Education
Services
Australia

edu.au Registrar response
Issues paper: Implementation of .au Domain Name Registrations (Direct Registration), February 2018

FINAL

Version 1.0
February 2018

Contents

1   Introduction

[Education Services Australia](#) (ESA) is a national, not-for-profit company owned by all Australian education ministers. It was established to support the delivery of national priorities and initiatives in the schools, training and higher education sectors. ESA traditionally delivers large-scale technology infrastructure projects, with a pedagogical instructional design component.

ESA has provided registrar services for the closed edu.au second level domain for over 15 years. As the edu.au Domain Registrar, ESA is accountable to the edu.au Domain Administration Committee (eDAC), which meets quarterly and includes representatives from the Higher Education, VET and Schools sectors across the States and Territories of Australia. eDAC is in turn accountable to .au Domain Administration Ltd (auDA).

The responses provided below are provided by ESA in its capacity as the edu.au Domain Registrar.

2   Questions and Responses

2.1   .au Structure

2.1.1   Should the .au domain namespace be a 'general purpose' domain for all Australians allowing use for any purpose?

The edu.au Domain Registrar agrees that the .au domain namespace should be a 'general purpose' domain for all Australians, allowing use for any purpose. The edu.au Domain Registrar also believes that it is important for each existing second level namespace to continue to have a specific purpose in order not to dilute the benefits of each namespace. Therefore, if the .au domain's purpose is to be 'general use', then com.au, edu.au and other second level domain namespaces should retain their existing purposes. The edu.au Domain Registrar also believes that the .au domain namespace should reflect the same general principles as the rest of the domain, which are:

- no proprietary rights in a domain name
- no hierarchy of rights
- allocation of domains on a first come, first served basis.

2.1.2   Should the net.au namespace be closed to new registrations? If so, should existing net.au registrants be permitted to continue to renew their domain name indefinitely?

The edu.au Domain Registrar notes that a number of edu.au registrants operate in the net.au namespace, and supports the response of eDAC.

2.1.3   What should happen to the asn.au namespace? Should it be closed to new registrations or retained as a dedicated namespace for associations?

The edu.au Domain Registrar notes that a number of edu.au registrants operate in the asn.au namespace, and supports the response of eDAC.

2.1.4 Should the State and Territory namespaces be used for other purposes? If yes, why and what are the purposes for which domain names should be registered under these namespaces?

The edu.au Domain Registrar supports the response of eDAC.

2.2 Reserved Names

2.2.1 Should auDA continue to maintain a public reserved list? Should the public reserved list be published? What process or steps should auDA take before deleting a restricted or prohibited name?

The edu.au Domain Registrar believes that auDA should continue to both maintain and publish a public reserved list, so that registrants have access to and are aware of their legal obligations at any point in their licensing cycle. The publication of the reserved list is also vital for registrars, to aid them in determining whether a domain name should be available for registration in cases where the domain name is not immediately blocked at the registry.

The edu.au Domain Registrar acknowledges that ensuring the currency of the reserved list can be challenging. Therefore, if the panel and auDA have concerns about auDA being able to maintain a full, accurate and current list of reserved names, then the edu.au Domain Registrar would endorse an alternative approach whereby auDA publishes a guide to the types and composition of names that would be reserved or ineligible for registration as a domain name (similar to schedule 2, section 2 of the *2016-02 edu.au Registration Policy*) with hyperlinks to the relevant listings from government agencies and legislations.

Where registrants seek approval from the appropriate authority to use a name prohibited by the public reserved list, the edu.au Domain Registrar believes that registrants should only be considered eligible for the domain name once the domain name has been approved (and not whilst approval is pending). To allow otherwise would effectively allow registrants to pre-reserve a domain name, which contradicts the general principles of the .au domain namespace.

The edu.au Domain Registrar would encourage auDA to work with the registry operator to undertake regular reviews of the .au domain namespace to identify names that could be in conflict with the reserved list. As legislation evolves and more names are added to the reserved list, some registrants may already be licensing domain names that were not part of the public reserved list at the point of registration or their most recent renewal. auDA should take a proactive role in providing feedback and advice to these registrants (either directly or through their registrar) where possible, to ensure the ongoing stability and reputation of the .au domain.

The functionality of the registry should also be reviewed at regular intervals to ensure that reserved names and combinations of reserved names are blocked at the registry where possible. This could include discussions with the registry operator regarding the ability to restrict sub-strings or combinations of reserved names as well as standalone words.

Finally, the edu.au Domain Registrar would encourage auDA to apply the same approach as the *2015-07 edu.au Complaints Policy* before deleting a restricted or prohibited domain name registration, that is:

- The registrant should be notified that they are in breach of the policy
- The registrant should have a set amount of time (e.g. 14 days) to demonstrate they have approval to use the domain
- If no response is received, the domain should enter a "pending delete" status for a nominated amount of time (e.g. 14 days)

- After this time, the domain should be deleted and blocked for new registrations by the registry operator.

