under the Registrar Review Panel Rules (2010-03) and under applicable law, as it now exists or as it may be extended by a good faith and reasonable argument.";

- h) annexes any documentary or other evidence upon which the Application relies, together with a schedule indexing such evidence.

6. NOTIFICATION OF RECEIPT

- 6.1 Upon receipt of an Application, the Panel Chair must review the Application for administrative compliance with the requirements set out in clause 23A of the Registrar Agreement, and these Registrar Review Rules.
- 6.2 If the Application is compliant, the Panel Chair must acknowledge the receipt of the Application and request auDA to provide all relevant material which were taken into consideration by auDA in making the Reviewable Decision. auDA must provide such material within five Business Days of the request of the Panel Chair.
- 6.3 Where the Application is deficient, the Panel Chair must promptly notify the Registrar of the nature of the deficiencies. The Registrar will have three Business Days within which to correct the deficiencies, after which the Application will be dismissed.

7. APPOINTMENT OF PANEL AND TIMING OF DECISION

- 7.1 auDA will publish on its website from time to time, a list of persons approved by the board of auDA as being qualified to become a Panelist. At any time, one of such persons will act as the Panel Chair on a rotational basis. auDA will also publish on its website, the person who will act as the Panel Chair from time to time.
- 7.2 In considering appropriate candidates for appointment to become a Panelist, the board of auDA will consider whether the individual possesses an adequate level of industry knowledge, as well as skills in dispute resolution. For example, .au Dispute Resolution Policy Panelists may be considered appropriate candidates.
- 7.3 The following individuals are not eligible to be appointed as Panelists:
 - a) a director or employee of, or consultant to, auDA; and
 - b) a director or employee of, or consultant to, the Registrar or any other accredited registrar.

- 7.4 The Registrar Review Panel to review a Reviewable Decision (being the subject of an Application) comprises the Panel Chair and two additional members, selected by the Panel Chair from the list of qualified Panelists published by auDA.
- 7.5 The Panel Chair is responsible for all functions associated with the administration of the Registrar Review Panel including, but not limited to, constituting the Registrar Review Panel for determining an Application and arranging the business of the Registrar Review Panel.
- 7.6 Once the information requested under paragraph 6.2 has been received, the Panel Chair will appoint a Registrar Review Panel to conduct the review.
- 7.7 The Registrar Review Panel will consider the Application and forward its decision to auDA and the Registrar within 10 Business Days of the later of:
- a) it receiving a compliant Application; and
 - b) it receiving the information requested under paragraph 6.2.
- 7.8 A Panelist must:
- a) be impartial and independent; and
 - b) have, before accepting the appointment, disclosed to the Panel Chair any circumstances giving rise to justifiable doubt as to the Panelist's impartiality or independence.

If, at any stage during the administrative proceeding, new circumstances arise that could give rise to justifiable doubt as to the impartiality or independence of the Panelist, that Panelist must promptly disclose such circumstances to the Panel Chair. In such event, the Panel Chair has the discretion to appoint a substitute Panelist.

8. GENERAL PROCEDURE FOR REVIEW

- 8.1 The Registrar Review Panel must conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Registrar Agreement and these Registrar Review Panel Rules.
- 8.2 The Registrar Review Panel must ensure that the administrative proceeding takes place with due expedition. It may, at the request of the Registrar or on its own motion, extend, in exceptional cases, a period of time fixed by these Registrar Review Panel Rules or by the Registrar Review Panel earlier.
- 8.3 The Registrar Review Panel is not bound by the rules of evidence and will proceed in an informal manner. The Registrar Review Panel is entitled to determine the admissibility, relevance, materiality and weight of the evidence.
- 8.4 The Registrar Review Panel is entitled to review the Reviewable Decision on the basis of the statements and documents submitted and by reference to the constitution of auDA, the published policies of auDA, the Registrar Agreement, and any rules or principles of law that it deems appropriate.
- 8.5 The Registrar Review Panel must give written reasons for its decision.
- 8.6 The Registrar Review Panel may dismiss vexatious or frivolous applications for review without proceeding to a determination on the merits.

9. REGISTRAR REVIEW PANEL'S POWERS AND DISCRETION

- 9.1 The Registrar Review Panel can make a decision to:
- a) affirm a Reviewable Decision; or

- b) set aside a Reviewable Decision, and:
 - (i) make a decision in substitution of the Reviewable Decision; or
 - (ii) remit the matter for reconsideration by auDA according to any directions or recommendations of the Registrar Review Panel.

9.2 In making a decision under paragraph 9.1, the Registrar Review Panel is only entitled to consider:

- a) whether an Event of Default has occurred in respect of the Registrar, in all the circumstances; and
- b) where applicable, whether auDA was entitled to consider that an Event of Default has occurred in respect of the Registrar, in all the circumstances,

and not other matters.

10. LANGUAGE

10.1 Unless otherwise agreed by the Parties, the language of the administrative proceeding must be in English.

10.2 The Registrar Review Panel may order that any documents submitted in languages other than in English be accompanied by a translation in whole or in part into English.

11. FURTHER STATEMENTS

11.1 In addition to the Application, the Registrar Review Panel, in its sole discretion, may request or permit further statements or documents from auDA or the Registrar.

12. IN-PERSON HEARINGS

12.1 There will be no in-person hearings (including hearings by teleconference, videoconference, or web conference) unless the Registrar Review Panel determines, in its sole discretion and as an exceptional matter, that such a hearing is necessary for conducting the review.

13. DEFAULT

13.1 In the event that a party, in the absence of exceptional circumstances, does not comply with any of the time periods established by the Registrar Agreement, these Registrar Review Panel Rules or the Registrar Review Panel, the Registrar Review Panel is entitled to proceed to a decision on the Application.

13.2 If a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Registrar Agreement, these Registrar Review Panel Rules or any request from the Registrar Review Panel, the Registrar Review Panel is entitled to draw such inferences as it considers appropriate.

14. EFFECT OF COURT PROCEEDINGS

14.1 In the event of any legal proceedings initiated prior to or during an administrative proceeding in respect of a Reviewable Decision that is the subject of an Application, the Registrar Review Panel has the discretion to decide whether to suspend or terminate the administrative proceeding, or to proceed to a decision.

14.2 In the event that the Registrar initiates any legal proceedings during the course of an administrative proceeding in respect of a Reviewable Decision that is the subject of an Application, it must promptly notify the Registrar Review Panel.

15. CONFIDENTIALITY AND DISCLOSURE

- 15.1 Subject to the rules of procedural fairness, each review is conducted privately, with (as far as possible) all parties having access to all information which is before the Registrar Review Panel.
- 15.2 Subject to paragraph 16, the Registrar Review Panel, auDA and the Registrar must maintain the confidentiality of all information that is the subject of the review.

16. PUBLICATION

- 16.1 The Registrar Review Panel is entitled to publish its decision in full over the Internet, except when the Registrar Review Panel determines in exceptional case to redact portion of its decision.

17. EXCLUSION OF LIABILITY

- 17.1 Except in the case of deliberate wrongdoing, neither the Panel Chair nor the members of the Registrar Review Panel is liable to a Registrar for any act or omission in connection with the review process under these Registrar Review Rules.

18. AMENDMENTS

- 18.1 The version of these Registrar Review Panel Rules in effect at the time of the submission of the Application will apply to the administrative proceeding.