

InternetNZ February 2021 .nz rules consultation.

**The Domain Name Commission's
submission.**

March 2021

DNCL's submission in response to InternetNZ's February 2021 consultation on the .nz rules review

Background

The .nz Policy Advisory Panel (appointed by InternetNZ) has been running an engagement process reviewing the frameworks and policies that govern how .nz works and considering whether those frameworks and policies are fit for purpose.

The .nz Policy Advisory Panel released Re-imagining the future of .nz: Options Report which followed the initial Issues Paper. The options report canvassed options on 23 issues identified by the Panel in their preliminary research and engagement with New Zealanders.

DNCL provided a comprehensive submission in response to the options report. Subsequently, the Panel produced its recommendations report in September 2020 with 53 recommendations.

Since then (in February 2021) InternetNZ has circulated re-written rules that have been prepared to reflect the panel's thinking. This is part of the first tranche of work responding to the recommendations. In the consultation document, which was issued with the re-written rules, Internet NZ has also set out a number of issues on which it seeks further submissions.[1]

DNCL's approach to the current consultation

DNCL is the subsidiary company of InternetNZ and one of its functions is to give input into policy making. DNCL has been informally consulted regarding the released re-written rules during the drafting process.

DNCL gave a comprehensive submission in response to the options paper, which sets out its general position on the issues, which should still be taken as DNCL's considered view on issues.

It is noted that in this re-draft, InternetNZ is seeking to address recommendations to achieve:

- Simplification and consolidation of .nz policies
- Adopt five guiding principles
- Amend and clarify the policy development processes
- Introduce policy to advance engagement with Māori

- Ensure policy is in an accessible format
- Make permanent a modified emergency provision
- Introduce changes regarding the management of registrant details
- Address matters regarding growth and pricing.

What this submission addresses

This submission comments on the redrafted rules and responds to further implementation questions regarding privacy and growth.

As stated above, DNCL has provided its position on the substantive issues in its response to the options paper. This submission will only cover matters of significant interest to DNCL, noting that DNCL has already had the opportunity to both formally and informally make its position known to InternetNZ.

DNCL has identified no significant issues with the changes to achieve:

- Simplification and consolidation of .nz policies
- Adoption of five guiding principles
- Amendment and clarification of the policy development processes
- Introduction of policy to advance engagement with Māori
- Ensuring that policy is in an accessible format
- Making permanent a modified emergency provision.

Accordingly, this submission is limited to:

- Seeking three drafting changes to the rules to make explicit a new reasonable inquiry provision; and
- Commenting on the privacy recommendations.
- Commenting on the pricing variability and incentives recommendations.

The re-drafted rules - comments on drafting

DNCL has reviewed the rules and appreciates the work that has gone into simplifying the .nz policies. One of the objectives of the rewrite has been to remove redundant or repetitive material. InternetNZ has asked for reviewers to comment as to whether any material may have been lost that is not in this category.

There are three specific matters in the current draft rules in respect of which DNCL wishes to submit. First, the omission of the word 'identifiable' in proposed clause 2.2. Second, the absence of an express requirement for

parties to provide reasonable information demonstrating compliance with the rules. Third, the bulk transfer process is considered too prescriptive by DNCL and more flexibility is suggested.

Redraft request - The omission of 'identifiable'

Clause 7.2 of the **.nz Operations and Procedures** (version 2.4) provides:

Registrants must be identifiable individuals over 18 years of age or properly constituted organisations.

In substitution, the new clause 2.2 will provide:

A person can apply to register a .nz domain name through a Registrar authorised under clause 11 (Authorisation of Registrars) if the person is an individual over the age of 18 or lawfully constituted entity.

DNCL seeks that the word *identifiable* be reinstated. The inclusion of the word *identifiable* has been a useful requirement from the regulator's (DNCL's) point of view and supports push back on people using fake or anonymous registrant details.

Redraft request - Reasonable inquiry provision

Related, DNCL seeks more comprehensive and explicit wording in the .nz rules to support achieving the goal of ensuring that real people/entities are the holders of domain names; noting that having real people/entities as domain holders is an essential requirement in achieving a secure and trusted system.

Specifically, a more comprehensive approach would be to add a rule that, in addition to the requirement that an identifiable (*real*) person or properly constituted entity hold the domain name, holders must *demonstrate* that they are an identifiable person or properly constituted entity.

