

.au DOMAIN NAME SUPPLIERS' CODE OF PRACTICE

1. BACKGROUND

- 1.1 This document sets out the auDA-endorsed Code of Practice for registrars and resellers in the .au domain. The Code is at Schedule A of this document. It replaces the previous .au Domain Name Suppliers' Code of Practice (Policy No 2003-09).
- 1.2 The Code was reviewed by a Committee of industry and consumer representatives, following an open call for public comment in September 2004. The auDA Board formally endorsed this latest version of the Code on 11 October 2004.

2. COMPLIANCE WITH CODE OF PRACTICE

- 2.1 Compliance with the Code of Practice is mandatory for all auDA accredited registrars and their appointed resellers. A list of registrars and resellers is available on the auDA website at <http://www.auda.org.au/registrars>.
- 2.2 auDA is responsible for enforcing the Code. Complaints about alleged breaches of the Code will be handled in accordance with auDA's Complaints Policy (Policy No 2002-21).

3. REVIEW OF CODE OF PRACTICE

- 3.1 The full Code, or parts of the Code, will be reviewed by the Committee on an ongoing ad hoc basis in response to market-driven demand. Membership of the Committee is open to all interested people. The review process will include public consultation.
- 3.2 Any suggested amendments to the Code as a result of the reviews, will be submitted to the auDA Board for approval.

SCHEDULE A

.au DOMAIN NAME SUPPLIERS' CODE OF PRACTICE v1.2004

Background

As an integral part of auDA's consultative policy development initiatives and commitment to industry self-regulation, the Code of Practice Committee¹, the membership of which was drawn from a wide variety of stakeholders, has prepared this Code of Practice. This Code of Practice version 1.2004 replaces the previous version 2.2003.

The Code of Practice is a compulsory set of principles and approaches to market conduct for auDA accredited registrars and their appointed resellers and is to be read in conjunction with the auDA's Registrar Agreement² and all applicable policies published by auDA³.

auDA is the Government-endorsed domain name industry self-regulatory body. auDA's powers of enforcement are established by legal agreements between participants in the .au domain name registration industry. More detailed information about the Federal Government's approach to industry self-regulation can be found at <http://www.dcita.gov.au>.

The Code of Practice Committee drew on a number of codes of practice across other industries, most notably the registered codes of the Australian Communications Industry Forum (ACIF) and the Australian Direct Marketing Association's Direct Marketing Code of Practice, November 2001.

Please note that this Code uses the convention of capitalising words to denote that the Code contains a definition in Section 16 of this document.

¹ <http://www.ada.org.au/cop/cop-index/>

² <http://www.ada.org.au/registrars/accreditation/>

³ <http://www.ada.org.au/policies/policy-index/>

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1. Preamble

- 1.1 The Registrar Agreement and the Code of Practice are two key elements in the industry self-regulatory model for which auDA is responsible.
- 1.2 The Code sets out rules for the conduct of Domain Name Suppliers in the .au domain name industry. It forms part of the Registrar Agreement to which all Registrars must adhere. The Code also binds appointed Resellers of Registrars through their Reseller Agreement with a Registrar.
- 1.3 The Code is intended to act as an incentive for industry participants to conduct their business in accordance with the Code and is a non-negotiable commitment to the auDA Registrar Agreement.
- 1.4 The Code establishes an industry-wide comprehensive process for dealing with Complaints by Customers and other industry participants. The Code has been designed to meet Customers' expectations of international best practice for complaint handling, based on the Australian Standard AS © 4269.
- 1.5 The Code provides practical guidelines for the step by step handling of a Complaint plus a comprehensive set of rules for handling Complaints within an organisation.
- 1.6 Domain Name Suppliers are expected to develop and enforce a comprehensive Complaint handling process within their respective organisations, in order to:
 - a) recognise, promote and protect Customers' rights, including the right to actively provide feedback;
 - b) provide an efficient, fair and accessible mechanism for handling Complaints;
 - c) provide information to Customers on the Complaint handling process for the Products of the organisation; and
 - d) monitor Complaints in an endeavour to improve the quality of Products.
- 1.7 The Code will be reviewed on an ongoing ad hoc basis to consider whether it:
 - a) fulfils its purpose; and
 - b) remains relevant and appropriate to the conduct of Domain Name Suppliers as time goes by, and may be amended according to the recommendations of the committee conducting each review (which will include public consultation).

2. Objectives of Code

- 2.1 The objective of the Code is to promote and protect the interests of the Domain Name registration industry, Domain Name Suppliers, Registrants and Customers by:
 - a) supporting and promoting competition;
 - b) establishing minimum standards for dealings between Domain Name Suppliers and with Customers and Registrants;

- c) ensuring that Registrants and Customers receive accurate, complete and timely information concerning Domain Name registrations, renewals and solicitations;
- d) ensuring accuracy of Domain Name Advertising Material;
- e) preventing practices that undermine the reputation of the industry and the interests of Registrants and Customers;
- f) establishing minimum standards in relation to Complaint handling by Domain Name Suppliers; and
- g) establishing procedures for dealing with breaches of the Code.

