

Policy: Academic Freedom and Freedom of Speech

“The establishment and maintenance of academic freedom is more important than the actual research and teaching done inside the walls of a university.”

Sir Douglas Copland Inaugural Vice-Chancellor Australian National University 1948 – 1952

Purpose

To outline the University’s policy framework for ensuring the protection of academic freedom and freedom of speech.

Overview

The aims of this policy are:

- To ensure that academic freedom is treated as a defining value by the University and, therefore, not restricted nor its exercise unnecessarily burdened other than in accordance with law or as required by this policy.
- 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, not restricted nor its exercise unnecessarily burdened other than in accordance with the law or as required by this policy.
- To affirm the importance of the University’s institutional autonomy under law in the regulation of its affairs, including in the protection of academic freedom and freedom of speech.

Scope

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.

Definitions

Academic freedom¹ for the purposes of this policy comprises the following elements:

- the freedom of academic² staff to teach, discuss, and research and to disseminate and publish the results of their research;
- 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;

¹ Hon Robert French AC’s Report of the Independent Review of Freedom of Speech in Australian Higher Education Providers – p.230

Higher Education Support Act 2003 Compilation No. 78 - Subclause 1(1) of Schedule 1

² For the purposes of this policy, ‘academic staff’ includes HDR students, holders of an academic title conferred under the Academic Titles Conferral policy, and non-academic staff engaged in academic activity.

- 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;
- the freedom of academic staff to participate in professional or representative academic bodies;
- the freedom of students to participate in student societies and associations;
- 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.

Duty to foster the wellbeing of staff and students

- 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 identity, sexuality, religion and political belief;
- 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;
- supports reasonable and proportionate measures to prevent any person from engaging in lawful speech which a reasonable person would regard, in the circumstances, as likely to humiliate or intimidate any other person or persons and which is intended to have either or both of those effects;
- does not extend to a duty to protect any person from feeling offended, shocked or insulted by the lawful speech of another.

Freedom of speech for the purposes of this policy comprises the freedom of academic staff and students of the University and visitors to the University to engage in all forms of lawful expressive conduct including oral speech and written, artistic, musical and performing works and activity and communication using social media.

Invited visiting speaker means any person who has been invited by the University to speak on the University's land or at its facilities. For the purposes of this definition, 'the University' includes: its decision-making organs and officers; its student representative bodies, undergraduate and post-graduate; any clubs, societies and associations recognized by its decision-making organs or student representative bodies; and any entities controlled by the University.

Non-invited visiting speaker means any person who is not an invited visiting speaker and for whom permission is sought to speak on the University's land or at its facilities.

Policy Statement

Academic Freedom

1. Academic freedom is fundamental to the life of the University. Our founding charter requires us to advance and transmit knowledge by undertaking research, education and public engagement of the highest quality.³ The realisation of that mission through those activities is possible only under conditions of academic freedom.
2. The University affirms its right to academic autonomy and its responsibilities in relation to ensuring the rights of academic staff and students to exercise their academic freedom.
3. Every member of academic staff and every student enjoys academic freedom subject only to prohibitions, restrictions or conditions:
 - a. imposed by law;
 - b. imposed by the reasonable and proportionate regulation necessary to the discharge of the University's teaching and research activities;
 - c. imposed by the reasonable and proportionate regulation necessary to discharge the University's duty to foster the wellbeing of students and staff;
 - d. imposed by the reasonable and proportionate regulation necessary to enable the University to give effect to its legal duties;
 - e. imposed by the University as part of its reasonable requirements as to the courses to be delivered and the content and means of their delivery.
4. The exercise by a member of the academic staff or a student of academic freedom, subject to the above limitations, shall not constitute misconduct nor attract any penalty or other adverse action.
5. The founding charter of the University directs that we "pay attention to its national and international roles."⁴ The University will serve as a model for the maintenance and protection of academic freedom universally: we believe that all those pursuing academic activities should be afforded academic freedom.
6. Consistently 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. Academic staff are not precluded from including content solely on the ground that it may offend or shock any student or class of students.

³ ANU Act 1991 s.5 (1) (a), (g).

⁴ ANU Act 1991 s.5 (2).

Freedom of Speech

7. The pursuit by the University of its mission to advance and transmit knowledge by undertaking research, education and public engagement proceeds within a wider Australian and global context of rights and freedoms. Freedom of speech is both a fundamental human right and a necessary condition for the effective pursuit of the University's mission. Academic freedom is distinct from, but ultimately dependent on, a general freedom of speech.
8. Every member of the staff and every student at the University enjoys freedom of speech exercised on University land or in connection with the University, subject only to restraints or burdens imposed by:
 - a. law;
 - b. the reasonable and proportionate regulation of conduct necessary to the discharge of the University's teaching and research activities;
 - c. the right and freedom of others to express themselves and to hear and receive information and opinions;
 - d. the reasonable and proportionate regulation of conduct to enable the University to fulfil its duty to foster the wellbeing of staff and students;
 - e. 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.
9. Subject to reasonable and proportionate regulation of the kind referred to in the previous section, a person's lawful speech on the University's land 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.

Visiting Speakers

10. The University has the right and responsibility to determine the terms and conditions upon which it shall permit non-invited visiting speakers and invited visiting speakers to speak on University land and use University facilities and in so doing may:
 - a. 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;
 - b. distinguish between invited visiting speakers and non-invited visiting speakers in framing any such requirements and conditions

- c. refuse permission to any invited visiting speaker or non-invited visiting speaker to speak on University land or at University facilities where the content of the speech is or is likely to:
 - d. be unlawful;
 - e. prejudice the fulfilment by the University of its duty to foster the wellbeing of staff and students;
 - f. refuse permission to any non-invited visiting speaker to speak on University land or at University facilities where the content of the speech advances or is likely to 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.
 - g. require a person or persons seeking permission for the use of University land or facilities for any non-invited 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 visiting speaker is to speak.
11. Subject to the preceding sections the University shall not refuse permission for the use of its land or facilities by a non-invited visiting speaker or invited visiting speaker nor attach conditions to its permission, solely on the basis of the content of the proposed speech by the visitor.

Operation

12. Responsibility for ensuring compliance with this policy lies with the Vice-Chancellor.
13. Under the University's Academic Board Charter, the Board maintains responsibility for "developing and promoting principles pertaining to academic freedom within the ANU" and for "advising the Vice-Chancellor and Council on the safeguarding and implementation of ANU academic freedom policy in general terms and in particular cases, as they arise."⁵
14. The University shall have regard to 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.
15. Non-statutory policies and rules of the University shall be interpreted and applied, so far as is reasonably practicable, in accordance with this policy.
16. Any power or discretion under a non-statutory policy or rule of the University shall be exercised in accordance with this policy.
17. This policy prevails, to the extent of any inconsistency, over any non-statutory policy or rules of the University.

⁵ Academic Board Charter s.14 (g) and (h).

18. 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 this policy.
19. 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 contract or workplace agreement, in accordance with this policy.
20. In entering into affiliation, 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.

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