

## Explanatory Statement – auDA Licensing Rules amendments October 2023

### 1. Purpose of this explanatory statement

The purpose of this explanatory statement is to explain:

- the principles and process that apply when making administrative changes to an auDA published policy;
- our multi stakeholder approach to consultation;
- the proposed administrative changes to the [.au Domain Administration Rules: Licensing](#) (.au Licensing Rules);
- the timeline for this process.

### 2. The principles that guide .au policy development

The principles adopted by the auDA Board to guide policy development in the .au are set out in auDA’s corporate policy, ‘[Process for the Development and Review of auDA Published Policies](#),’ (Policy Review Policy). All eight principles have been considered in relation to these proposed amendments to the .au Licensing Rules.

**Principle 1: Establishing a case for action before a problem is addressed.**

There is a case for action in respect of each proposed amendment to the .au Licensing Rules. The overview of changes below explains the rationale for the changes.

**Principle 2: A range of feasible policy options will be considered and costs and benefits.**



Consistent with the Policy Review Policy, there is no requirement to develop policy options as the policy changes contemplated are necessary for administrative reasons.

**Principle 3: Adopting the option that generates the greatest net benefit for the Australian community**

The proposed changes will achieve tangible benefits to registrants, registrars, government, members of the public, and auDA, as they will improve the accessibility of the Licensing Rules, making them easier to understand and apply. This will achieve intangible benefits such as increased consumer confidence in the Licensing Rules and their application to .au domain names.

**Principle 4: Policies should not restrict competition unless it can be demonstrated that:**

- The benefits to the Australian community should outweigh the cost
- The objectives of the policies can only be achieved by restricting competition

None of the amendments have the effect of restricting competition.

**Principle 5: Providing effective guidance and education to stakeholders (including government regulators, registrars, resellers and registrants) to ensure that the policy intent and compliance requirements are clear.**

The proposed amendments are explained in this document and are detailed in the marked-up copy of the .au Licensing Rules. Operational changes are consistent with current practice and auDA's published policies, so there is no significant change to compliance requirements. We will continue to work with and educate stakeholders on the compliance requirements under the .au Licensing Rules.



**Principle 6: Ensuring that the policies remain relevant and effective over time.**

The proposed amendments are minor tweaks to ensure the .au Licensing Rules are effective and operationally sound.

**Principle 7: Consulting effectively with key stakeholders at all stages of the policy cycle.**

In our review of the .au Licensing Rules we reviewed feedback from stakeholders including registrants, registrars, government and members of the public. The 21 day public consultation period is an important part of this process.

**Principle 8: Ensuring that all policy outcomes are effective and proportional to the issue being addressed.**

We have taken a 'light touch' approach to this review, to ensure that we limit amendments to minor changes that are effective and proportionate to the operational issues we are addressing.

### **3. Our multi stakeholder approach to policy review**

This is an auDA managed policy review process in accordance with section 44 of the Policy Review Policy for minor policy amendments, where the change is required for administrative, technical, or legal reasons.

Public consultation plays an important role in ensuring the best outcome for this review.

We will publish a marked-up copy of the .au Licensing Rules, showing all proposed changes, with the explanatory statement on our website for 21 days, and invite the public to provide feedback.



All public submissions will be published on our website.

The auDA Board will be advised of the subject matter of submissions, and will review any changes to the draft .au Licensing Rules and the explanatory statement as a result of submissions.

As this review is limited to minor policy amendments, suggestions for major changes to the .au Licensing Rules cannot be accommodated. Those suggestions are best suited to the major review of the .au Licensing Rules which will be undertaken in 2025-2026 and will involve extensive public consultation.

## 4. Overview of the proposed changes

**1.2 Commencement** – where applicable, the wording has been changed from "will commence" to "commenced".

**Capitalisation of defined terms** – The .au Licensing Rules do not capitalise defined terms consistently, for example, terms defined in section *1.4 Definitions*. As a result, when reading the .au Licensing Rules, defined terms are not readily identifiable.

Defined terms have been capitalised and minor administrative amendments been made to relevant sections in the .au Licensing Rules to include the relevant defined term. For example, changes were made to sections 2.2.8 to 2.2.12 which referred to a "Related Body Corporate" when the relevant defined term is "Related Australian Body Corporate".

**Additional defined terms** – defined terms have been added where necessary for administrative reasons, such as "Business Days", "DNS Abuse", "auDA Rules" and "Public Interest Test".

**Definition of Not for Profit Entity** – the definition has been altered from an "unincorporated association" to an "entity" that appears on the



Australian Charities and Not-for-profit Commission (ACNC) Charity Register, to reflect its application to all not for profit entities registered with the ACNC.

**1.4.2** – this is a new clause that assists in interpreting the .au Licensing Rules.

**2.11.2 Contractual capacity** – this clause has been amended to state that an exception to the deemed cancellation of a Licence under 2.11.2 exists where, prior to its demise, a Registrant agreed to transfer the Licence to another party that meets the transfer criteria. This reflects the existing auDA Published Policy, '*Complaints (Registrant Eligibility) Policy (2004-01)*', and current practice.

**2.11.4 Contractual capacity** – a new clause has been added which states that, where a Registrant is a natural person who becomes deceased, the Registrant's executor is responsible for the Licence and must effect a transfer or cancellation in accordance with the Licensing Rules. This reflects the existing auDA Published Policy, '*Complaints (Registrant Eligibility) Policy (2004-01)*', and current practice.

**2.11.18 Prohibited uses** – A note has been added to 2.11.18 to provide an example a prohibited use – using or inadvertently allowing a domain name to be used for DNS Abuse.

**2.13.6 Transfers – change of registrant** – the clause has been amended to remove reference to clause 2.13.4. This is to reflect current practice, which may allow remedy where a transfer of licence arising from a contract or agreement is not completed within the mandated 28 days due to an administrative oversight. It also aligns with the change to 2.11.2.

**2.15.2 and 2.15.6 Cancelling a Licence** – these clauses have been amended to clarify the reference to the wholesale component of the Licence Fee.



**2.16.1 Audit and compliance monitoring** – Clarification of the audit and compliance monitoring role.

**2.18.13 Disclosure and use of data – WHOIS information** – Schedule D of the .au Licensing Rules sets out the public WHOIS fields for .au domain name licences. The amendment to 2.18.13 allows for auDA to consider changes to the information disclosed on the public WHOIS if requested by a registrant.

For example, withholding information from the public WHOIS if the information is suppressed on the Australian Business Register (ABR). The ABR typically agrees to non-disclosure of personal information if publishing the information may be a risk to a person's safety, or exceptional circumstances support non disclosure.

**3.8.11 Receipt of Licence Review Panel application** – this clause has been amended to make referral to the Licence Review Panel contingent on payment of the external review fee.

Please note that all proposed changes are contained in full in the draft .au Licensing Rules.

## **Public consultation period**

Public consultation on the proposed amendments to the .au Licensing Rules will commence on 10 October 2023. Information about the proposed changes and the process for making a submission will be available on the auDA website.

A webinar discussing the proposed amendments will be held on 17 October 2023.

The public consultation period will end on 30 October 2023.