3. Implementation and Compliance

- 3.1 The Code applies to all Registrars, their appointed Resellers, and all other parties that are signatories to the Code.
- 3.2 A Domain Name Supplier may use the auDA Compliance Mark to indicate their signatory/compliance status in relation to the Code that the supplier has signed.
- 3.3 Domain Name Suppliers must provide to auDA, upon request, information about their compliance systems associated with this Code.

4. Market Conduct – Domain Name Registrations

- 4.1 Domain Name Suppliers must not register Domain Names on their own behalf for the purpose of preventing any other Domain Name registration.
- 4.2 Subject to clause 4.4, Domain Name Suppliers must only:
 - a) register a Domain Name at the request of a Customer; and
 - b) renew a Domain Name:
 - (i) at the request of, or with the approval of, a Registrant; and
 - (ii) after obtaining confirmation from the Registrant that they continue to satisfy the Domain Name Eligibility and Allocation Policy Rules for Open Second Level Domains in respect of the Domain Name.
- 4.3 Domain Name Suppliers must not register or renew Domain Names (in advance of a request from a Customer or Registrant) for the purpose of restricting a competitor of the Domain Name Supplier from registering the Domain Name on behalf of the Registrant, or for the purpose of later offering this Domain Name to potential Customers.

Guideline - examples of unacceptable conduct:

- (1) Anticipating a Customer's preference for a Domain Name (via examining Customer activity on a website, or by reference to other databases such as company name databases), registering that Domain Name using the Customer's details, and then offering the Domain Name to the Customer for a fee or in conjunction with a bundled offering. This practice restricts the Customer's choice of Domain Name Supplier, and

may lock the Customer's into service conditions (such as the need to host a website with the Domain Name Supplier). This example is sometimes called front-running.

(2) Pre-registering Domain Names that may be in demand in the future (reference clause 14.2.3 and clause 6.2.4 of Schedule B of the Registrar Agreement). This could be done to either artificially reduce the supply of a Domain Name perceived as good (eg. by registering all Domain Names with 3 letters, along with registering the appropriate business names to match), or with the intent to speculate on the value of the Domain Name for later sale. This example is sometimes called warehousing.

- 4.4 A Domain Name Supplier may register Domain Names on its own behalf for its own use.
- 4.5 Domain Name Suppliers must only renew an expired Domain Name at the request of a Registrant. The Registry will automatically delete Domain Names that have not been renewed, 14 days after the expiry date.
- 4.6 Domain Name Suppliers must only sell Domain Name Licences for periods of 2 years. Where Domain Name services are provided for periods longer than 2 years, the Domain Name Supplier must clearly inform Customers that the Domain Name Licence must be renewed every 2 years.

5. Customer Contact

- 5.1 A Registrar and a Reseller of that Registrar may agree (through a registrar-reseller agreement) on procedures for contacting a Registrant that has chosen the Reseller as the Registrant's agent. The Registrar of Record for a Domain Name Licence may maintain records of a Registrant's current choice of agent.
- 5.2 A Registrar or other Domain Name Supplier must use reasonable commercial endeavours not to send a renewal notice to a Registrant, or any other communication that might reasonably be construed by a Registrant to be a renewal notice, for a specific Domain Name Licence unless:
 - a) the Registrar is the Registrar-of-Record for that Domain Name Licence; or
 - b) the other Domain Name Supplier has a current Written Agreement to act on behalf of the Registrant with respect to that Domain Name Licence.

Guideline - meaning of reasonable commercial endeavours:

(1) 'Reasonable commercial endeavours' includes, for example, where a Registrar has checked the registry database to ensure that they are still the Registrar-of-Record, or where a Reseller has checked with their Registrar to ensure that they are still the Registrant's agent. Renewal notices should include the date on which the Domain Name Supplier made such checks.

- 5.3 A Domain Name Supplier must advise the Registrant if there will be a transfer to a new Domain Name Licence with a different Registrar-of-Record, associated with accepting a renewal offer in response to a renewal notice sent under clause 5.2 (this may occur when either a Reseller becomes a Registrar, or when a Reseller chooses to use a different Registrar).

- 5.4 A Domain Name Supplier for a specific Domain Name Licence must not send a renewal notice any earlier than 90 days prior to the expiry date, and must make reasonable commercial efforts to advise the Registrant at least 30 days prior to expiry of a Domain Name Licence of the need to renew it.
- 5.5 A Domain Name Supplier may make an offer to a Customer for Products (other than as described in clauses 5.2-5.4 above), provided:
- a) it is clearly identified as a solicitation for business;
 - b) there is no mention of, or cross-reference of any kind to, a specific existing Domain Name or related information such as expiry dates, unless:
 - (i) the Registrar is the Registrar-of-Record for that Domain Name Licence; or
 - (ii) the other Domain Name Supplier has a current Written Agreement to act on behalf of the Registrant with respect to that Domain Name Licence;

Guideline - meaning of cross-reference:

(1) 'Cross-reference' includes, for example, the inclusion of mechanisms in offers such as unique identifiers, references or links to websites or links within emails that have the object or effect of acting as an indirect reference to, or referring the Customer directly or indirectly to, specific Domain Names.

