

auDA PUBLISHED POLICY**Policy Title:** Registrant Review Panel Rules**Policy No:** 2011-01**Publication Date:** 16/01/2011**Status:** Replaced by Policy No 2012-01**1. BACKGROUND**

- 1.1 This document sets out the rules (Registrant Review Panel Rules) which govern the functions, powers and discretions of the Registrant Review Panel.
- 1.2 The role of the Registrant Review Panel is to provide an independent review where a domain name registrant is dissatisfied with a decision of auDA to cancel the registrant's licence to a domain name, and delete the domain name for breach of auDA published policies (or the domain name licence terms and conditions).

2. TERMINOLOGY

- 2.1 This document uses the following terms:
 - a) "Application" means an application submitted by a Registrant in accordance with the Registrant Review Panel Rules;
 - b) "Domain Name" means the domain name that is the subject of an Application;
 - c) "Panel Chair" means the chair of the Registrant Review Panel;
 - d) "Panelist" means a member of the Registrant Review Panel, which may include the Panel Chair;
 - e) "Internal Review" means a review by auDA senior management of auDA's initial decision to cancel a Registrant's licence to a domain name, and delete the domain name for breach of auDA published policies (or the domain name licence terms and conditions);
 - f) "Registrant" means a registrant who has made, or intends to make, an Application;
 - g) "Registrant Agreement" means the registrant agreement which a registrant enters into with an auDA accredited registrar when it registers a domain name;
 - h) "Registrant Review Panel" means a panel constituted under the Registrant Review Panel Rules to review a Reviewable Decision;
 - i) "Registrant Review Panel Rules" means the rules and procedures set out in this document; and
 - j) "Reviewable Decision" means a decision of auDA to cancel a Registrant's licence to a domain name(s), and delete the domain name(s) for breach of auDA published policies (or the domain name licence terms and conditions), following an Internal Review.

3. COMMUNICATIONS

- 3.1 All communication to auDA in connection with an Application must be made by electronic mail using the following address:
<auda.registrantreview@auda.org.au>.
- 3.2 All communication to the Registrant Review Panel must be made by electronic mail using the following address: <chair.registrantreview@auda.org.au>.
- 3.3 Except as otherwise provided in these Registrant Review Panel Rules, or decided by the Registrant Review Panel, all communications provided for under these Registrant Review Panel Rules are taken to have been made on the date that the communication was sent, provided that the date of sending is verifiable.
- 3.4 Except as otherwise provided in these Registrant Review Panel Rules, all time periods calculated under these Registrant 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 3.2.
- 3.5 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 Registrant Review Panel and for reporting purposes.
- 3.6 In the event that a person sending a communication receives notification of non-delivery of the communication, the person must promptly notify the Registrant Review Panel of the circumstances of the notification. Further proceedings concerning the communication and any response must be as directed by the Registrant Review Panel.

4. APPLICATION TO REGISTRANT REVIEW PANEL

- 4.1 An Application for review of a Reviewable Decision:
 - a) may only be made after an Internal Review has been completed;
 - b) must not relate to more than one auDA complaint reference number;
 - c) must be submitted to auDA within ten (10) calendar days of the date of the Reviewable Decision.
- 4.2 The Application shall be submitted to auDA in electronic form and shall:
 - a) request the Registrant Review Panel to review the Reviewable Decision;
 - b) provide the name, postal and email addresses, and the telephone and fax numbers of the Registrant and of any person authorised to represent the Registrant in the administrative proceeding;
 - c) specify a preferred email address for communicating with the Registrant, or their authorised representative, in relation to the Application;
 - d) specify the auDA complaint reference number that is the subject of the Application;
 - e) specify the Domain Name(s) that is/are the subject of the Application;
 - f) identify any other legal proceedings that have been commenced or terminated in connection with the Reviewable Decision, that is the subject of the Application; and
 - g) conclude with the following statement followed by the signature of the Registrant or its authorised representative:

"Registrant waives all claims and remedies against the Registrant Review Panel (including any Panel Chair) arising from this application, except in the case of deliberate wrongdoing.

Registrant certifies that:

- the information contained in this application is to the best of the Registrant's knowledge complete and accurate;
- the information contained in this application and to be provided to the Panel Chair under paragraph 6.1 of the Registrant Review Panel Rules, was provided to auDA for its consideration in making the Reviewable Decision;
- this application is not being presented for any improper purpose, such as to harass; and
- the assertions in this application are warranted under the Registrant Review Panel Rules and under applicable law, as it now exists or as it may be extended by a good faith and reasonable argument."

4.3 The fee for submitting an Application is \$750.00 (ex GST) which must be paid to auDA at the time the Application is submitted.

5. NOTIFICATION OF RECEIPT

5.1 Upon receipt of an Application, auDA must review the Application for administrative compliance with the requirements set out in paragraph 4.2.

