

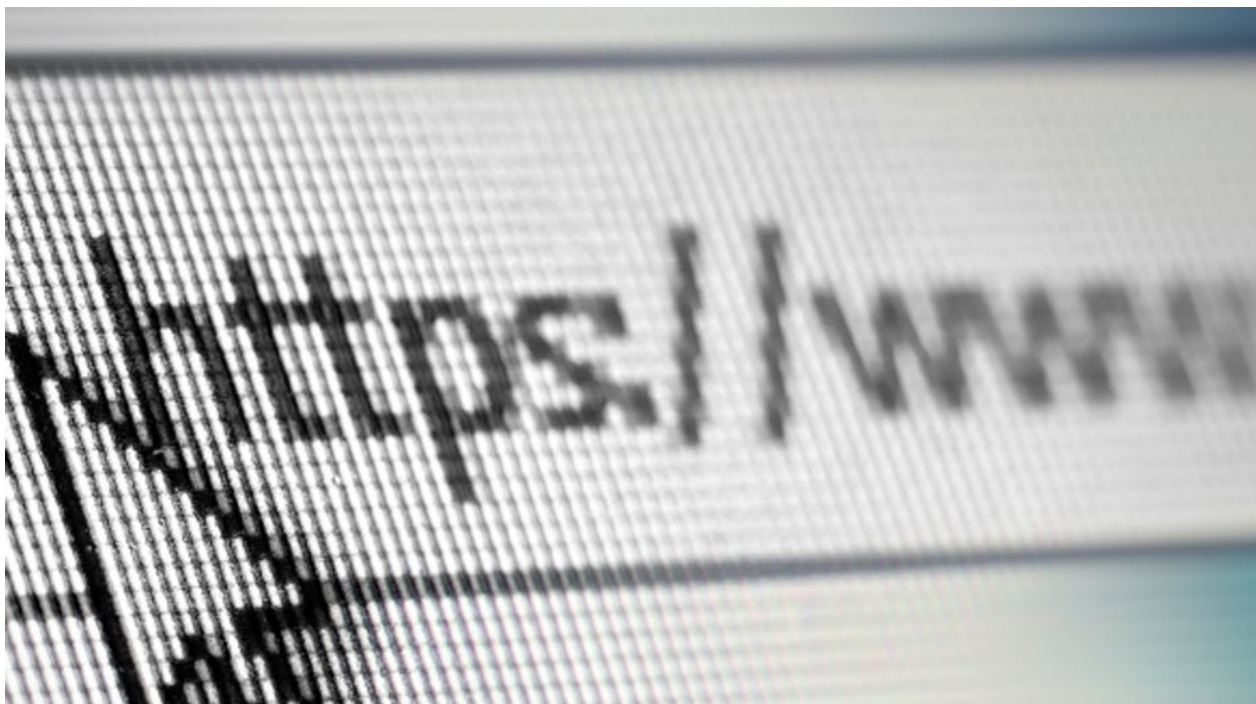


## 'au' direct launched - what you need to know

Jane Seager and Cindy Mikul

*Hogan Lovells*

08 June 2022



### AUSTRALIA

Legal updates: case law analysis and intelligence

- Holders of Australian second-level domain names have priority to apply for the corresponding domain names directly under '.au'
- The applicant for a licence in the '.au' direct namespace must have an Australian presence
- 'Contested names' will be allocated in line with the Priority Allocation Process

auDA, the body that runs the Australian domain name registry, has recently launched '.au' direct domain name registrations. Current holders of Australian second-level domain names have priority, under the [Priority Allocation Process](#), to apply for the corresponding domain names directly under '.au' until 20 September 2022, at which point all names matching existing domain names registered in other extensions will be released for registration by any registrant with a valid Australian presence.

### What's happening?

'.au' direct names launched on 24 March 2022. As of that date it has been possible to apply for:

- new '.au' direct names that are not already registered in any existing '.au' namespace, such as '.com.au' or '.org.au', provided that these comply with the applicable ['.au' Licensing Rules](#); and
- the exact match of any existing '.au' domain name of which you are the registrant.

These names will be allocated according to the Priority Allocation Process.