- c) it includes a statement that the Customer is under no obligation to respond;
- d) in the case of soliciting the renewal of a Domain Name Licence, it includes a statement that the Customer may choose to renew their Domain Name Licence through the Registrar-of-Record in the Registry Database, or their existing agent (who may be a Reseller of the Registrar-of-Record);
- e) if it concerns a transfer from the Customer's current Domain Name Supplier, it is clearly explained whether acceptance of the offer requires the Customer to either transfer between agents (or Resellers) within the databases of the Registrar-of-Record, or transfer to a new Domain Name Licence with a different Registrar-of-Record;
- f) if it concerns a transfer from the Customer's current Domain Name Supplier, it is clearly explained that a Domain Name Licence is independent of any Products that the Domain Name Supplier's service offering may include (such as webhosting or email Products);
- g) the offer is not sent as email, unless the Domain Name Supplier has an existing relationship with the Customer, or the Customer has requested marketing information from the Domain Name Supplier. Any such email must include a simple and effective mechanism to enable the Customer to choose not to receive any further communications;
- h) the contact information for the Customer is not obtained from the Registry or auDA's centralised WHOIS service (see clause 13 of the Registrar Agreement); and
- i) it cannot reasonably be construed as a renewal notice or an invoice.

Guideline - examples of unacceptable conduct:

- (1) Sending an invoice (or anything that appears to be an invoice) to a Registrant for Domain Name renewal, where the Domain Name is presently registered through another Domain Name Supplier.
- (2) Sending a renewal notice, or an offer to transfer, for a specific Domain Name with an expiry date (eg. "xyz.com.au expires on 1/6/2002 - renew it now at our website"), where the Domain Name is presently registered through another Domain Name Supplier.
- (3) Sending a notice addressed to "accounts payable", requesting payment for the renewal of a specific Domain Name with an expiry date, where the Domain Name is presently registered through another Domain Name Supplier.
- (4) Informing a registrant that a transfer to a different Registrar-of-Record is necessary to delegate a domain name for new webhosting or email services. Delegation may be performed by the Registrant, or by a Domain Name Supplier on behalf of the Registrant, through the current Registrar-of-Record.
- (5) Sending a notice to a Registrant to register a new Domain Name that closely resembles the Registrant's existing Domain Name, and appears to the Registrant to be an invoice for payment.
- (6) Sending an offer to a Customer with a unique URL that when used by the Customer refers the Customer to a website that displays a specific existing Domain Name or expiry date to the Customer.

- 5.6 If a Complaint is made about the accuracy of WHOIS data, then the Registrar-of-Record on receiving, or receiving notice of, the Complaint must make reasonable commercial efforts to contact the Registrant to arrange for the information to be corrected. The Registrar-of-Record may delegate this responsibility to a Reseller via the terms of a registrar-reseller agreement.

6. Service Offerings

- 6.1 If a Domain Name Supplier provides bundled Products, Products bundled with other goods or services (whether related services such as hosting or forwarding services or otherwise) or both, then the Domain Name Supplier must specify the unbundled price of each Product.

Guideline - examples of unbundled pricing:

- (1) A Registrar that sells ".com.au" for \$150, and ".net.au" for \$150, may make an offer as: ".com.au and net.au for \$150 each, or register both a com.au and net.au name for a special price of \$250".
- (2) A Registrar that sells ".com.au" for \$150 for 2 years, and web hosting for \$500 for 2 years, may express an offer as follows: "com.au registration for \$150, web hosting for \$500 for two years. If you register a com.au domain name for \$150, you will get a

10% discount off our standard prices for web hosting associated with that domain name (i.e. total package price of \$600)."

- 6.2 Where a Domain Name Supplier presents Products in Advertising Materials as being provided as part of a bundled offering, the Domain Name Supplier must make it clear which Products depicted in the Advertising Material are supplied under the bundled offer.

Guideline:

- (1) If a website is illustrated together with both a com.au and id.au Domain Name, and the com.au Domain Name is not part of the bundled offering, the advertisement could state "com.au domain name services not included in the offer".

- 6.3 Where a Domain Name Supplier represents that Products in Advertising Materials are provided under a bundled offering, the Domain Name Supplier must be in a position to supply those Products unless a disclaimer (that complies with clause 8.1 of this Code) to the contrary effect is included.

Guideline:

- (1) If a Domain Name Supplier offers registration in second level ".au" domains as part of a Domain Name offer, the Domain Name Supplier must either supply Products in all 2LDs, or include a disclaimer to the contrary (such as "offer does not include registration in csiro.au").

- 6.4 Where Advertising Materials indicate the price of a component Product of a bundled offering, the Domain Name Supplier must include in the Advertising Materials a statement of the minimum total charge of the bundled offering and indicate any conditions that may apply to obtain the component Product at the stated price.

