

Submission by Rick Shera on the Application for .health.nz

To the Domain Name Commissioner,

As a member of the SRS Working Group, whose final report gave rise to current .nz SRS system and, more recently, as convenor of the working group whose deliberations gave rise to the .nz domain name dispute resolution system ("DRS"), I remain interested in developments in this area. I do not have any specific knowledge of the health system however so my comments must be read in that light.

I support this application and consider that the .health.nz will meet the criteria for creation of a 2ld in the .nz space.

There are however a few aspects that you and the applicant might like to consider:

1. I assume that the applicant has considered and discounted the possibility of some sort of sunrise period or other criteria for first registration? With 17,000 organisations and the potential for multiple domain names there is a reasonable chance of conflict. For example, there are presumably numerous "Smith" practitioners. How is the moderator to allocate the name smith.health.nz or any variant of that, particularly where a health practitioner already has a Smith variant name in an existing 2ld? As you will be aware, this has given rise to significant issues with the introduction of new 2lds overseas. A combination of the moderator and use of DRS panellists might assist in this area.
2. My assumption however is that the DRS generally will not apply to this 2ld since the moderation policy indicates that decisions re names, conflicts and the like will be made by the moderator. I would suggest that this be made explicit. However, given that the moderator will be making decisions analogous to those made under the DRS, it would be good to see an acknowledgement that the same principles will be applied, at least in clear cut cases that would have been susceptible to DRS determination.
3. Domain names can be vested with significant reputational and economic significance. The withdrawal of a name is a serious issue. It is therefore appropriate for the criteria for withdrawal to be specified in more detail. There are a few aspects to this:
 - 3.1 I am not sure that the reference to a name "being used in a way that could bring the sector into disrepute" (clause 2.7 of the draft moderation policy) or "in such a way as it will damage the reputation of the sector as a whole or the integrity of the domain name system" (clause 3.5) quite covers every possibility (and the two phrases are of course slightly different, which can cause difficulties). For example, how will a suspension under the Act be dealt with - should the use of the name be suspended at the same time? Further, what if the activity that brings the industry into disrepute has nothing to do with *use of the name* (but falls short of having the practitioner deregistered under the Act) - is that a situation in which the moderator would wish to exercise this power?
 - 3.2 Are there some objective criteria against which this standard of "disrepute" can be measured? No doubt one response might be that "It is difficult to define an elephant but I know one when I see one", but, as I say above, removal of a domain name is a serious matter. The SRS was put in place with the fundamental principle that registrants' rights would be given primacy. Therefore, any system which allows those rights to be removed should, in my view, be carefully enunciated. Just as the DRS does, I suggest that it is only fair for registrants to have details of the objective standards against which they are to be judged. Presumably, there is a significant body of administrative decision making under the Act which could be drawn upon to set out many of these Sector related criteria. I am uncertain however what is meant by "the integrity of the domain name system". If anyone was to have

a right to terminate a registrant's domain name registration on this ground (and many would argue against that), I would expect it to be the DNC. I am not aware of you having that right. I am concerned therefore that it is an altogether too subjective and vague criterion.

- 3.3 I do note that the policy is very similar on this issue to that in use for .parliament.nz and .govt.nz. However, I would suggest that whilst a lesser level of detail is understandable and appropriate where the regulatory power of the moderator is being exercised *intra-Government*, the same does not apply where a Government agency is exercising a power over private citizens as will be the case in the .health.nz 2ld.
4. I am not for a moment suggesting that the moderator would make such withdrawal decisions lightly, or contrary to natural justice, but the lack of any objective standards does not sit entirely comfortably with the application's support of the principles in RFC1591.
5. Following on from the above, it would I think be fairer to set out more detail on the appeal process (both its substance and its procedure). For example, in a situation where an application for a name is declined because the moderator considers that the name conflicts with or is misleadingly similar to an existing registrant's name, should the appeal process not specify that the existing registrant be given notice so that it can argue its case? Natural justice would presumably dictate that since one potential outcome of the appeal, if it is to have any utility, would have to be the removal of the name from the existing registrant, therefore that registrant should have the right to be heard. Often appellate processes also specify whether they are *de novo* (a complete re-hearing) or otherwise and detail other procedural aspects such as rights to be heard orally vs. on the papers alone.
6. A related issue, given that this involves Government sanction of private use rights, is whether the policy is entirely consistent with section 27 of the Bill of Rights Act 1990 (Right to Justice). Again, this is not my area but I note that the DRS policy explicitly recognises that that policy does not prevent an application to Court. Perhaps, to avoid any doubt, this policy should do likewise and not simply rely on judicial review rights.
7. I wonder also whether it would be useful to draw on the experience of the DRS panellists with respect to the proposed appointment to the appellate body of a non-Government person - i.e., provide that that person be an appointee of the Chair of the DRS Experts panel.
8. Finally, having read the Medical Council of New Zealand submission dated 3 June 2008, if that submission is correct in noting that persons such as the Health and Disability Commissioner would not be able to obtain a .health.nz domain name, then I agree that the registration criteria are too narrow. The Commissioner example is a particularly apposite one since the Commissioner appears to be integrally involved in quality assurance and regulatory processes under the Act. It would be strange therefore for Mr Paterson, the current Commissioner, to be unable to obtain a domain name in the 2ld designed for persons over whom he has regulatory oversight. As I said at the start of this submission, I am not across the detail of regulation in the health Sector however, so I do not comment on the exact wording which might be needed to expand the registration criteria adequately.

Thank you for your consideration.

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