



## Academic Freedom and Freedom of Speech Policy

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**Custodian:** Vice-Chancellor & President

**Contact:** Deputy Vice-Chancellor Research and Innovation

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In developing this policy the University had regard to the provisions of section 40B(1)(b) of the Human Rights Act 2004 (ACT).

### PURPOSE:

1. To ensure that the freedom of lawful speech of staff and students of the University and visitors to the University is treated as a paramount value and therefore is not restricted nor its exercise unnecessarily burdened by restrictions or burdens other than those imposed by law and set out in the Principles of the Policy.
2. To ensure that academic freedom is treated as a defining value by the University and therefore not restricted nor its exercise unnecessarily burdened by restrictions or burdens other than those imposed by law and set out in the Principles of the Policy.
3. To affirm the importance of the University's institutional autonomy under law in the regulation of its affairs, including in the protection of freedom of speech and academic freedom.

### SCOPE:

1. This Policy applies to the governing body of the University, its officers and employees and its decision-making organs, including those involved in academic governance.
2. It also applies to student representative bodies to the extent that their policies and rules are capable of being applied to restrict or burden the freedom of speech or academic freedom of anyone.

### PRINCIPLE:

1. The University is committed to the promotion and protection of academic freedom; academic staff and students at the University are free to engage in critical enquiry, scholarly endeavour, creative endeavour and public discourse in relation to their subjects of study and research and to enjoy academic freedom subject only to prohibitions, restrictions or conditions:

- 1.1. imposed by law;
  - 1.2. imposed by the reasonable and proportionate regulation necessary to the discharge of the University's teaching and research activities, and by the establishment of scholarly standards for disputes that are conducive to the University's core mission of the advancement of knowledge;
  - 1.3. imposed by the reasonable and proportionate regulation necessary to discharge the University's duty to foster the wellbeing of students and staff;
  - 1.4. imposed by the reasonable and proportionate regulation to enable the University to give effect to its legal duties; and
  - 1.5. imposed by the University by way of its reasonable requirements as to the courses to be delivered and the content and means of their delivery.
2. The exercise of academic freedom by a member of the academic staff or by a student, subject to the above limitations, shall not constitute misconduct nor attract any penalty or other adverse action.
3. The University is committed to the right of all staff and students at the University to enjoy freedom of speech exercised on University land or in connection with the University. Freedom of speech is subject only to restraints or burdens imposed by:
- 3.1. law, including those laws that protect individuals from being humiliated or intimidated;
  - 3.2. the reasonable and proportionate regulation necessary to the discharge of the University's teaching and research activities;
  - 3.3. the right and freedom of others to express themselves and to hear and receive information and opinions, recognising that all members of the University community have the freedom to express their respective views;
  - 3.4. the reasonable and proportionate regulation of conduct to enable the University to fulfill its duty to foster the wellbeing of students and staff, including measures to mitigate risks to their safety; and
  - 3.5. the reasonable and proportionate regulation of conduct necessary to enable the university to give effect to its legal duties including its duties to visitors to the University.
4. Subject to reasonable and proportionate regulation of the kind referred to above, a person's lawful speech on the University's land or in or in connection with a University activity shall not constitute misconduct nor attract any penalty or other adverse action by reference only to its content; nor shall the freedom of academic staff to make lawful public comment on any issue in their personal capacities be subject to constraint imposed by reason of their employment by the University. Where multiple conflicting views exist in the lawful exercise of freedom of speech, the University's duty to foster the wellbeing of students and staff will be used as a guiding principle in deciding on an organisational response.
5. In entering into affiliations, collaborative or contractual arrangements with third parties and in accepting donations from third parties subject to conditions, the University shall take all reasonable steps to minimise the restrictions or burdens imposed by such arrangements or conditions on the freedom of speech or academic freedom of any member of the academic staff or students carrying on research or study under such arrangements or subject to such conditions.
6. The University has the right and responsibility to determine the terms and conditions upon which it shall permit external visitors and invited visitors to speak on University land and use University facilities and in so doing may:
- 6.1. require the person or persons organising the event to comply with the University's booking procedures and to provide information relevant to the conduct of any event, and any public safety and security issues;

- 6.2. distinguish between invited visitors and external visitors in framing any such requirements and conditions;
- 6.3. refuse permission to any invited visitor or external visitor to speak on University land or at University facilities where the content of the speech is or is likely to:
  - 6.3.1. be unlawful;
  - 6.3.2. prejudice the fulfillment by the University of its duty to foster the wellbeing of staff and students;
  - 6.3.3. involve the advancement of theories or propositions which purport to be based on scholarship or research but which fall below scholarly standards to such an extent as to be detrimental to the University's character as an institution of higher learning;
- 6.4. require a person or persons seeking permission for the use of University land or facilities for any visiting speaker to contribute in whole or in part to the cost of providing security and other measures in the interests of public safety and order in connection with the event at which the visitor is to speak.

7. Subject to the preceding Principles, the University shall not refuse permission for the use of its land or facilities by an external visitor or invited visitor nor attach conditions to its permission, solely on the basis of the content of the proposed speech by the visitor.

8. Consistent with this Policy, the University may take reasonable and proportionate steps to ensure that all prospective students in any of its courses have an opportunity to be fully informed of the content of those courses. Academic staff must comply with any policies and rules supportive of the University's duty to foster the wellbeing of staff and students. They are not precluded from including content solely on the ground that it may offend or shock any student or class of students.

