

# AUSTRALIAN E-RESEARCH INFRASTRUCTURE COUNCIL (AERIC)

## AERIC MEETING – 23 JULY 2007

### AGENDA ITEM 8: MANAGING AERIC MEMBER CONFLICTS OF INTEREST

#### Purpose

For AeRIC members to:

1. agree to the proposed AeRIC Code of Conduct and Conflict of Interest Guidelines;
2. agree to provide a statement of interests to the Secretariat by 24 August 2007;
3. note that their interests will be assessed at the following AeRIC meeting; and
4. note that an agenda item on Conflicts of Interest will be included in subsequent AeRIC meetings.

#### Issues

AeRIC is responsible for overseeing the NCRIS Platforms for Collaboration capability and advising the Government on the ongoing implementation, monitoring and review of \$75 million in funding under the National Collaborative Research Infrastructure Strategy.

It is imperative that AeRIC activities be performed with fairness and impartiality. In order to ensure the probity of AeRIC's activities it is proposed the attached Code of Conduct and Conflict of Interest Guidelines be utilised. The attachment is very similar to the arrangements for the NCRIS Committee.

DEST intends to write to each AeRIC member following this meeting, asking that the member agree to abide by the Code of Conduct and asking that the member declare all conflicts of interest. Any conflicts that arise will be treated in accordance with the guidelines.

A standing agenda item will be included at future AeRIC meetings where members will be asked to declare any conflicts of interest with respect to the agenda under consideration.

#### Action

That AeRIC discuss and agree to the Code of Conduct and Conflict of Interest Guidelines, and the associated processes.

AeRIC Secretariat

July 2007

**Australian e-Research Infrastructure Council**

**Code of Conduct and Conflict of Interest Guidelines**

**Code of Conduct**

Members of the Australian e-Research Infrastructure Council (AeRIC) are expected to observe the following code of conduct.

1. Members should perform the duties of their position impartially, uninfluenced by fear or favour.
2. Members should be frank and honest in official dealings with colleagues.
3. Members should avoid situations in which their private interest, whether pecuniary or otherwise, conflicts or might reasonably be thought to conflict with their public duty.
4. Members should not use information obtained in the course of official duties to gain directly or indirectly a pecuniary or other advantage for themselves or for any other person.
5. Members should not:
  - a. solicit or accept from any person any remuneration or benefit for the discharge of the duties of their office over and above the official remuneration;
  - b. solicit or accept any benefit, advantage or promise of future advantage, whether for themselves, their immediate family or any business concern or trust with which they are associated from persons who are in, or seek to be in, any contractual or special relationship with government;
  - c. except as may be permitted under the rules applicable to their office, accept any gift, hospitality or concessional travel offered in connection with the discharge of the duties of their office.
6. Members should be scrupulous in their use of public property and services, and should not permit their misuse by other persons.
7. Members should not allow the pursuit of their private interest to interfere with the proper discharge of their public duties.<sup>1</sup>

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<sup>1</sup> This code is based on the principles set out in the Report of the Committee of Inquiry: Public Duty and Private Interest 1979 (the Bowen Report) referred to in the APSC publication APS Values and Code of Conduct in Practice

## Conflict of Interest Guidelines

**Conflict of interest arises inevitably from time to time. These guidelines are designed to ensure that all such conflicts are identified, disclosed and managed in a rigorous and transparent way that promotes public confidence in the integrity, legitimacy, impartiality and fairness of AeRIC's decision-making.**

### 1. Three Steps

- **Identify and record any conflict of interest**
- **Assess the materiality of any conflict of interest**
- **Effectively manage the conflict of interest**

### 2. Identification and Recording

#### What is a conflict of interest?

2.1 A conflict of interest involves a conflict between the public duty and private interests of a member, in which the member has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.<sup>2</sup>

2.2 An *apparent* (or perceived) conflict of interest exists where it appears that a member's private interests could improperly influence the performance of their duties and responsibilities but this is not in fact the case. A *potential* conflict of interest arises where a member has a private interest which is such that an actual conflict of interest would arise if the member were to become involved in relevant (ie conflicting) official duties and responsibilities in the future.<sup>3</sup>

2.3 In the context of AeRIC a conflict of interest (apparent or potential) may arise in the following situations (this list is indicative and not exhaustive of the types of private interests that may result in a conflict of interest):

#### Financial

- Member has a current contractual relationship with an organisation that stands to benefit from NCRIS funding
- Member is a member of or has involvement with an organisation that stands to benefit from NCRIS funding

#### Other

- A family member is an employee of an organisation that stands to benefit from NCRIS funding
- Membership of an interest or lobby group involved in activities directly related to the NCRIS programme

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<sup>2</sup> This definition is set out in *Managing Conflict of Interest in the Public Service: OECD Guidelines and Overview*, OECD, 2003 referred to in the Employment, Workplace Relations & Education Committee Inquiry into the Office of the Chief Scientist 5 August 2004

<sup>3</sup> Definitions based on *Managing Conflict of Interest in the Public Service: OECD Guidelines and Overview*, OECD, 2003

## Procedures for identifying and recording any Conflict of Interest (apparent or potential)

2.4 Prior to undertaking or participating in any official duties or responsibilities, members must disclose in writing the nature of any private interest (financial or other) and conflict of interests in relation to matters to be considered by the member.<sup>4</sup>

2.5 Prior to an AeRIC meeting, the Department will provide members with a draft meeting agenda and seek disclosure from members of any potential conflict of interest.