Guideline:

- (1) A Domain Name Supplier may offer Products at \$10 per month, but for a minimum licence period of 2 years - thus a minimum total price of \$240 over the 2-year licence period.
- (2) A Domain Name Supplier may offer a 10-year Domain Name service for \$750, which requires the Domain Name Supplier to renew the licence every 2 years. The Domain Name Supplier must state that the Domain Name Licence will be subject to the Registrant confirming that they continue to be eligible for the Domain Name Licence every 2 years.

7. Advertising Principles

- 7.1 All Advertising Materials used by a Domain Name Supplier must comply with all applicable legislation and published standards.
- 7.2 Domain Name Suppliers must provide Customers with information about Products that is:
- a) clear;
 - b) accurate;

- c) complete; and
- d) not confusing, misleading or deceptive.

7.3 Domain Name Suppliers must give Customers information, which avoids unnecessary complexity, is in simple and straightforward language, and is readily understandable by the target audience.

8. Advertising Guidelines

8.1 Disclaimers are to be used in Advertising Materials as follows:

- a) A Domain Name Supplier must clearly state any disclaimers to an offer next to the offer, or linked to the offer by an asterisked footnote in proximity to the offer, or for television and radio Advertising Material, as part of the advertisement.

Guideline:

(1) For example, "\$100 per year domain name registration fee (minimum contract period 2 years)" or "\$200 per year domain name registration fee with free website*" * "Up to 3 webpages containing up to 20 Mbytes of content".

- b) A Domain Name Supplier must ensure that disclaimers used in Advertising Materials are clearly indicated, and readily understandable having regard to the nature of the advertisement including the size of the text in the body copy, the medium used to convey it and its likely audience.

Guideline:

(1) For printed Advertising Materials, a Domain Name Supplier should ensure that the font size of a disclaimer is at least 10 point, where the Advertising Material is A4 size or greater, or 8 point, where the Advertising Material is less than A4 size but larger than an 8cm x 6cm advertisement and 6 point where the Advertising Material is of a size equal to 8cm x 6cm or smaller, by reference to the font size of Times New Roman or equivalent.

(2) For billboards, a Domain Name Supplier must ensure that any disclaimer used is sufficiently clear and prominent to be clearly read by the intended audience.

(3) For radio a Domain Name Supplier must ensure that any verbal disclaimer used is stated at a speed and volume which is clearly discernible by the average listener.

(4) For television, a Domain Name Supplier should use both a verbal and visual disclaimer and must ensure that any verbal disclaimer used is stated at a speed and volume which is clearly discernible by the average listener.

- c) A Domain Name Supplier must ensure that a disclaimer used in Advertising Materials that use text appears in text which contrasts sufficiently in colour with its background to be clearly readable, and is positioned as a horizontal statement.
- d) A Domain Name Supplier must not use a disclaimer to negate the principal messages of the Advertising Materials.

- 8.2 If any offer for a Product has eligibility requirements, such requirements must be clearly set out in all Advertising Materials in which the offer is promoted.

Guideline:

- (1) "Available only to those customers with 10 domains or more" or "Available only to the first 50 customers that respond to this advertisement" or "Available only to customers that respond within 72 hours to this offer".

- 8.3 A Domain Name Supplier must state in Advertising Material any applicable time limits on availability of an offer promoted in the Advertising Materials.

Guideline:

- (1) "Available until 30 June 2003"

- 8.4 A Domain Name Supplier must not make a Savings Claim in any Advertising Materials unless it is true and each reasonable inference from the Advertising Materials as to savings can be substantiated.

- 8.5 A Domain Name Supplier must make clear in Advertising Materials the basis for any Savings Claim made.

Guideline:

- (1) When making a claim such as "saves up to 50%" it must be apparent what the basis is for the savings claim, for example "save up to 50% off company A's recommended retail price", "save up to 50% off our normal price", "save up to 50% off our previous rates", "save up to 50% this weekend on our normal domain name registration fee".

- 8.6 If it is possible some Customers with particular usage patterns would not save, a Domain Name Supplier must qualify a Savings Claim.

- 8.7 A Domain Name Supplier must only use general Savings Claims, eg. "save money", "you will save" or "our rates are cheaper", if all Customers would save under the offer. Otherwise a Domain Name Supplier could use Savings Claims, such as the examples below:

Guideline:

- (1) "you could save", "we are cheaper for many customers", "you may save", "many customers will save".

- 8.8 If access to a Product is promoted in any Advertising Material as provided for free or below market price, but additional charges apply to the use of the Product, a Domain Name Supplier must disclose the additional charges.

Guideline:

- (1) "free net.au domain name registration (charges apply for delegation)"

- 8.9 A Domain Name Supplier must not advertise Products as "free" that may accompany a Domain Name registration unless the principal terms and conditions of the free offer as

they relate to fees and charges are disclosed in the Advertising Material, and the prices for the Products accompanying the offer are not inflated to cover some or all of the cost of the free offers.