5.2 No action shall be taken by auDA until it has received from the Registrant the fee for submitting an Application under paragraph 4.3. If auDA has not received the fee within three (3) business days of receiving the Application, the Application shall be deemed withdrawn.

5.3 If the Application is compliant under paragraph 4.2, auDA must within three (3) calendar days of receipt of the fee under paragraph 4.3:

- a) remove the Domain Name from pending delete status, where applicable;
- b) place the Domain Name under server lock status to prevent any update, transfer or deletion of the Domain Name pending the decision of the Registrant Review Panel; and
- c) acknowledge receipt of the fee and forward the Application to the Panel Chair.

5.4 Where the Application is deficient, auDA must promptly notify the Registrant of the nature of the deficiencies. The Registrant will have three (3) business days within which to correct the deficiencies, after which the Application will be dismissed and the fee refunded.

5.5 Upon receipt by auDA of an Application, then:

- a) both the Registrant and auDA are taken to be bound by, and must comply with, the Registrant Review Panel Rules; and
- b) auDA agrees to be bound by the decision of the Registrant Review Panel.

6. REQUEST FOR MATERIALS

6.1 Upon receipt of an Application, the Panel Chair must request:

- a) the Registrant, to:
 - (i) describe the grounds on which the Registrant contends that auDA was not entitled to make the Reviewable Decision;

- (ii) specify the outcome sought by the Registrant, which outcome must be one that the Registrant Review Panel is entitled to make under paragraph 9.1;
 - (iii) annex any documentary or other evidence upon which the Application relies, together with a schedule indexing such evidence; and
 - b) auDA, to provide all relevant materials and information which were taken into consideration by auDA in making the Reviewable Decision.
- 6.2 The Registrant and auDA must provide the requested materials within five (5) business days of the request of the Panel Chair.

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 Panel Chair on a rotational basis. auDA will also publish on its website, the person who will act as 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, any auDA accredited registrar.
- 7.4 The Registrant Review Panel to review a Reviewable Decision (being the subject of an Application) will comprise a Panelist selected by the Panel Chair (which may include the Panel Chair himself or herself) 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 Registrant Review Panel including, but not limited to, constituting the Registrant Review Panel for determining an Application and arranging the business of the Registrant Review Panel.
- 7.6 The materials provided under paragraph 6.1 are to be forwarded by the Panel Chair to the Registrant Review Panel as soon as they are received.
- 7.7 The Registrant Review Panel must consider the Application and forward its decision to auDA and the Registrant within ten (10) business days of it receiving the materials provided under paragraph 6.1.
- 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 in relation to an Application.

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 in relation to an Application, 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, or where the Registrant Review Panel comprises the Panel Chair, must request auDA to appoint another Panel Chair in relation to that Application.

8. GENERAL PROCEDURE FOR REVIEW

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

9. REGISTRANT REVIEW PANEL'S POWERS AND DISCRETION

- 9.1 A Registrant Review Panel may:
 - a) affirm a Reviewable Decision; or
 - b) set aside a Reviewable Decision, and:
 - (i) make a decision in substitution for the Reviewable Decision; or
 - (ii) remit the matter for reconsideration by auDA according to any directions or recommendations of the Registrant Review Panel.
- 9.2 In the event that a Registrant Review Panel decides to set aside a Reviewable Decision, the fee for submitting an Application under paragraph 4.3 shall be refunded to the Registrant.

10. LANGUAGE

- 10.1 Unless otherwise agreed by the parties, the language of the administrative proceeding must be in English.
- 10.2 The Registrant 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 and the materials provided under paragraphs 6.1 and 6.2, the Registrant Review Panel, in its sole discretion, may request or permit further statements or documents from auDA or the Registrant.

12. IN-PERSON HEARINGS

- 12.1 There will be no in-person hearings (including hearings by teleconference, videoconference, or web conference) unless the Registrant 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 these Registrant Review Panel Rules or the Registrant Review Panel, the Registrant 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, these Registrant Review Panel Rules or any request from the Registrant Review Panel, the Registrant 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 Domain Name, the Registrant 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 Registrant 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 Registrant 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 Registrant Review Panel.
- 15.2 Subject to paragraph 16, the Registrant Review Panel, auDA and the Registrant must maintain the confidentiality of all information that is the subject of the review.

16. PUBLICATION

- 16.1 Except to the extent that a Registrant Review Panel in exceptional circumstances directs that any portion of its decision be redacted for publication, auDA must publish in full on its website each decision of a Registrant Review Panel.

17. EXCLUSION OF LIABILITY

- 17.1 Except in the case of deliberate wrongdoing, neither a Panel Chair nor a Panelist is liable to a Registrant or auDA for any act or omission in connection with an Application.

18. AMENDMENTS

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