2.2.2 Should auDA be able to reserve names in the public interest? How should the public interest be defined? What names should be reserved in the .au domain namespace? Should the public interest test replace the Prohibition on Misspellings Policy?

The edu.au Domain Registrar believes that auDA should be able to block or reserve names where it is in the interests of the public and/or the greater internet community. This is especially relevant and important if the .au domain is considered and designated critical infrastructure.

The edu.au Domain Registrar is supportive of a public interest test but concerned that this would be open to subjective interpretation by different registrars. The scope of the public interest test and its interpretation would therefore need to be clearly defined, and the test would need to be regularly reviewed and its effectiveness monitored. Furthermore, auDA would need to take an active role in policing registered domains that fail the public interest test.

The edu.au Domain Registrar believes that the following terms that currently appear on the reserved list should continue to be reserved in the .au domain namespace, especially: university, TAFE, technical and further education, and TAFE SA. Furthermore, as noted in its response to the October 2017 .au Policy Review Panel Issues Paper (*Implementation of Second Level Domain Name Registrations (Direct Registration)*), the edu.au Domain Registrar shares eDAC's concerns regarding generic education and training terms being permitted for direct registration. These concerns do not appear to have been addressed or referenced in the January 2018 issues paper.

The edu.au Domain Registrar believes that generic education and training terms should be reserved from registration in the .au domain namespace as they would present a risk to the sustainability, operational stability and reputation of the edu.au second level domain and its registrants. This is because they could:

- present an increased risk for the creation of "de facto" new second level domains, by the creation of private or unofficial registries whereby sub-domains or other services attached to a domain are sold to or used by an entity other than the registrant
- adversely reflect on or target the education and training sector by appearing to be authoritative/representative, without their registrants being required to adhere to the eligibility and allocation rules applied in the edu.au domain, and by extension could facilitate fraudulent or misleading business practices
- adversely impact the education and training sector through registrants gaining an unreasonable advantage over other education and training entities that may be operating in the same sector or offering the same or similar services.

As such, the edu.au Domain Registrar believes that generic education and training terms should be reserved or prohibited from registration. The exact terms to be prohibited should be identified and advised by eDAC.

The edu.au Domain Registrar would also stress the need for auDA to ensure robust policy documentation and strong enforcement mechanisms (such as the rapid de-registration or suspension of direct registrations that are used as unofficial registries) are in place to counter the potential for unofficial registries and to avoid undermining the edu.au domain.

Finally, rather than replacing the *Prohibition on Misspellings Policy*, the edu.au Domain Registrar believes that this policy should be incorporated into a public interest test. In light of the implementation of direct registration, and as noted in the Registrar's response to the October 2017 .au Policy Review Panel Issues Paper, the edu.au Domain Registrar also believes that the *Prohibition on Misspellings Policy* should be expanded to include existing second level domains so that names that are potentially misleading or

confusing when registered at the second level and deliberate misspellings of 2LD categories, such as comm.au, nett.au or con.au, or that end in edu (e.g. vicedu.au) would be prohibited.

The edu.au Domain Registrar believes that this public interest test should also be applied to contested domains in the priority registration period for direct registrations, to ensure that domains that fail the public interest test do not secure the priority registration in the .au namespace.

2.2.3 Should the names identified in the discussion paper be reserved as future 2LD namespaces? Are there other names that should be reserved for use as future 2LD namespaces and why?

The edu.au Domain Registrar expects that if, as a consequence of the responses to this issues paper, any education terms are added to the list of names that should be reserved for use as future 2LD namespaces, feedback on the proposal(s) will be sought from eDAC.

2.2.4 Should there be a requirement for auDA to publish a list of names that are reserved for use by the registry and names that pose a risk to the operational stability and utility of the .au domain? Should there be any exceptions to the publication of names?

The edu.au Domain Registrar believes that there should be a requirement for auDA to publish a list of names that are reserved for use by the registry and names that pose a risk to the operational stability and utility of the .au domain. Furthermore, the edu.au Domain Registrar would encourage auDA to include alongside the published list of names an explanation as to why each name is reserved, so as to better inform and educate registrants and to equip registrars to better handle enquiries. The only exception to this would be where publishing the reserved domain name or the reasons for its reservation would in itself pose a risk to the sustainability, operational stability and reputation of the .au namespace.

2.3 Eligibility and Allocation Rules

2.3.1 How should the Australian presence requirements be defined? Should trademark applicants and registrants only be allowed to register a domain name that is an exact match to their Australian trademark application or registration when relying on the trademark application or registration to establish an Australian connection?