Guideline - example of unacceptable conduct:

- (1) "Free net.au domain name, when you purchase a com.au domain name for \$300", if a Domain Name Supplier normally charges \$150 for a com.au domain name, without the free offer.

9. Comparative Advertisements

- 9.1 A Comparative Advertisement must make it clear what the Preferred Products and the Compared Products are.

Guideline:

- (1) When comparing Customer service response times, the Advertising Materials should indicate the time of day and day of the week on which the comparison is based.

- 9.2 A Domain Name Supplier must ensure that either:
 - a) the Preferred Products are genuinely comparable with Compared Products, having regard to any claims made in the Comparative Advertisement; or
 - b) if the Preferred Products are not genuinely comparable with the Compared Products, that the Comparative Advertisement is not misleading as to the differences between the respective Products.
- 9.3 When considering whether Preferred Products are genuinely comparable with Compared Products, a Domain Name Supplier must also have regard to:
 - a) the respective purpose or purposes for which the Preferred Products and the Compared Products are ordinarily to be used;
 - b) the respective pertinent features of the Preferred Products and the Compared Products; and
 - c) whether, in relation to the Compared Product, other goods or services offered by the Domain Name Supplier would afford a more appropriate comparison.
- 9.4 A Domain Name Supplier must ensure that any disclaimer used in a Comparative Advertisement complies with clause 8 of this Code.
- 9.5 A Domain Name Supplier must use current information in a Comparative Advertisement.

10. Customer Information

- 10.1 Domain Name Suppliers must fully disclose to a Registrant the following minimum level of information:
 - a) the identity of the Domain Name Supplier including:

- (i) the legal name of the business and the name under which the business trades (including the Australian Business Number or ACN);
 - (ii) the address of the registered office or principal place of business;
 - (iii) an email address or other electronic means of contact, or telephone number;
- b) the identity of the Registrar being used by the Domain Name Supplier if the Domain Name Supplier is NOT a Registrar including the trading name shown in the auDA list of Registrars;
 - c) the terms and conditions of the Domain Name Licence; and
 - d) the processing time for Domain Name registrations, Customer support contact information and a web address link to this Code.
- 10.2 Domain Name Suppliers must publish information about changes to any policy of the Domain Name Supplier that materially affect a Registrant's Domain Name Licence.
- 10.3 Where the information referred to in clause 10.2 of this Code is not published on the Domain Name Supplier's website, the Domain Name Supplier must take reasonable steps to ensure that Registrants are aware of the changes.

11. Conduct of Employees, Agents, Contractors and Resellers

- 11.1 Each Domain Name Supplier must use reasonable efforts to ensure its employees, agents and contractors comply with the Code.

Guideline:

- (1) For the protection of their own interests each Domain Name Supplier should undertake reasonable measures to develop with their employees, agents and contractors a culture of compliance with this Code.

- 11.2 If a Domain Name Supplier becomes aware of any actual or potential breach of the Code by its employees in the course of their employment or by its agents or contractors (including Resellers) in the course of performing their functions as agents or contractors, the Domain Name Supplier must take such action which may be reasonably available to it to prevent or discourage the continuation of the breach of this Code, including informing auDA if, in the opinion of the Domain Name Supplier, it is appropriate to do so.

12. Consumer Protection

- 12.1 Domain Name Suppliers must:
- a) publish on their website, and observe, a written Complaints handling process which is to be available to all Customers at no charge;
 - b) provide a link on their website to auDA for consumer information, including the consumer guide and FAQ;
 - c) gain the consent of Registrants before changing the terms and conditions of an existing Domain Name Licence.

12.2 Domain Name Suppliers should note that:

a) under the general law, Domain Name Suppliers must:

(i) comply with the National Privacy Principles of the *Privacy Act (Cth) 1988*⁴ in all dealings with Customers;

(ii) comply with their obligations to consumers pursuant to the *Trade Practices Act (Cth) 1974*, and the *Disability Discrimination Act (Cth) 1992*;

(iii) comply with any other relevant consumer related laws and codes of the Commonwealth, States and Territories of Australia; and

b) a breach of any applicable law of Australia (or elsewhere) is also a breach of sub-clause 14.1.12 of the Registrar Agreement.

12.3 Domain Name Suppliers must publish on their website, and include in their terms and conditions, a written cancellation policy.

Guideline:

(1) Fair trading legislation in some states and territories mandates a cooling off period for sales of goods and services made over the telephone or the Internet. Domain Name Suppliers should ensure that their cancellation policy complies with relevant legislative requirements.

13. Code Enforcement

13.1 Industry participants must conduct their business in accordance with the Code. For the avoidance of any doubt, this Code:

a) forms a part of the Registrar Agreement under clause 7.4 of the Registrar Agreement; and

b) is a Published Policy for the purposes of clause 7.2 of the Registrar Agreement.

