

AARNet Pty Ltd
(A.C.N. 084 540 518)

Policy on Allowed Access to AARNet

1 July 2004

1. Preamble

1.1 AARNet Pty Ltd ('**APL**') is a not-for-profit company limited by shares. Most of the Australian universities and the CSIRO are shareholders in APL. APL is a licensed telecommunications carrier under the *Telecommunications Act 1997* (Cth.) (holding Carrier Licence No. 61).

1.2 APL owns and/or operates a telecommunications network, known as '**AARNet**', and through that network provides a range of national and international telecommunications services for persons in Australia. However, both as a condition of maintaining its 'not-for-profit' status for the purposes of Australian taxation laws, and by virtue of contractual arrangements through which it has acquired the capacity on its network to enable it to provide those telecommunications services, APL's activities as a provider of telecommunications services are limited to the provision of telecommunications services to entities and persons whose activities and/or objects are limited, or directly related, to education and research.

1.3 Entities and persons who wish to access and use AARNet must enter into an Access Agreement with APL. There are two forms of this Access Agreement: one for Members of APL (and certain other entities who are not Members, but are to be accorded the same terms of access to AARNet as those offered to Members), and one for all other parties.

1.4 In order to ensure that APL:

- (a) preserves its 'not-for-profit' status; and
- (b) complies with its obligations to its principal suppliers of telecommunications capacity,

APL has developed a set of rules or guidelines to determine whether a particular entity or person may be granted access to AARNet and, once such access has been granted, whether that entity or person may continue to have that access. It is those rules and guidelines that constitute *APL's Policy on Allowed Access to AARNet*.

1.5 By entering into an Access Agreement, an entity or person agrees to be bound not only by the terms and conditions of that Access Agreement but also by the provisions of this Access Policy, which form part of that Access Agreement. The terms and conditions of the Access Agreement must be read in conjunction with those of this Access Policy.

1.6 Accordingly, any entity or person wishing to access and use, or to continue accessing and using, AARNet is bound by the terms of this Access Policy, and must satisfy and continue to satisfy the rules and guidelines contained in it.

2. Interpretation

2.1 On and from 1 July 2004, the provisions of this document represent the entirety of the rules and guidelines pursuant to which parties are granted, and are permitted to retain, access to AARNet, and supersede and replace all prior documents and/or provisions concerning that subject matter. For the avoidance of doubt, on and from that date, this document supersedes and replaces the document entitled *Policy on Allowed Access to AARNet* dated on or about 3 May 2001 (and Attachment A to that document), and that latter documents will cease to have effect.

2.2 Section 1 (Preamble) and this section each form part of this Access Policy.

2.3 References in this document to:

- (a) this ‘**Access Policy**’ are references to this document;
- (b) ‘**AARNet**’ are references to the telecommunications network referred to in paragraph 1.2 of this Access Policy; and
- (c) a ‘**Member**’ means a person who is a shareholder of APL, from time to time, and ‘**Members**’ will have a corresponding meaning.

Rules/Guidelines for granting access to AARNet

3. General Principles of access

3.1 Subject to paragraph 3.2 below, an entity, body corporate, trust or person (or a particular division, section or discrete and separate element of that entity, body corporate, trust or person) is eligible to be granted access to AARNet if that entity, body corporate, trust or person (or that division, section or element, as the case may be) is located in Australia, and:

- (a) one of the material and actual purposes for which it has been formed, incorporated or constituted (whether by statute, regulation, contract, deed or other formal instrument) is any or all of the following:
 - (i) provision of education, training or teaching in Australia;
 - (ii) conduct or co-ordination of research in Australia;
 - (iii) administration of the activities referred to in subparagraphs (i) and/or (ii) of this paragraph 3.1(a);
 - (iv) provision of support or ancillary services to entities or persons engaging in the activities referred to in subparagraphs (i) and/or (ii) of this paragraph 3.1(a); or
- (b) establishes to APL's satisfaction that its activities and operations are restricted substantially and/or materially to any or all of the following:

- (i) provision of education, training or teaching in Australia;
- (ii) conduct or co-ordination of research in Australia;
- (iii) administration of the activities referred to in subparagraphs (i) and/or (ii) of this paragraph 3.1(b); or
- (iv) provision of support or ancillary services to entities or persons engaging in the activities referred to in subparagraphs (i) and/or (ii) of this paragraph 3.1(b).