## **Operations**

1. The University shall have regard to the Principles of this Policy in the drafting, review or amendment of any non-statutory policies or rules and in the drafting, review or amendment of delegated legislation pursuant to any delegated law-making powers.
2. Non-statutory policies and rules of the University shall be interpreted and applied, so far as is reasonably practicable, in accordance with the Principles of this Policy.
3. Any power or discretion under a non-statutory policy or rule of the University shall be exercised in accordance with the Principles in this Policy.
4. This Policy prevails, to the extent of any inconsistency, over any non-statutory policy or rules of the University.
5. Any power or discretion conferred on the University by a law made by the University in the exercise of its delegated law-making powers shall be exercised, so far as that law allows, in accordance with the Principles of this Policy.
6. Any power or discretion conferred on the University under any contract or workplace agreement shall be exercised, so far as it is consistent with the terms of that contact or workplace agreement, in accordance with the Principles of this Policy.

## **RESPONSIBILITIES:**

Who	Responsibilities
Vice-Chancellor	Policy custodian
Deputy Vice-Chancellor Research and Innovation	Policy contact.  Policy implementation and review.  Monitoring and reporting on policy compliance and/or policy improvement and development.

## LEGISLATION:

*Higher Education Support Act 2003, Higher Education Support Amendment (No 1) Act 2011 and Higher Education Support Amendment (No 2) Act 2011*

[International Covenant on Civil and Political Rights](#)

*Human Rights Act 2004 (ACT)*

*Delegations of Authority Policy*

[Academic Staff Promotions Policy](#)

[Human Rights and Discrimination Policy](#)

[Intellectual Property Policy](#)

[Peer Review of Research Policy](#)

[Performance Expectations Policy](#)

[Privacy Policy](#)

[Publication and Authorship of Research Policy](#)

[Risk Management Plan](#)

## SUPPORTING INFORMATION:

French Report (The Report of the Independent Review of Freedom of Speech in Australian Higher Education Providers) March 2019.

Universities Australia media release (from 2019) affirming their support for the French Report, and their media release (from 2018) re-affirming their commitment to academic freedom.

Letter from Minister of Education the Hon Dan Tehan, 6 January 2020.

## DEFINITIONS:

Terms	Definitions
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Academic freedom	<ul style="list-style-type: none"> <li>• the freedom of academic staff to teach, discuss, and research and to disseminate and publish the results of their research;</li> <li>• the freedom of academic staff and students to engage in intellectual inquiry, to express their opinions and beliefs, and to contribute to public debate, in relation to their subjects of study and research;</li> <li>• the freedom of academic staff and students to express their opinions in relation to the higher education provider in which they work or are enrolled;</li> <li>• the freedom of academic staff, without constraint imposed by reason of their employment by the university, to make lawful public comment on any issue in their personal capacities;</li> <li>• the freedom of academic staff to participate in professional or representative academic bodies;</li> <li>• the freedom of students to participate in professional or representative academic bodies; and</li> <li>• the autonomy of the higher education provider in relation to the choice of academic courses and offerings, the ways in which they are taught and the choices of research activities and the ways in which they are conducted.</li> </ul>
academic staff	all those who are employed by the University to teach and/or carry out research, including those who provide, whether on an honorary basis or otherwise, teaching services and/or conduct research at the University.
duty to foster the wellbeing of staff and students	<ul style="list-style-type: none"> <li>• includes the duty to ensure that no member of staff and no student suffers unfair disadvantage or unfair adverse discrimination on any basis recognised at law including race, gender, sexuality, religion and political belief;</li> <li>• includes the duty to ensure that no member of staff and no student is subject to threatening or intimidating behaviour by another person or persons on account of anything they have said or proposed to say in exercising their freedom of speech;</li> <li>• supports reasonable and proportionate measures to prevent any person from using lawful speech which a reasonable person would regard, in the circumstances, as likely to humiliate or intimidate other persons and which is intended to have either or both of those effects; and</li> <li>• does not extend to a duty to protect any person from feeling offended or shocked or insulted by the lawful speech of another.</li> </ul>
external visiting speaker	any person who is not an invited visiting speaker and for whom permission is sought to speak on the university's land or facilities.
Imposed by law	in relation to restrictions or burdens or conditions on a freedom include restrictions or burdens or conditions imposed by statute law, the common law (including the law of defamation), duties of confidentiality, restrictions deriving from intellectual property law and restrictions imposed by contract.

invited visiting speaker	any person who has been invited by the university to speak on the university's land or facilities. For the purposes of this definition, "the University" includes its decision-making organs and officers; its student representative bodies, under-graduate and post-graduate students; societies and associations recognised by its decision-making organs or student representative bodies; and any entities controlled by the University.
Non-statutory policies and rules	any non-statutory policies, rules, guidelines, principles, codes or charters or similar instruments.
speech	includes all forms of expressive conduct including oral speech and written, artistic, musical and performing works, peaceful protest and activity and communication using social media.
staff	for the purposes of this policy, 'staff' includes all employees of the University whether fulltime or part-time, and whether or not academic staff.
The University	The University as an entity, including its decision-making organs and officers, its student representative bodies—undergraduate and postgraduate—and any entities controlled by the University.
unlawful	In contravention of a prohibition or restriction or condition imposed by law.

#### NOTES:

There are no attendant procedures. The University will review associated documents in accordance with published review schedules for compliance with the Principles of this Policy.