2.6 The agenda of any AeRIC meeting must have an early agenda item involving formal enquiry as to the existence of any conflict of interests in relation to matters under consideration by AeRIC.

2.7 If a member becomes aware of any conflict of interest during discussions in a meeting they must declare it orally in the meeting to the Chair. Such disclosure must be made as soon as the relevant facts come to the member's knowledge, and must be recorded in the minutes of meetings.

2.8 *Completeness of Disclosure* – When disclosing private interests or conflicts of interests a member must provide sufficient detail to enable an adequately informed decision to be made about identification of any conflict of interest, the materiality of any conflict of interest and appropriate management.

### **3. Assessing Materiality of any Conflict of Interest**

**A too strict approach to managing private interests and conflicts of interest may conflict with other rights, be unworkable or counter-productive in practice (eg where the member has the greatest expertise in the particular matter), or may deter some people from seeking public office. Therefore these guidelines seek to strike a balance by prohibiting unacceptable forms of conflict and managing other conflict situations appropriately without unduly inhibiting the effectiveness and efficiency of AeRIC.**<sup>5</sup>

3.1 If a member declares a potential or apparent conflict of interest AeRIC must assign a level of materiality to the conflict of interest as follows:

- Category 1 – Those conflicts of interest where, while it is appropriate and proper to notify the apparent conflict, it is of such a minor nature that it could not reasonably be construed as affecting the member's ability to give the issue or matter at hand full, unbiased and expert consideration.
- Category 2 – Those conflicts of interest which, although not minor in nature, are not so material that it should deprive AeRIC of the member's expertise and knowledge during the consideration of the issue or matter at hand.

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<sup>4</sup> The information in the Statement will be treated by the Commonwealth as confidential and in accordance with the Information Privacy Principles set out in the Privacy Act.

<sup>5</sup> In accordance with *Managing Conflict of Interest in the Public Service: OECD Guidelines and Overview*, OECD, 2003 p7.

- Category 3 – Those conflicts of interest which are so material that a member could not, or would be perceived as not able to, give the matter or issue at hand full, unbiased and expert consideration.

3.2 In making this assessment of materiality AeRIC may consider:

- How the member stands to benefit eg securing employment for a family member, renewal of a contract or grant funding, increased job security;
- To what extent the member can influence that outcome;
- Is there any capacity for the member to use information gained as a member of the Committee to obtain (either directly or indirectly) an advantage for themselves or another person or organisation.

3.3 AeRIC's assessment of the materiality of a conflict of interest must be made before the member undertakes or participates in any official duties or responsibilities. The assigned category of the conflict of interest and the reasons for that assigned level must be recorded.

#### **4. Effectively managing the conflict of interest**

4.1 Where a member has disclosed a potential or apparent conflict of interest to the Department prior to a meeting, the Department, in liaison with the Chair of AeRIC, will determine at first instance the category of conflict of interest. Depending on the category determined the member may not receive reports or information on the matter in relation to which the member has the conflict. AeRIC must confirm or vary the category determined by the Department at the forthcoming meeting and record the decision in the minutes of the meeting.

4.2 Categories of Conflict of Interest must be managed as follows:

- Category 1

Members with category 1 conflicts of interest may undertake and participate fully in official duties and responsibilities relating to that conflict including participating in AeRIC's deliberations and recommendations.

- Category 2

Members with category 2 conflicts:

- may undertake and participate in duties and responsibilities to which that conflict applies which do not involve making decisions or recommendations; and
- will, in relation to the matter to which the conflict applies:
  - not be given access to any confidential material in agenda papers;
  - have their conflict of interest disclosed to AeRIC prior to participating in AeRIC discussions; and
  - not take part in any AeRIC decision.

- Category 3

Members with category 3 conflicts will, in relation to the matter to which the conflict applies:

- physically absent themselves from all or any part of a meeting or other discussion at which the matter is being discussed;
- not receive any papers; and
- not take part in any decision making.

4.3 Compliance with the management of the conflict of interest in accordance with these guidelines must be recorded.

4.4 Where possible, if a member can foresee a potential conflict of interest at some future time, the member should take steps to prevent it from actually arising.

## **5. Enforcement of the conflict of interest Guidelines**

**These guidelines seek to impose proportional consequences for a member's breach of them. AeRIC is responsible for enforcing these guidelines including investigating any breach and ensuring procedural fairness is observed during that investigation.**

5.1 If AeRIC becomes aware of a member's possible breach of these guidelines, it must investigate and decide whether there is a breach of the guidelines and whether to impose one or more of the following consequences:

- publishing details of the breach in the minutes of AeRIC meetings; or
- publishing details of the breach on the Department's website; or
- excluding or limiting the participation of the member for a period of time from an activity of AeRIC; or
- recommending to DEST that the member's appointment be revoked.

5.2 AeRIC may exclude the member from its deliberations under clause 5.1. However, AeRIC must give the member an opportunity to make written or oral submissions to it prior to making any decision under clause 5.1.

5.3 In making a decision under clause 5.1 AeRIC may have regard to any matter, including whether:

- the breach is of a minor or major nature;
- the breach has occurred before and, if so, how often; and
- the impact of the breach on public confidence in the integrity, legitimacy, impartiality and fairness of AeRIC's decision-making.

5.4 AeRIC must record details of its decisions under clause 5.1 in its minutes and also report those details to the Department.