

Statement on Academic Freedom and Freedom of Speech

This Statement, together with the attached Principles, outlines the University's commitment to promoting and protecting academic freedom and freedom of speech within the University and the broader community generally which the University considers is fundamental to its purpose of transforming lives and enriching society through education and research.

The University is therefore committed to promoting and protecting the rights of:

1. academic employees, in relation to their area of expertise, to pursue critical and open inquiry and to freely discuss, teach, assess, develop curricula, carry out research and publish;
2. students, in the course of their academic activities, to pursue critical and open inquiry and to freely discuss, assess, carry out research and publish;
3. all University employees, to participate in decision-making processes and structures within the University, including the rights to express opinions about the operations of the University and higher education policy more generally;
4. all University employees, to participate in public debates, express unpopular or controversial views and opinions about issues and ideas related to their discipline area, or area of expertise, about the University or higher education issues more generally; and
5. all University employees, to participate in professional and representative bodies and engage in community service without fear of harassment, intimidation or unfair treatment.

Whilst it is not the intention of the University to unnecessarily restrict or limit an individual's pursuit of academic freedom or freedom of speech, the University considers that it is reasonable to require that individuals exercise the above rights:

1. in a professional and ethical manner;
2. in a manner that does not harass, vilify, intimidate or defame others or the University;
3. in accordance with the University's policies and procedures (as amended from time to time), including but not limited to the University's Code of Conduct, Student Code of Conduct, Media Policy and Social Media Policy; and
4. in a manner consistent with the University's values of integrity, respect, rational enquiry and personal excellence.

The University will have regard to this Statement and the attached Principles when making decisions, exercising its discretion, drafting new policies and procedures and reviewing and updating existing policies and procedures. To the extent of any inconsistency between the University's Codes of Conduct and this Statement, the Codes of Conduct will prevail.

Endorsed by: Academic Board, Resolution 14/20

Approved by: Council, Resolution 198/21

Date last modified: 5 March 2020

Principles for the Protection of Academic Freedom and Freedom of Speech at Edith Cowan University¹

Application

The University has adopted a Statement on Academic Freedom and Freedom of Speech. These Principles outline how the University will uphold the commitments made in the Statement.

Operation

The University, and all aspects of the University which have decision-making powers (including the University's Council, committees, officers and employees) will have regard to these Principles when making decisions, exercising discretion, drafting, reviewing or amending industrial agreements and policies and procedures and when drafting, reviewing or amending delegated legislation pursuant to any delegated law-making powers, but the Principles will not have overriding legal status.

Student representative bodies of the University (such as the University's Student Guild) should also have regard to these Principles to the extent that they have policies and rules which are capable of being applied to, or are making decisions which may, restrict or burden academic freedom or freedom of speech.

Definitions

'**academic freedom**' for the purposes of these Principles comprises the following elements:

1. the freedom of staff, in the course of their academic activities, to educate, discuss, or research and to disseminate and publish the results of those activities;
2. the freedom of staff and students to engage in intellectual inquiry in the course of their academic activities, to express their opinions and beliefs, and to contribute to public debate, in relation to those activities;
3. the freedom of staff and students to express their opinions in relation to the University;
4. the freedom of staff to participate in professional or representative bodies and associations;
5. the freedom of students to participate in student societies and associations; and
6. the autonomy of the University 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.

'**affiliate**' means an adjunct, conjoint or honorary appointee.

'**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

¹ The University's Principles for the Protection of Academic Freedom and Freedom of Speech are based upon a model code for the protection of these freedoms developed by former High Court Chief Justice, the Hon Robert S. French AC, following an independent review into the effectiveness of Australian universities in promoting and protecting freedom of speech and academic freedom on their campuses, which was completed in March 2019.

law of defamation), duties of confidentiality, restrictions deriving from intellectual property law and restrictions imposed by contract.

'invited visiting speaker' means any person who has been invited by the University to speak on the University's land or through the use of University facilities.

'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 through the use of University facilities.

'non-statutory policies and rules' means any non-statutory policies, rules, guidelines, principles, codes or charters or similar instruments.

'speech' extends to all forms of expressive conduct including oral speech and written, artistic, musical and performing works and activity and communication using social media; the word 'speak' has a corresponding meaning.

'staff' includes all employees and affiliates of the University.

'student' has the meaning given to that term in the University's Glossary for Rules, By-Laws, Policies, Procedures and Guidelines.

'the duty to foster the wellbeing of staff and students':

1. 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, disability, religion and political belief;
2. 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;
3. supports reasonable and proportionate measures to prohibit any person from using lawful speech which a reasonable person would regard, in the circumstances, both:
 - (a) as likely to humiliate, intimidate, harass or bully other persons; and
 - (b) as being intended to have any one or more of those effects; and
4. does not extend to a duty to protect any person from feeling offended or shocked or insulted by the lawful speech of another.

'unit' has the meaning given to that term in the University's Glossary for Rules, By-Laws, Policies, Procedures and Guidelines.

'University' means Edith Cowan University.

'unlawful' means in contravention of a prohibition or restriction or condition imposed by law.

Principles

1. 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 education and research activities, and, to the extent that those activities are informed and advanced by argument and disagreement, by setting scholarly standards for those arguments and disagreements that are conducive to the University's purpose of transforming lives and enriching society through education and research;
 - (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 students and staff;
 - (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.
2. Subject to the University's Codes of Conduct, nothing in any non-statutory policy or rule of the University shall restrict or inhibit the freedom of staff to make public comment on any issue in their personal capacities.
 3. Subject to reasonable and proportionate regulation of the kind referred to above, 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.
 4. Every member of the 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 education 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 by way of its reasonable requirements as to the units or courses to be delivered and the content and means of their delivery.
 5. When exercising its discretion to impose reasonable and proportionate regulation in respect of each of the matters outlined above, the University will use reasonable endeavours to ensure that such regulation has a formal basis in existing rules, policies or procedures to the extent possible, and is not being imposed purely to prohibit, restrict or impose conditions on the exercise of academic freedom.
 6. The exercise by a staff member or student of academic freedom, subject to the above limitations, shall not constitute misconduct nor attract any penalty or other adverse action.
 7. 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 staff or students carrying on research or study under such arrangements or subject to such conditions.

8. 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 through the use of University facilities where the content of the speech is or is likely to be unlawful, prejudice the fulfilment by the University of its duty to foster the wellbeing of staff and students, or is inconsistent with the University's values;
 - (d) refuse permission to any non-invited visiting speaker to speak on University land or through the use of University facilities where the content of the speech is 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;
 - (e) 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 non-invited visiting speaker is to speak.
9. The University may take reasonable and proportionate steps to ensure that all students in any of its units have an opportunity to be fully informed of the content of those units. Staff are not precluded from including content solely on the ground that it may offend or shock any student or class of students but in doing so must comply with any University policies and rules supportive of the University's duty to foster the wellbeing of staff and students.