Regarding information provision generally, it is noted that DNCL's current practice is to ask for information, where considered necessary, so as to substantiate that the rules are being followed. At times, there has been pushback as there is no clear requirement in the rules that parties respond to information requests in a timely way. While it is implicit in the function of regulator, and in the specific role of monitoring compliance that information may be sought by DNCL, it is preferable that that ability is made explicit.

Accordingly, DNCL asks that a new provision be included in the rules that provides that all parties must respond to reasonable requests from the regulator for information to substantiate compliance with the rules.

Redraft request - Bulk Transfers process

Bulk transfer processes are provided for in proposed clauses 4.2.7, 4.2.8, and 4.3.6 of the current draft rules.

Clause 4.2.7 refers to DNCL being able to approve bulk transfers where a registrar needs to transfer several .nz domain names and clause 4.3.6 requires that at least 30 days notice be given to registrants before the bulk transfer is implemented. DNCL envisages circumstances arising where a non-standard bulk transfer may be needed and submits that that should be provided for in the .nz rules. Specifically, it is suggested that the rules be modified to say that the standard process can be varied at the absolute discretion of DNCL where the interest of the domain name holder requires it. This could arise, for example, where there is a complete failure of registrar services.

Privacy Recommendations

The current consultation asks for submissions on a proposed method for implementing the Panel's recommended changes to the information management; specifically managing information about registrants (called domain name holders under the new rules). Re-drafted rules on privacy have not been drafted, but the general approach intended is released in the current consultation document.

DNCL notes that it is intended that:

- There be no change to the information collected about domain name holders;
- That the information available under the public query service about the domain name holder is reduced. (Currently, when the privacy option is selected, the information provided via the public query service is the *domain holder's name, country and email address*, but it is recommended that that approach change to only provide the domain holder's name under the query service (and not email address, or country of domain holder's address)).
- That it is intended that provision of admin and technical contacts in respect of the domain name would become optional.

- At this stage, the privacy setting will remain set as 'opt in', rather than by default.
- That the consideration of the Panel's recommendation as to whether InternetNZ should offer an optional NZ Legal Person Verification process (which would result in a marker being added to the domain name registration data) be delayed until the tranche 2 issues are considered.

Privacy of email address

DNCL accepts that there is merit in email addresses no longer being provided under the query service and that the need to contact the domain name holder can be achieved by a contact form.

Privacy of country of domain name holder

DNCL is concerned about the removal of country information *in advance* of proper consideration of establishing a service for the NZ Legal Person Verification.

The Panel noted the strong desire for geographical limitation from submitters and expressed a view that this issue could be addressed by better information/ transparency around the country/ location of the domain name holder.

In the short term, there is no NZ Legal Person Verification process in place and for that reason DNCL consider it is premature to remove information about the country associated with the Domain Name Holder. It is noted that transparency regarding the country associated with the domain name holder would assist in dispelling the perception that .nz is limited to New Zealand associated persons (another issue identified by the Panel).

Making optional the collection of admin and technical contact details

The Panel considered that admin and technical contact details are often the same as the registrant. However, DNCL notes that there are many instances where they are not the same. DNCL believes that more consideration should be given to the potential implications of losing second and third persons as potential contact points, especially where the first contact registrant is not responding.

DNCL sometimes uses secondary contacts in performing the function of validating domain names. Having more than one potential contact may also be useful to Government agencies, when responding to infrastructure abuse such as the Cyber Emergency Response Team or an emergency. Stakeholder views about the primary and secondary uses of secondary contacts such as technical contact should be canvassed.

Growth - Pricing Variability and Incentives

It is proposed that variable pricing of the wholesale fee be introduced, and that the registry be allowed to offer rebates of the wholesale price for certain priority registrants. The variable pricing would be the same for all registrars. The rebates would be targeted for certain groups (for example, to support small business, te reo and other priorities).

It is also recommended that incentives be provided to encourage .nz market growth and drive certain initiatives.

InternetNZ believes that safeguards would likely be required to ensure pricing practices and incentive programmes are fair and reasonable. (See the consultation document at page 28.)

DNCL notes that in other regulated areas, for example, in the financial services/mortgage brokerage industry the provision of incentives based on sales numbers alone has been criticised. Consideration should be given to whether incentivising other performance factors such as administrative performance and providing a quality service to registrants should also be the subject of incentives.

DNCL's interest is in ensuring that rebates and incentives are fair and that there is no adverse effect on any one market participant caused by the incentives. It is likely that competition law advice would be needed to assess the detail of any incentives proposed.

[1] See Internet NZ's Consultation document of February 2021 entitled 'nz Police review' in which InternetNZ's response to the Panel's recommendations is set out into the tranches.