13.2 Any person including a Customer, Reseller, Registrar or the Registry, may bring a Complaint under this Code.

13.3 Alleged breaches of this Code will be dealt with, by auDA under its Complaints Policy⁵.

13.4 Nothing in this Code is intended to derogate from any rights or causes of action a person may have under any law of any jurisdiction.

13.5 A breach of this Code is an Event of Default under the Registrar Agreement and may result in the suspension or termination of the Registrar's auDA accreditation or the termination of the Registrar Agreement.

13.6 For the purposes of auDA complying with its responsibilities in relation to the regulation of the .au domain, the suspension or termination of a Registrar's auDA accreditation or

⁴ <http://www.privacy.gov.au>

⁵ <http://www.auda.org.au/registrars/complain>

the termination of a Registrar Agreement will immediately suspend or terminate any agreement between that Registrar and their appointed Resellers.

14. Complaints Handling Principles

14.1 Domain Name Suppliers must:

- a) provide an efficient, fair (both to the subject of the Complaint, and the Complainant whether an organisation or individual) and accessible mechanism for handling Complaints;
- b) demonstrate a commitment to the right of Customers to complain; and
- c) in their dealings with Complainants, regard Complaints as an opportunity to improve their Products.

14.2 Domain Name Suppliers must provide adequate resources for Complaint handling with sufficient delegated levels of authority.

14.3 Domain Name Suppliers' Complaints handling processes must have the capacity to determine and implement remedies to achieve resolution.

14.4 Complaints must be dealt with in 30 days where possible, or as soon as practicable after this time, and Complainants must be treated with courtesy.

14.5 If a Complaint is made Domain Name Suppliers must ensure that the Complainant is aware of:

- a) their rights under this clause 14 and the Complaints Handling Rules under clause 15 of this Code; and
- b) the Domain Name Suppliers' own Complaints handling procedures.

14.6 If a Domain Name Supplier is not able to resolve a Complaint to the satisfaction of either the Domain Name Supplier or the Complainant, the Domain Name Supplier may refer the Complaint to auDA.

14.7 If a Domain Name Supplier is not able to resolve a Complaint to the satisfaction of either the Domain Name Supplier or the Complainant, the Domain Name Supplier must inform the Complainant that the Complainant may either refer the Complaint to auDA, or may request the Domain Name Supplier to refer the Complaint to auDA.

14.8 auDA may investigate a Complaint at any time either before or after it has been referred to auDA by a Complainant or a Domain Name Supplier.

15. Complaints Handling Rules

15.1 Domain Name Suppliers must implement processes and procedures and must deal with Complainants in accordance with the Complaints Handling Principles and Rules set out in this Code.

15.2 Domain Name Suppliers' Complaints handling processes must:

- a) be publicised (in accordance with clause 12.1 a) of this Code) to Customers and staff of the Domain Name Supplier;
- b) include information about a Customer's right to complain; and
- c) specify how the Domain Name Supplier can be contacted in order to make a Complaint.

Guideline:

- (1) It is recommended that Domain Name Suppliers provide easily understood information about their Complaints handling process in as many media and formats as reasonably practicable. Examples may include, but not be limited to, telephone directory listings, information printed on accounts, service guarantee or product/service brochures, Advertising Material, Customer service guides or Internet pages.

15.3 Domain Name Suppliers must provide information on how, when and where to make a Complaint. This may include information about the Complaint lodging process, hours of operation and offices or locations at which Complaints can be lodged. This information must be simple, in plain English, and reasonably accessible to all Complainants, including people with disabilities and from non-English speaking backgrounds.

15.4 Domain Name Suppliers must ensure that Complainants have access to free or low cost and flexible methods for lodging Complaints.

Guideline:

- (1) To ensure that Customers or Complainants are not discouraged from making a Complaint, Domain Name Suppliers should consider the provision of a toll free or local access number. Other alternatives for low cost access include e-mail, free-call/local call fax, street address, mailing address or Internet web page form.

15.5 Where requested, Domain Name Suppliers must provide Complainants with reasonable assistance in formulating and lodging Complaints and must ensure that Complainants are aware of their right to make such a request.

Guideline:

- (1) There may be a number of reasons for the request, eg. language problems or physical disability. This may also take the form of providing information on what the Domain Name Supplier requires the Complainant to provide to progress the Complaint, but does not extend to providing resources to compile compensation claims on behalf of the Complainant.

15.6 Responsiveness

- a) A Domain Name Supplier must acknowledge written Complaints within 5 business days of receipt of the Complaint. A Domain Name Supplier can elect to do this either verbally or in writing, unless the Complainant specifies one or the other method.
- b) Verbal Complaints will be taken as acknowledged at the time the Complaint is made.

