Code for the Protection of Freedom of Speech and Academic Freedom

Section 1 - Introduction

(1) The University of Newcastle "University" has a strong and enduring commitment to the principles of academic freedom and freedom of speech. Our Student Code of Conduct and Staff Code of Conduct promotes academic freedom through the expectation of inclusive and open behaviours across our University.

(2) The University wishes to maintain its commitment to academic freedom and freedom of speech, and by doing so, establish the principles by which academic freedom and freedom of speech can be supported.

(3) This Code has been developed in consideration of:

a. the Model Code for the Protection of Freedom of Speech and Academic Freedom in Australian Higher Education Providers, commissioned by the Minister for Education in 2018;
b. the context of the University of Newcastle; and
c. an assessment of associated risks in accordance with our governing infrastructure, academic environment and our stakeholders.

(4) In the event of inconsistencies between this Code and any University policy document or a document signed for and on behalf of the University that establishes obligations for the University, its staff, or students ('higher level document'), the provisions or requirements of the higher level document will prevail.

Section 2 - Objectives

(5) The objectives of the Code are to:

a. ensure that the freedom of lawful speech and academic freedom for staff and students of the University and visitors to the University are not restricted or unnecessarily burdened;
b. 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.

Section 3 - Scope

(6) The Code applies to the University:

a. Council and its members;
b. decision makers;
c. students;
d. staff;
e. invited visiting speakers; and

f. external visiting speakers.

(7) This Code does not apply to any lawful public comment made by a staff member or student in their personal capacity on any issue where it may be clear to a reasonable person that the lawful public comment is not being made as a representative of the University.

Section 4 - Definitions

(8) In the context of this document:

a. ‘academic freedom’ means:
    i. the freedom of staff in the course of their academic activities to teach, discuss, and research and to dissemination and publish the results of those activities;
    ii. the freedom of staff and students in the course of their academic activities to engage in intellectual inquiry, to express their opinions and beliefs, and to contribute to public debate in relation to those activities;
    iii. the freedom of staff and students to express their opinions in relation to the University in which they work or are enrolled;
    iv. the freedom of staff to participate in professional or representative bodies and associations;
    v. the freedom of students to participate in student societies and associations;
    vi. 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;
b. ‘decision maker’ means a person, committee or body who is authorised, has responsibility, or has delegated authority to make a decision that commits; binds; or determines actions by the University or its representatives;
c. ‘external visiting speaker’ means any person who is not an invited visiting speaker and for whom permission needs to be sought for them to speak on the University's land, through the use of University facility or facilities, or through the use of a facility or facilities provided by the University;
d. ‘imposed by law’ in relation to restrictions or burdens, or conditions on a freedom, includes restrictions, burdens or conditions imposed by:
    i. statute law;
    ii. the common law (including the law of defamation);
    iii. duties of confidentiality;
    iv. intellectual property law; and
    v. contract;
e. ‘invited visiting speaker’ means any person who has been invited by the University, or a representative of, to speak on the University's land, through the use of University facility or facilities, or through the use of a facility or facilities provided by the University;
f. ‘personal capacity’ means where a reasonable person can identify that another person is acting in their individual capacity and not acting as a representative of the University;
g. ‘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, traditional media, online publications and forums; the word ‘speak’ has a corresponding meaning;
h. ‘the duty to foster the wellbeing of staff and students’:
    i. includes the duty to ensure that no staff or students suffer unfair disadvantage or unfair adverse discrimination on any basis recognised at law;
    ii. includes the duty to ensure that no staff or students are 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;

iii. 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
    - being intended to have any one or more of those effects;

iv. does not extend to a duty to protect any person from feeling offended or shocked or insulted by the lawful speech of another;

i. "University policy documents" means those documents identified in the Hierarchy of University Policy Documents as established by the University's Policy Framework; and published in the University's Policy library; and

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

Section 5 - Operation

(9) The University shall have regard to the Principles of this Code in the drafting, reviewing or amendment of any University Policy Document or industrial agreements.

(10) The principles outlined in this Code do not have overriding legal status nor overriding status to the University's institutional values or strategic commitments.

Section 6 - Principles

Freedom of Speech

(11) Staff and students of the University will enjoy freedom of speech and right to peaceful protest exercised on University land, or in connection with the University, subject only to restraints or burdens:

a. imposed by law;
b. imposed by the right and freedom of others to express themselves and to hear and receive information and opinions; and
c. imposed by the reasonable and proportionate regulation of conduct to:
    i. discharge the University's teaching and research activities;
    ii. enable the University to fulfil its duty to foster the wellbeing of staff and students; and
    iii. enable the University to give effect to its legal duties including its duties to visitors to the University.

(12) Where a person's lawful speech and peaceful protest on University land or in connection with University business or a university activity complies with Clause 11 it shall not constitute misconduct or attract any penalty or other adverse action solely due to its content.

(13) The freedom of staff to make lawful public comment on any issue in their personal capacity will not be subject to constraint imposed by reason of their employment with the University.