3.2 Notwithstanding that an entity or person may be eligible for a grant of access to AARNet by virtue of paragraph 3.1 above, any grant of access to that entity or person is subject to a requirement that such access to, and any use of, AARNet by that entity or person is for a purpose related substantially and/or materially to any or all of the following:

- (a) provision of education, training or teaching in Australia;
- (b) conduct or co-ordination of scientific and/or medical research in Australia;
- (c) administration of the activities referred to in subparagraphs (a) and/or (b) of this paragraph 3.2; or
- (d) provision of support or ancillary services to entities or persons engaging in the activities referred to in subparagraphs (a) and/or (b) of this paragraph 3.2.

3.3 For the avoidance of doubt, APL may grant access to AARNet to a particular division, section, or discrete and separate element of an entity, body corporate, trust or person even though, when viewed overall:

- (a) that entity, body corporate, trust or person was not formed, incorporated or constituted materially for any of the purposes referred to in paragraph 3.1(a); or
- (b) the activities and operations of that entity, body corporate, trust or person are not restricted substantially and/or materially to any or all of the purposes referred to in paragraph 3.1(b),

provided that:

- (c) that division, section or element was formed, incorporated or constituted solely or principally for any of the purposes referred to in paragraph 3.1(a); and/or
- (d) the activities and operations of that division, section or element are restricted solely or principally to any or all of the purposes referred to in paragraph 3.1(b).

3.4 Even if an entity or person is eligible to be granted access to AARNet by virtue of this Access Policy, it will not have a right to such access unless and until it has entered into an Access Agreement (or equivalent document) with APL.

3.5 Once an entity or person is granted access to AARNet, its continued access to AARNet is conditional on:

- (a) if it became eligible for access by virtue of satisfying the requirements of subparagraph 3.1(a) or 3.1(b) above, as the case may be, it continuing to satisfy such requirements; and
- (b) its access and use of AARNet being restricted to the purposes specified in paragraph 3.2 above.

Without limiting APL's rights under the Access Agreement between it and such entity or person, if that entity or person either fails to satisfy each of these conditions, or breaches either condition, then APL may revoke that entity or person's access to AARNet.

- 3.6 For the purposes of paragraphs 3.1 and 3.2 of this section 3, an activity will be considered to be '*in Australia*' notwithstanding that such activity may be conducted, or the benefit of such activity may be enjoyed, outside Australia, provided that:
- (a) the conduct of such activity is substantially controlled by the relevant entity or person from Australia; or
 - (b) a substantial portion of the benefit of such activity is enjoyed in Australia.
- 3.7 Sections 4 and 5 of this Access Policy are intended to further explain the operation of, but do not limit the general operation of the principles in, this section 3.

4. Access by Members/Associates of APL

- 4.1 A Member will be entitled to access and use AARNet, provided that:
- (a) it is party to an operative Access Agreement with APL; and
 - (b) its access and use of AARNet, from time to time, conforms to, and complies with, the requirements of paragraph 3.2.
- 4.2 A Member's entitlement to access and use AARNet includes a right to authorise and permit the following persons to access and use AARNet through that Member's means of access:
- (a) the officers and staff of that Member, its departments, faculties, schools, other divisions or centres directly controlled by that Member and/or administration (provided that such persons perform functions for that Member that are directly related to the activities listed in paragraph 3.2);
 - (b) enrolled students of that Member, from time to time;
 - (c) contractors and agents of that Member (provided that such persons perform functions for that Member that are directly related to the activities listed in paragraph 3.2);
 - (d) visiting staff and students (whether academic or otherwise) from other educational or research institutions; and
 - (e) a corporation:
 - (i) that is a '*subsidiary*' of that Member (as that term is defined in the *Corporations Act 2001* (Cth.)); and

- (ii) whose operations are related principally to educational and/or research purposes; and
 - (f) enrolled students (if any) of a corporation of the kind referred to in paragraph (e) above, and the officers, employees, contractors and/or agents of such corporation (provided that such persons perform functions for that corporation that are directly related to the activities listed in paragraph 3.2).
- 4.3 By authorising and permitting a person of the type listed in paragraph 4.2 to access and use AARNet, a Member agrees to be fully responsible (and therefore liable) for the access and use by that person. APL is entitled to treat any access or use by such person as being access and use by the Member.
- 4.4 Those entities or organisations that are designated as ‘*Associates*’ of APL from time to time¹ will be entitled to access and use, and to permit third parties to access and use, AARNet in the same manner, and subject to the same terms and conditions, as for Members. To that end, references to ‘*Members*’ in this section 4, and in sections 6 to 10 (inclusive), may be read as if there were also references to the parties designated as ‘*Associates*’ of APL from time to time.
- 5. Access by entities that are not Members or Associates of APL**
- 5.1 Provided that a given entity or person satisfies the guidelines in paragraphs 3.1 and 3.2, APL may, in its absolute discretion, grant to that entity or person the right to access and use AARNet. That grant will be conditional on that entity or person continuing to satisfy the guidelines in paragraph 3.1 and 3.2, and subject to the terms of the Access Agreement between APL and that entity or person.
- 5.2 It is not a requirement or condition of that grant of such right that that entity or person is:
- (a) nominated or approved by, or otherwise associated with, a Member; or
 - (b) co-located at premises or facilities of a Member; or
 - (c) engaged in 'higher' or tertiary education.
- 5.3 By way of example, but without limiting paragraph 5.1, access to, and use of, AARNet may be granted to any or all of the following:
- (a) TAFE institutions and similar vocational education and training organisations or corporations;
 - (b) schools;
 - (c) entities with whom APL collaborates as part of a government or related program, or is engaged in research and/or education partnerships; and/or
 - (d) private universities and colleges operating in Australia;