- c) At the time of receiving the Complaint or as soon as reasonably practicable after receiving the Complaint, the Domain Name Supplier must inform the Complainant of the Complainant's right:
- (i) to request the Domain Name Supplier to provide their response or determination in relation to the Complaint in writing;
 - (ii) to request information from the Domain Name Supplier as to the progress of the Complaint.
- d) Wherever possible, a Domain Name Supplier must advise Complainants when they make a Complaint, within 5 working days, of the complexity of the investigation and a timeframe for the possible final determination of the Complaint. The timeframe for finalisation should not exceed 30 calendar days unless clause 15.7d) applies or the Complaint has been referred to auDA.
- e) In certain cases it will not be possible for a Complaint to be handled within the 30-day timeframe due to the complexity or circumstances of the Complaint. A Domain Name Supplier must provide regular updates to the Complainant in these circumstances and the Complainant must be kept informed as to the Complaint's progress and likely timeframe for finalisation. The Domain Name Supplier must also inform the Complainant of the Complainant's right to refer any such Complaint to auDA.

Guideline:

- (1) The complexity or circumstances of a Complaint may include where the Domain Name Supplier is relying on another Domain Name Supplier for the provision of information to enable further investigation of the Complaint, or for another Domain Name Supplier to provide information on the resolution or determination of the Complaint.

- f) Domain Name Suppliers must advise Complainants of the outcome of the investigation of their Complaint. This must be in a written format, if requested by the Complainant, giving reasons for the response or determination.
- g) If a Complainant makes a request for information regarding the progress of a Complaint, a Domain Name Supplier must provide a response as soon as is reasonably practicable. A Domain Name Supplier need not provide a response to such a request if it can reasonably be said that the request is frivolous or vexatious.

Guideline - meaning of 'as soon as is reasonably practicable' and 'frivolous or vexatious':

- (1) When determining what response time meets the requirement of being '*as soon as is reasonably practicable*', regard must be had to:
- (i) the means by which the request has been received and the response is to be provided (simple requests by telephone or email that can be answered at the time of the call or could be filed for a response within a day;
 - (ii) the ease with which the response may be determined and provided;

- (iii) the seriousness of the subject matter giving rise to the Complaint;
 - (iv) the method of communication of the response and the alternatives available, striking a balance between the reasonable administrative practices of the Domain Name Supplier with the wishes of the Complainant; and
 - (v) the Complaints Handling protocols of the Domain Name Supplier and their reasonable application to the particular request.
- (2) When considering whether a request is frivolous or vexatious, regard must be had to:
- (i) the frequency of such requests or the time that has passed since a previous request;
 - (ii) the seriousness of the subject matter giving rise to the Complaint;
 - (iii) any other relevant conduct on the part of the Complainant;
 - (iv) the context of the expected time frame for resolution of the Complaint; and
 - (v) the relative expense, inconvenience or difficulty associated with the Domain Name Supplier providing the relevant information.

- h) Domain Name Suppliers must not impose Complaints handling charges on Complainants, except where the investigative/handling process is sufficiently onerous to justify the levying of a Complaints handling charge.

Guideline - example of onerous circumstances:

- (1) Where a Complainant instigates a complaint process that requires the retrieval of archival records more than two years old.
- i) Where the outcome of a Complaint is upheld in favour of the Complainant, a Domain Name Supplier must refund any Complaints handling charges paid by the Complainant for that Complaint.
 - j) Where a Domain Name Supplier considers that the investigative/ handling process is sufficiently onerous to justify the levying of a Complaints handling charge, a Domain Name Supplier must not impose the charge without reference to, and discussion with, the Complainant. In cases where a charge is to be imposed, the Domain Name Supplier must inform the Complainant of such charge in writing.
 - k) Where the Domain Name Supplier deems the Complaint frivolous or vexatious, the Domain Name Supplier must:
 - (i) inform the Complainant of the reasons for the decision not to investigate; and
 - (ii) inform the Complainant of the availability of external options for Complaint handling, eg. by making the Complaint to auDA.

15.7 Escalation and further recourse

- a) A Domain Name Supplier's Complaints handling process must include an escalation process.
- b) Domain Name Suppliers must advise Complainants of their avenues of recourse, including their internal options and/or external options, in all instances where the Complainant indicates to the Domain Name Supplier that they remain dissatisfied with the outcome of a Complaint.

15.8 A Domain Name Supplier must not demand payment of justifiably disputed amounts whilst the Complaint is being investigated.

15.9 Complaints data collection and analysis

- a) Domain Name Suppliers must have appropriate systems to record Complaints and their outcomes. These systems must enable the Domain Name Supplier to collect and analyse Complaints in order to identify Systemic Problems and provide the basis for Complaint reporting required under the regulatory and the self-regulatory regimes.
- b) Domain Name Suppliers must ensure that data collected is categorised and analysed at least every six months to allow for the identification and rectification of recurring Systemic Problems.
- c) A Domain Name Supplier must retain any material collected and recorded and any material provided by or communicated from a Complainant throughout the complaint handling process for a minimum period of two years following the closure of a Complaint.

15.10 Domain Name Suppliers must review their Complaints handling process at least every two years to ensure that it is delivering fair and reasonable outcomes. Any necessary amendments must be made to the Complaint handling process based on these reviews.

15.11 Changes to Complaints handling policies and processes

- a) Domain Name Suppliers must update any information regarding their Complaint handling process to reflect any variations to the process.
- b) Where significant variations are made that affect Complainant's access to the process, Domain Name Suppliers must inform Complainants of the changes.