### Eligibility to register

Under Clause 2.4.3 of the '.au' Licensing Rules, the applicant for a licence in the '.au' direct namespace must have an Australian presence. Under the eligibility and allocation requirements, Australian presence includes the following, among others:

- an Australian citizen or an Australian permanent resident visa holder;
- a company registered under the Corporations Act 2001;
- a registrable body, meaning a registrable Australian body or a foreign company under the Corporations Act 2001 which has an Australian registered body number;
- a charity registered under the Australian Charities and Not-for-Profits Act 2012, and which appears on the Australian Charities and Not-for-Profits Commission's Charities and Not-for-Profits Register;
- a partnership under the relevant Australian state or territory law where at least one of the partners are Australian citizens or permanent resident visa holders or an Australian body corporate;
- a trust where the trustee must be an Australian citizen or the trustee is an Australian body corporate;
- the applicant or owner of an Australian trademark can rely upon that application or registration to establish an Australian presence, but only in respect of a domain name that is an exact match of the words which are the subject of the Australian trademark application or registration.

### Registering the exact match of an existing '.au' domain name under the Priority Allocation Process

If you already hold a '.au' domain name under another extension ('.com.au', '.net.au', '.org.au', '.asn.au', '.id.au', '.gov.au' and '.edu.au'), you have six months from 24 March until 20 September 2022 to apply for its exact '.au' direct match. The six-month period is known as the Priority Application Period and the rules for same are set out in the '.au' direct [Direct Priority Implementation rules](#).

Exact match names will be put on priority hold by the registry for the priority application period to prevent them from being registered by other parties, and to allow existing registrants to have the first option on registering the exact match of their existing domain names.

If there are no other applicants (or potential applicants), the applicant for a matching '.au' direct domain name will be able to use the domain name shortly after applying for it. If, however, more than one registrant holds a licence for the same term in a different extension, all such registrants are eligible to apply for the corresponding '.au' direct domain name. These are known as 'contested names' and will be allocated in line with the Priority Allocation Process, according to the following 'priority categories', which depend upon the registration date of the domain name:

- Priority Category 1: domain names created on or before the cut-off date of 4 February 2018.
- Priority Category 2: domain names created after the cut-off date of 4 February 2018

The priority category of an individual domain name can be checked via the registry's [priority status tool](#).

### How do the priority categories determine who is allocated a contested '.au' direct name?

Where there are multiple applications for a contested name, the following principles apply:

- Category 1 applicants have priority over Category 2 applicants;
- where there are multiple Category 1 applications, the name is allocated on agreement/negotiation between the Category 1 applicants; and
- where there are only Category 2 applicants, the name is allocated to the applicant whose domain name has the earliest creation date.

Negotiation between multiple Category 1 applicants:

- where there are multiple Category 1 applications, the applicants will need to negotiate between themselves to determine who will be allocated the '.au' direct domain name they have applied for; and
- applicants will be able to contact each other via the publicly available registrant contact information found in WHOIS.

Where an agreement is reached:

- the agreed applicant(s) will withdraw their applications; and
- the name is allocated to the registrant with the only active priority status application remaining for an initial one-year licence term.

Where no agreement is reached:

- the '.au' direct domain name remains subject to a 'priority hold'; and
- the name remains on priority hold until there is only one active application remaining;

Applicants will need to renew their applications on a yearly basis.

### When are contested names allocated?

A contested name is allocated once the contention is resolved. This will vary depending on:

- which eligible registrants submit an application for priority status, or decline or withdraw their applications;
- each applicant's priority category;
- if and when an agreement between Category 1 applicants is reached.

If there are no applications for a reserved '.au' direct from an eligible registrant name during the six-month priority allocation period, that name will become available to the public on a first-come, first-served basis at the close of the priority allocation period on 20 September 2022.

### What the future holds

Upon expiry of the priority allocation period on 20 September 2022, all terms previously registered under a second-level '.au' extension will be opened up for registration by any registrant that meets the Australian presence requirements with no additional need for the domain name to match either a business name, trademark or any other element. This will give Australian registrants an advantage over foreign registrants, who will still need to rely on an Australian trademark application or registration exactly matching the words which are the subject of the Australian trademark in order to fulfil the Australian presence requirement if they do not have a subsidiary in the country.

Further, Clause 2.2 and subsections of the '.au' Licensing Rules explicitly prohibit the use of trustees or proxy registration by agents or registrars for Australian domain names, so this is not an option for a foreign registrant. For this reason, registrants of existing Australian domain names are advised to secure their brands under '.au' direct well in advance of the 20 September cut-off date.

---

## Jane Seager

Author | Partner

[jane.seager@hoganlovells.com](mailto:jane.seager@hoganlovells.com)

Hogan Lovells

---

## Cindy Mikul

Author

Hogan Lovells