The edu.au Domain Registrar would expect that any changes to Australian presence requirements would only impact the .au namespace and would not entail any changes to the Australian presence requirements in place for closed second level domains such as edu.au and gov.au. Any changes to the Australian presence requirements that would impact the *2016-02 edu.au Registration Policy* should be reviewed and approved by eDAC as they could pose a serious threat to the reputation and stability of the edu.au namespace.

2.3.2 What eligibility and allocation rules should apply to the .au domain namespace (direct registration) and the open 2LD namespaces, and why? Should the close and substantial connection rule be retained and why? Should allocation criteria be removed, and the focus be on registrant eligibility? Should domain monetisation continue to be permitted in the com.au and net.au 2LD and at the second level? How should domain monetisers interests be balanced against the needs of the broader Australian Internet Community?

The edu.au Domain Registrar would discourage any changes being made to the current eligibility and allocation rules for edu.au and gov.au.

The edu.au Domain Registrar notes that item 1.3 of the *2015-03 edu.au Policy Change Process* declares that:

"eDAC must submit any changes to existing policies that it proposes to auDA for ratification. This must be accompanied by a statement confirming that the policy change does not conflict with existing auDA policies and guidelines."

The edu.au Domain Registrar therefore requests that any proposed policy changes as a consequence of this review be communicated transparently to eDAC so that any potential risks or conflicts with edu.au policy can be promptly addressed.

The edu.au Domain Registrar agrees with eDAC that a variation of Model C would be the most appropriate combination of eligibility and allocation rules, with the only proposed change to the model being that the close and substantial connection rule should continue to apply to 2LDs.

The edu.au Domain Registrar would encourage the panel to consider including a step to review whether contested domains currently meet the eligibility and allocation criteria for their namespace as part of the process for resolving contested domains in the priority registration period for direct registrations, to ensure that the direct registration is not secured by a registrant that is actually ineligible for its current domain.

2.3.3 Should internationalised domain names be trialled at the second level, and under what conditions?

The edu.au Domain Registrar recognises that the introduction of internationalised domain names would likely be appealing to education and training providers interested in promoting their organisation to international students. However, the edu.au Domain Registrar notes that there are significant logistical challenges that would make the implementation of internationalised domain names challenging, especially the resourcing and effort required to monitor internationalised domain names, particularly in relation to:

- allocation policy and complaints (where extensive resourcing could be required to translate and examine the meaning of internationalised domain names to assess their adherence to .au policy)
- the potential for using internationalised domain names to circumvent the *Prohibition on Misspellings Policy*.

The edu.au Domain Registrar believes that a comprehensive cost-benefit analysis should be undertaken to understand the costs of implementing the trial, and the costs of monitoring and policing internationalised domain names, compared to the likely uptake of internationalised domain names and associated revenue generation. The edu.au Domain Registrar would also encourage the panel to review international examples where internationalised domain names have already been trialled, and agrees with eDAC that any trial should take place within .au, assuming that there are limited allocation rules applying there.

2.4   Licence Conditions

2.4.1   Should a registrant be able to sublease the domain name to an unrelated party? If yes, in what circumstances should this be permitted?

The edu.au Domain Registrar believes that allowing registrants to sublease domain names to unrelated parties would pose a serious threat to the stability and reputation of the .au namespace. The unrelated party would not be subject to registrar approval, would not be bound by the registrant agreement and would not have to prove adherence to the allocation or eligibility criteria for .au. Furthermore, allowing registrants to sublease domain names would lead to an additional overhead in investigating and resolving complaints, due to the added complexity of identifying the party at fault.

The edu.au Domain Registrar is concerned that allowing registrants to sublease domain names to unrelated parties could also lead to the creation of unofficial registries, with many entities operating under the one domain name. If this were permitted, and if no restrictions were placed on the registration of generic education and training terms in the .au namespace, the edu.au Domain Registrar would have significant concerns that the stability and reputation of the edu.au space could be compromised, for example, by registrants subleasing namespaces such as "rto.au" to interested parties.

The edu.au Domain Registrar therefore believes that the subleasing of domain names to unrelated parties should not be permitted – that any party looking to operate in the .au namespace should register a domain name directly.

2.4.2   Where a domain name licence is transferred between registrants, should the transferee receive the benefit of the remainder of the licence period?

The edu.au Domain Registrar agrees with the panel's concerns that the issuing of a new domain licence at the point of transfer is inconsistent with the principle that there are no proprietary rights in a domain name and can cause confusion amongst registrants. The Registrar also agrees that, should the current process change, a transfer fee would need to apply. It should be made clear to registrants receiving the transfer that the same eligibility and allocation rules apply in transfers as in domain registrations.

2.4.3   Should auDA be given the power to suspend a domain name licence? When should auDA suspend rather than cancel a domain name licence? What should be the maximum suspension period before a domain name licence is cancelled?