¹ As at 1 January 2005, the Australian Institute of Marine Sciences, the Australian Nuclear Science and Technology Organisation, the University of the Sunshine Coast, the Australian Vice-Chancellors' Committee Secretariat and the Defence Science and Technology Organisation as so designated.

- (e) corporations, partnerships and joint ventures formed to engage in research and development, irrespective of whether they are funded privately (whether wholly or partially);
 - (f) discrete divisions or sections, or subsidiaries, of commercial corporations, joint ventures, partnerships or entities, devoted solely or principally to the provision of education, training or research for that corporation, venture, partnership or entity (or group of corporations of that that corporation, venture, partnership or entity is part), provided such access and use is limited to purposes specified in paragraph 3.2;
 - (g) hospitals, provided such access and use is limited to purposes specified in paragraph 3.2; and/or
 - (h) government departments, provided such access and use is limited to purposes specified in paragraph 3.2.
- 5.4 If an entity or person is granted access to AARNet by virtue of this section 5 of this Access Policy, its entitlement to access and use AARNet includes a right to authorise and permit the following persons to access and use AARNet through its means of access:
- (a) the officers and staff of that entity or person, its departments, faculties, schools and/or administration (provided that such persons perform functions for that entity or person that are directly related to the activities listed in paragraph 3.2);
 - (b) enrolled students (if any) of that entity or person;
 - (c) contractors and agents of that entity or person (provided that such persons perform functions for that entity or person that are directly related to the activities listed in paragraph 3.2); and
 - (d) bona fide visitors of that entity or person, provided that such access and use is solely for an educational or research purpose.

5.5 An entity or person, who is not a Member, who requests access to AARNet will not be entitled to such access unless and until it enters into an Access Agreement with APL.

6. On-supply of services by Members and 'Non-Members'

- 6.1 Only Members may grant to third parties rights to access and use AARNet, and even then a Member's ability to make such grant will be subject to paragraph 6.2, and the terms and conditions of the applicable Access Agreement between APL and that Member.
- 6.2 A Member may grant to a third party rights to access and use AARNet, only if that third party satisfies (and continues, on an ongoing basis, to satisfy) the guidelines in paragraph 3.1 and 3.2. If, for any reason, that third party fails to satisfy such guidelines, or breaches them, that Member must suspend or terminate that third party's access to, and use of, AARNet.
- 6.3 By granting to such third party a right to access and use AARNet, a Member agrees to be fully responsible (and therefore liable) to APL not only for the grant of that right, but also for the access and use by that third party (or, if applicable, its officers, agents,

employees, students, invitees and/or contractors). APL is entitled to treat any access or use by such persons as being access and use by the Member.

7. Commercial activities of Members and 'Non-Members' using AARNet

7.1 The intention of the guidelines and conditions in section 3 of this Access Policy is to ensure that the basis of a grant of access to, and the ongoing use of, AARNet is for educational and/or research purposes. The corollary of that intention is that if:

- (a) an entity or person accesses or uses AARNet (or permits others to access or use AARNet); or
- (b) in the case of a Member, grants to entities or persons rights to access and use AARNet,

for purposes unrelated to education and/or research, or in circumstances where the stated education or research purpose is merely an incidental or insignificant element of the relevant access and use, then that entity or person, or that Member, will be in breach of paragraph 3.2. Such breach will cause APL itself to be in breach of restrictions placed upon it by a number of suppliers from whom APL has acquired capacity for the purposes of AARNet, which imperils APL's ability to deliver services to its Members as a whole, and to other parties who acquire services through AARNet. Accordingly, APL will treat such breaches as grounds to terminate access to AARNet by the party or parties who engage in such conduct or permit it to continue.

