



THE UNIVERSITY
of ADELAIDE

Freedom of Speech and Academic Freedom Policy

OVERVIEW
OBJECTS
SCOPE AND APPLICATION
OPERATION
POLICY PRINCIPLES
DEFINITIONS
AUTHORITIES
PROCEDURES

OVERVIEW

The University of Adelaide's statutory objective is the advancement of learning and knowledge, including the provision of university education. It follows that the University is right to recognise the academic freedom of its academic staff, students and titleholders as essential to the practice of a discipline and fundamental to the advancement of learning and knowledge. The University values its autonomy in relation to the choice of academic courses and offerings and the manner in which they are taught, as well as its fields of research.

The purpose of this Policy is to affirm the University's commitment to upholding Academic Freedom and to identify necessary limitations.

This Policy adopts the Model Code developed by the Hon. Mr Robert French AC in the report of the *Independent Review of Freedom of Speech in Australian Higher Education Providers* (2019). This Policy is also informed by the findings of Professor Sally Walker AM review implementation of the Model Code by universities (2020) and the *Higher Education Support Amendment (Freedom of Speech) Act 2021*.

This policy is a Governance Policy for the purpose of the University's Governance Statement. It is endorsed by the University's Academic Board and approved by the Council as the University's governing body.

OBJECTS

The objects of this Policy are:

1. To ensure that the freedom of lawful speech of staff and students of the University, titleholders 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 this 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 AND APPLICATION

1. The Policy applies to Council and its committees, including those involved in academic governance, and the University's offices and staff members.
2. The Policy also applies to student representative bodies to the extent that they have policies and rules which are capable of being applied to restrict or burden the freedom of speech of anyone, or academic freedom.

Note: Where a student representative body is a separate legal entity, the University will use its best endeavours to encourage it to adopt the University's policy on freedom and academic freedom. (Walker Review (2020) recommendation vi).

OPERATION

1. The University shall have regard to the Principles in 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 in 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 contract or workplace agreement, in accordance with the Principles in this Policy.

POLICY PRINCIPLES

1. Every member of staff, titleholder 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 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 reasonable and proportionate regulation of the kind referred to in Principle 1, 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.
 3. Every member of the academic staff, every titleholder and 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 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 to enable the University to give effect to its legal duties; and
 - e. 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.
 4. The exercise by a member of academic staff, titleholder, or of a student of academic freedom, subject to the above limitations, shall not constitute misconduct nor attract any penalty or other adverse action.
 5. 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 academic staff, titleholders, 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:
 - 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 visitors and external visitors in framing any such requirements and conditions;
 - c. refuse permission to any invited visitor and external visitor to speak on University land or at University facilities where the content of the speech is or is likely to:
 - (i) be unlawful;
 - (ii) prejudice the fulfilment by the University of its duty to foster the wellbeing of staff and students; or
 - (iii) 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;
 - d. require a person or persons seeking permission for the use of University land or facilities for any external 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 external visiting speaker 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. Consistently with the 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.

Note: In relation to Policy Principle 5, the Academic Board noted that overseas jurisdictions may have differing concepts of academic freedom, and requested the Chair of Academic Board consider whether staff based in those jurisdictions needed to be aware of those differences.

DEFINITIONS

Academic Freedom for the purpose of this Policy, comprises the following elements:

- the freedom of academic staff and titleholders to teach, discuss, and research and to disseminate and publish the results of their research;
- the freedom of academic staff, titleholders 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;
- the freedom of academic staff, titleholders 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, without constraint imposed by reason of their employment by the University, to make lawful public comment on any issue in their personal capacities;
- 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.

Note: These Elements are expressed in the *Higher Education Support Act 2003* (Cth) Schedule 1.

academic staff means anyone employed under a University contract of employment as an academic staff member.

external visitor means 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 means in relation to restrictions or burdens on a freedom include restrictions or burdens or conditions imposed by statute law, including Commonwealth and State vilification laws, the common law (including the law of defamation), duties of confidentiality, restrictions deriving from intellectual property law and restrictions imposed by contract.

invited visitor means any person who has been invited by the University to speak on the University's lands or 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 means anyone employed by the University.

student means a student enrolled at the University in an academic program designated by the statutes or rules to be an undergraduate or postgraduate program.

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

- includes the duty to ensure that no member of staff or titleholder and no student suffers unfair disadvantage or unfair adverse discrimination on any basis recognised at law including race, gender, sexuality, religion, and political belief;
- includes the duty to ensure that no member of staff or titleholder 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 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;
- does not extend to a duty to protect any person from feeling offended or shocked or insulted by the lawful speech of another.

The University has the same meaning ascribed to that expression in the University’s enabling legislation.

Titleholder refers to a person who contributes to the achievement of the academic goals of the University and is awarded an honorary title in recognition of that contribution.

Unlawful means in contravention of a prohibition or condition imposed by law.

RMO File No.	F. 2021/5488
Policy Custodian	Provost
Responsible Policy officer	Provost
Endorsed by	Academic Board on 4 August 2021
Approved by	Council on 23 August 2021
Related Documents and Policies	Privacy Policy and Management Plan Research Grants, Contracts and Consultancies Policy Responsible Conduct of Research Policy and Procedure Student Grievances Resolution Process Policy Student Misconduct Policy Intellectual Property Policy
Related Legislation	Civil Liberty Act 1936 (SA) Competition and Consumer Act 2010 (Cth) Copyright Act 1968 (Cth) Criminal Code Act 1995 (Cth) Defamation Act 2005 (SA) Equal Opportunity Act 1984 (SA) Fair Work Act 2009 (Cth) Foreign Influence Transparency Scheme 2018 (Cth) Independent Commissioner Against Corruption 2012 (SA) Privacy Act 1988 (Cth) Racial Discrimination Act 1975 (Cth)

	Racial Vilification Act 1996 (SA) Sex Discrimination Act 1984 (Cth) Summary Offences Act 1953 (SA) Universal Declaration of Human Rights 1948 (UN) (Article 19) University of Adelaide Act 1971 (SA)
Superseded Policies	Academic Freedom Policy 2020 and Freedom of Speech Charter
Effective from	23 August 2021
Review Date	22 August 2024
Contact for queries about the Policy	Professor John Williams Interim Provost Tel: 8313 1426 Email: provost@adelaide.edu.au

AUTHORITIES

Key	Authority Category	Authority	Delegation Holder	Limits
				Nil

PROCEDURES

1. Adopting Academic Freedom

Responsibility: All University Personnel

All Personnel are expected to:

- a) Familiarise themselves with the elements of this Policy to those Principles under this Policy and identify the relevance of those elements to their roles, responsibilities and functions.

2. Implementing Freedom of Speech and Academic Freedom Policy

Responsibility: All University Personnel

All Personnel are expected to have regard to the Policy and implement it as outlined in the Operation section of the Policy:

- a) Have regard to the Principles of this Policy when formulating, reviewing or amending the Relevant Frameworks, to ensure that their terms are consistent with the University's support of the Principles;
- b) Ensure that decisions made under non-statutory policies and rules are in accordance with the Principles of this Policy.