16. Definitions

Term	Definition
2LD	Means a second level domain, that is, a name at the second level of the .au domain name hierarchy (for example, com.au)
Advertising Material	Means but is not limited to any advertising or promotional material via: television; radio; press and magazine advertisements; direct mail; posters; brochures; packaging; price tags; billboards; cinema

	<p>advertisements; advertorials; infomercials; promotional videos; website materials; signage; media releases; electronic mail; electronic news groups; bill messages and inserts; and other point of sale material. (From ACIF Code:C521 OCTOBER 2001)</p>
Advocate	<p>Means an attendant care worker, family member, friend or other person nominated by a Customer with a disability, non-English speaking background, or other special need to assist the Customer.</p> <p>An Advocate is not authorised to make changes to the Customer's account or Domain Name services unless the Customer or their Authorised Representative authorises the Advocate to do so.</p>
auDA	<p>Means .au Domain Administration Limited, the self-regulatory body responsible for the administration of the .au domain.</p>
auDA Compliance Mark	<p>Means a logo provided by auDA to denote compliance with the Code.</p>
Authorised Representative	<p>Means a person who is authorised by the Customer or the state to act on behalf of a Customer on matters associated with a Supplier's Domain Name activity or associated Products. Wherever the term Customer or Complainant is used in this Code, the term Authorised Representative should also be read.</p>
Code	<p>Means this .au Domain Name Suppliers' Code Of Practice being an auDA Published Policy.</p>
Comparative Advertisement	<p>Means any Advertising Materials the contents of which makes comparisons directly or by implication between Domain Name Suppliers, or between particular Products ("Preferred Products") and other Products ("Compared Products") and includes any comparison between the prices of or terms and conditions attaching to the Products.</p>
Complainant	<p>Means a person or organisation making a Complaint.</p>
Complaint	<p>Means any expression of dissatisfaction or grievance made to a Domain Name Supplier or auDA by a Customer or member of the public (including another Domain Name Supplier) in relation to any act or omission of a Domain Name Supplier related in any way to Domain Names, but does not include a request for information.</p>

Complaints Policy	Means the auDA Published Policy known as Complaints Policy No 2002-21 as amended from time to time.
Customer	Means a person or entity who: <ul style="list-style-type: none"> a) Has a contract with a Domain Name Supplier for the supply of a Product; b) is or may be eligible under the criteria set by a Domain Name Supplier to enter into a contract for the supply of the Product; c) is or may be eligible to obtain a Domain Name Licence under the eligibility criteria set by auDA from time to time; d) is a Registrant; or e) is a Domain Name Applicant.
Domain Name	Means a domain name in any designated .au 2LD or other domain name space for which auDA has regulatory responsibility from time to time.
Domain Name Applicant	Means an individual or entity that applies for a Domain Name Licence, or for the renewal of their existing Domain Name Licence.
Domain Name Licence	Means a licence to use a Domain Name for a specified period of time.
Domain Name Supplier	Means a Registrar or Reseller.
Product	Means a Domain Name good or service offered by a Domain Name Supplier including a Domain Name, a Domain Name Licence and registration, renewal or transfer services.
Published Policies	Means those specifications and policies established and published by auDA from time to time, in accordance with its constitution.
Registrant	Means an entity or individual that holds a Domain Name Licence in one of the 2LDs.
Registrant Agreement	Means the agreement to be entered into, or renewed, between the Registrar and a Customer or Registrant in relation to an approved Domain Name.
Registrar	Means an entity that registers Domain Names for Customers and who is accredited by auDA in accordance with auDA's accreditation practices and procedures.
Registrar Agreement	Means the agreement entered into between a Registrar and auDA in accordance with auDA's accreditation practices and procedures.

Registrar-of-Record	Means the Registrar that is listed in the Registry Database as being responsible for the administration of a Domain Name.
Registry Database	Means a database containing the Registry data in relation to a designated 2LD.
Reseller	Means a person or entity: <ul style="list-style-type: none"> a) appointed by a Registrar to sell Products or provide Customer services to Registrants on behalf of the Registrar; b) any person who is characterised as a reseller under auDA Policy 2002-16 as amended from time to time; or c) any person or entity that is an agent of any of the above.
Savings Claim	Means any claim or statement in any Advertising Materials that represents or implies that the recipient stands to save money or that the Product being advertised is in some way discounted in price.
Systemic Problem	Means the failure of a system, process or practice of a Domain Name Supplier which causes detriment to a significant number or class of Customers.
WHOIS service	Means the protocol used to provide a public information service in relation to data in the Registry Database.
WHOIS data	Means the set of data to be disclosed on a WHOIS service under auDA Policy No 2003-08 as amended from time to time.
Written Agreement	Means an agreement between the Domain Name Supplier and the Registrant evidenced in writing, which could include, for example a click through agreement on the Internet between the Domain Name Supplier and the Registrant that has been agreed to by the Registrant.