The edu.au Domain Registrar agrees that auDA should have the power to suspend a domain name licence under circumstances such as those listed in the issues paper. The edu.au Domain Registrar believes that there should be clear and consistent communication processes in place, including a clear timeframe within which the registrant should be notified by auDA that their domain has been suspended (e.g. XX hours) and a clear timeframe within which the registrant must provide additional information to demonstrate their compliance with .au policy (e.g. XX days). After this time, the domain name should be cancelled.

The edu.au Domain Registrar also agrees that the auDA Published Policies should provide more clarity regarding auDA's ability to cancel a domain name to comply with the request of a law enforcement agency or government requirement.

Finally, it is vital that if auDA is to set policies for the .au domain, auDA should have the power to enforce those policies and address issues of non-compliance.

2.4.4 For what purposes should auDA be allowed to collect, use and disclose registrant data?

The edu.au Domain Registrar believes that auDA should be allowed to collect registrant data for the express purpose of maintaining the .au registry database. Registrant data should be used for the WHOIS service, and auDA and the Registrar should be able to use the data to provide information (e.g. relating to policy changes and reviews), registry functions (e.g. EPP password resets) and consumer alerts (e.g. warning of an industry-related issue, i.e. breach of contract by their registrar or misleading business practices) to registrants. Other than to identify the registrant entity via the WHOIS service, additional personally identifiable data should only be disclosed to defined law enforcement agencies and to the registrar/registrant of the record. The only other circumstance under which registrant data should be disclosed would be if there were a relevant court order. Aggregate data could – and should – be used by auDA for research and reporting purposes, and to justify proposed changes to the .au domain. The edu.au Domain Registrar notes that the *2010-07 Registrant Contact Information Policy* explains the current use of registrant data, and agrees with eDAC's suggestion that auDA members and stakeholders should be consulted regarding any changes to this.

2.4.5 Are there any concerns with the current level of information included in the public WHOIS service? Should the technical contact field be utilised for agent and lessee details?

The edu.au Doman Registrar believes that there should be no change to the current level of information included in the public WHOIS service. It is critical that the details provided in the WHOIS service are sufficient to facilitate the enforcement of eligibility and allocation requirements, especially given that adherence to policies in the .au space as a whole is primarily governed by complaints rather than at the point of registration.

Should direct registrations be open to individuals, the edu.au Domain Registrar would be supportive of contact details for individuals being masked in the WHOIS service in the interest of protecting their privacy.

3   Other Comments

The edu.au Domain Registrar notes that at the public forums relating to this issues paper, the panel proposed that only registrants at the third level might be eligible for priority registration in the .au namespace, and that contested domains might be resolved by negotiation, followed by lottery should no consensus be agreed.

The edu.au Domain Registrar is concerned that these proposals would disadvantage edu.au registrants and requests the panel to consider that:

- The proposed process for priority registration would exclude edu.au registrants who are currently operating at the fourth (and fifth) level in order to meet the edu.au eligibility requirements. It seems unfair that fourth level edu.au registrants who could legitimately be operating at the third level in another namespace, such as com.au or net.au, should be denied the right to priority registration because they have elected to register in edu.au. The edu.au Domain Registrar believes that this would be inconsistent with the principle of there being no hierarchy of rights in the .au domain.
- Given the significant growth of the education industry, and considering the importance of international students to the Australian economy, it is a shame that the proposed process would disadvantage the majority of non-government schools (approx. 3500), a significant number of

training organisations (approx. 675) and higher education institutions (approx. 100), and some providers of non-accredited training, industry organisations and bodies serving overseas students (approx. 200).

- Whilst the edu.au Domain Registrar understands the panel's concerns that resolving contested domains at the fourth level for edu.au and gov.au could prove laborious, the Registrar would encourage the panel to investigate the likely number of contested domains in order to make an informed decision. Within edu.au, for example, the number of contested domains is relatively small: at 27 February 2018, there are only 1787 edu.au domains in conflict across the edu.au space, and this reduces to 1453 edu.au domains if a cut-off date of 18 April 2016 is applied.

- The edu.au Domain Registrar believes that the resolution of contested domains by negotiation will likely disadvantage certain sectors, including education, because it is likely that registrants will need to commit (sometimes significant) financial resources both to manage the administrative burden of the negotiation process and also within the negotiation process to secure the priority registration. This means the process could favour the wealthiest registrants or those with access to the best legal representation. The edu.au Domain Registrar believes that this would also be inconsistent with the principle of no hierarchy of rights in the .au domain. The edu.au Domain Registrar would therefore encourage the panel to consider a different process for resolving contested domains, such as longest continuous registrant.

- However, should the panel decide upon resolving contested domains by negotiation and lottery, the edu.au Domain Registrar would encourage the panel to implement an eligibility and public interest test prior to the resolution of contested domains, to ensure that domains registered in the .au namespace are in the public interest and that the existing registration meets the eligibility and allocation policy for its namespace.