Academic Freedom

(14) 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 reasonable and proportionate regulation necessary to the discharge of the University's:
    i. teaching and research activities; and
    ii. duty to foster the wellbeing of staff and students;
c. imposed by the reasonable and proportionate regulation to enable the University to give effect to its legal duties; and
d. 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.

(15) Where the exercise of academic freedom complies with Clause 14 it shall not constitute misconduct or attract any penalty or other adverse action.

Contractual and Other Restrictions

(16) The University will take all reasonable steps to minimise the restrictions, burdens or conditions imposed on the freedom of speech or academic freedom of staff or students undertaking associated research or study when entering into affiliation, collaborative or contractual arrangements with third parties, and in acceptance of donations from third parties subject to conditions.

Visitors to the University

(17) The University has the right and responsibility to determine the terms and conditions upon which it shall permit external visiting speakers and invited visiting speakers to speak on the University's land, through the use of a University facility or facilities, or through the use of a facility or facilities provided by the University and in so doing may:

a. require the organiser(s) of the event to:
    i. comply with the Venue Hire Agreement and any associated documents;
    ii. comply with any relevant University policy documents, or their associated documents;
    iii. provide information relevant to the conduct of the event, public safety and security issues;
b. distinguish between invited visiting speakers and external visiting speakers in framing any requirements and conditions;
c. refuse permission to any invited visiting speaker or external visiting speaker to speak on the University's land, through the use of a University facility or facilities, or through the use of a facility or facilities provided by the University, 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;
d. refuse permission to any external visiting speaker to speak on the University's land, through the use of a University facility or facilities, or through the use of a facility or facilities provided by the University, where the content of a speech is or is likely to involve the advancement of theories or propositions which purport to be based on academic study or research that falls below scholarly standards (such as the requirements of the Australian Code for the Responsible Conduct of Research) to such an extent that would be detrimental to the University's reputation as an institution of higher learning; and
e. require a person or persons seeking permission to use University land or a University facility or facilities, or use a facility or facilities provided by the University, by an 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 visitor is to speak.

(18) Subject to the preceding Principles, the University shall not refuse permission for the use of its land or facilities by an external visiting speaker nor attach conditions to its permission, solely on the basis of the content of the proposed

speech by the visitor.

Course Content

(19) 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.

(20) Staff must comply with all University Policy documents relevant to upholding the University's duty to foster the wellbeing of staff and students.

(21) The University will not prevent staff from including or excluding course content on the basis that it may offend or shock any student or class of students.

Foreign Interference

(22) The University will take active measures to prevent academic freedom or freedom of speech being impeded in any way by foreign interference.

Status and Details

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Effective Date	5th June 2024
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Responsible Executive	Alex Zelinsky Vice-Chancellor alex.zelinsky@newcastle.edu.au
Enquiries Contact	Hamish Lithgow University Secretary Legal and Governance Services

Glossary Terms and Definitions

"Council" - The governing authority of the University established under section 8A of the University of Newcastle Act 1989.

"University" - The University of Newcastle, a body corporate established under sections 4 and 5 of the University of Newcastle Act 1989.

"Risk" - Effect of uncertainty on objectives. Note: An effect is a deviation from the expected, whether it is positive and/or negative.

"Course" - When referring to a course offered by the University, a course is a set of learning activities or learning opportunities with defined, assessed and recorded learning outcomes. A course will be identified by an alphanumeric course code and course title. Course types include core courses, compulsory courses, directed courses, capstone courses and electives. For all other uses of this term, the generic definition applies.

"Law" - All applicable statutes, regulations, by-laws, ordinances or subordinate legislation in force from time to time anywhere in Australia, whether made by the Commonwealth, a State, a Territory or a local government and, where the context permits, includes the common law and equity.

"Student" - A person formally enrolled in a course or active in a program offered by the University or affiliated entity.

"Intellectual property" - Intellectual property (IP), as defined by the World Intellectual Property Organisation, refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. Intellectual property is divided into two categories: Industrial property includes patents for inventions, trademarks, industrial designs and geographical indications; and Copyright covers literary works (such as novels, poems and plays), films, music, artistic works (e.g. drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs.

"Policy library" - The repository of policy documents published on the University website.

"Research" - As defined in the Australian Code for the Responsible Conduct of Research, or any replacing Code or document.

"Staff" - Means a person who was at the relevant time employed by the University and includes professional and academic staff of the University, by contract or ongoing, as well as conjoint staff but does not include visitors to the University.

"University business" - Work that the University has directed to be undertaken which is required, essential, and beneficial for the functions of the University. This includes, but is not limited to, attending meetings, conferences or fieldwork, but does not include activity that is not location specific, e.g. email management, writing papers. University business may be undertaken by staff and non-staff.

"University facility" - Infrastructure owned, maintained or supported by the University.

"Foreign interference" - Foreign interference occurs when activities are carried out by, or on behalf of, a foreign actor that are coercive, clandestine, deceptive or corrupting and are contrary to Australia's sovereignty, values and national interests.