7.2 Notwithstanding paragraph 7.1, the requirements of section 3 do not mean that a Member or other entity or person accessing AARNet is prevented from imposing fees and charges as a condition of permitting others to use telecommunications services made available through AARNet, provided that those fees and charges are intended to enable the Member, entity or person (as the case may be) (the onus being on it to establish this) to recover the reasonable costs to it of permitting such use.

7.3 The grant of access to AARNet to a small business or enterprise that is co-located with, or provides services principally for the benefit of students and employees of, a Member or other entity or person granted access to AARNet will generally be considered to be within the guidelines and requirements of section 3. Examples of such businesses or enterprises are University bookshops, campus health centres and computer shops. However, if the operations of such businesses or enterprises extends beyond providing benefits to just the relevant Member, entity or person and its respective students and/or employees (for example, where a bookshop were to use its access to AARNet to sell books and materials to the public), then such use would be in breach of this Access Policy.

7.4 Notwithstanding any other provision in this policy that may suggest the contrary, APL considers that licensed 'carriers' (as that term is defined under the *Telecommunications Act*) companies who are themselves engaged in the development and supply of telecommunications services, will not be eligible for access to AARNet, unless by virtue of their constitution or an agreed undertaking, their activities and operations are the same or substantially the same as those of APL.

7.5 For the purposes of paragraphs 7.3 and 7.4, APL considers that the grant of access to such businesses, enterprises or companies (as the case may be) must be considered on a case-by-case basis, and reserves the right to direct that access by particular businesses or enterprises not be given or, if given, that it cease.

7.6 Under no circumstances may any party, who is permitted to access and use AARNet, agree to make available any capacity on AARNet to any Internet Service Provider or other telecommunications service provider.

8. Means of access, remote access

8.1 APL will issue, from time to time, technical specifications and standards prescribing the manner in which Members and other parties may access and use AARNet (including remote access), and the requirements to effect such access and use. A party who is granted rights to access and use AARNet may only effect such access and use in accordance with such specifications and standards.

8.2 Each Member must ensure that each person to whom it grants access to, and use of, AARNet, accesses and uses AARNet in accordance with the specifications and standards referred to in paragraph 8.1.

8.3 A failure to comply with this section 8 on the part of:

(a) a Member (or a person to whom it grants access to, and use of, AARNet); or

(b) an entity or person to whom APL has granted access to, and use of, AARNet,

will be considered a breach of this Access Policy by that Member, or that entity or person, as the case may be, and APL may take such action as is available to it under the applicable Access Agreement arising from that Member's, or that entity or person's, breach of this Access Policy.

9. Compliance with laws

Each person, to whom rights to access and use AARNet is given by APL, is responsible for complying with all laws applicable to:

(a) the access and use of AARNet by that person and any individuals who are authorised and permitted to access and use AARNet; and/or

(b) in the case of Members, its own grant of rights to access and use AARNet, or the supply of telecommunications generally, to third parties,

whether in accordance with this Access Policy or otherwise.

10. Clarifications, directions

10.1 APL has endeavoured to outline its policy on access to, and use of, AARNet, which reflects both its own strategic initiatives and objectives and its legal obligations, both under statute and contract. However, each person who is granted rights in respect of AARNet acknowledges and agrees that:

(a) the regulatory environment affecting the provision of telecommunications services is subject to change, and the interpretation of the applicable legislation is complex;

(b) the guidelines and rules in this Access Policy represent APL's own understanding of the requirements and restrictions to which it is subject under contracts with suppliers from whom APL has acquired capacity for the purposes of AARNet, but that that understanding may need to be adjusted over time; and

- (c) the technology underlying AARNet may change, which may necessitate changes to the manner in which this Access Policy applies.
- 10.2 To meet or address the circumstances referred to in paragraph 10.1, APL may issue clarifications or directions as to how this Access Policy, or particular provisions of this Access Policy, is or are to be interpreted and/or operate. Such clarifications or directions will be binding on those persons to whom rights to access and use AARNet have been given, whether by APL itself or by a Member, and, in the latter instance, that Member must ensure that such clarifications or directions issued by APL bind the parties to whom it has granted rights of access and use.
- 10.3 Aside from the circumstances referred to in paragraph 10.1, if a Member or other entity or person is unclear as to how this Access Policy is to be interpreted, or will operate, it may, in writing, seek a clarification or explanation from APL. Such clarification or explanation, once given by APL will be binding on the person who requested it. APL may, in its discretion, issue the clarification or explanation to all persons who are bound by this Access Policy and declare that such clarification or explanation will bind all such persons.