

# FREEDOM OF SPEECH AND ACADEMIC FREEDOM POLICY

## SCOPE

This policy applies to all members of Monash University.

For the purpose of this policy, references to 'the University' includes Monash University Australia, Monash University Malaysia, Monash University Indonesia, Monash College, Monash Suzhou, Monash Suzhou Research Institute, and the Monash University Prato Centre, unless indicated otherwise.

## POLICY STATEMENT

The Monash University Act charges Monash University with 'promoting critical and free enquiry, informed intellectual discourse and public debate within the University and in the wider society'.

Monash University values and protects freedom of speech and academic freedom and holds these freedoms as fundamental to the nature of a university. They are defining values for the University. This policy affirms the importance of the University's institutional autonomy under law in the regulation of its affairs.

The purpose of this policy is to give effect to the University's obligation to provide an environment that enables our community to engage in critical and free enquiry, by asking important questions, by sharing their findings, and by engaging in informed intellectual discourse and public debate in pursuit of a better future.

This policy will operate in jurisdictions outside Australia to the extent permitted by the law of those jurisdictions, and related government policy in those jurisdictions. In relation to Monash University campuses or other operations outside Australia, a reference below to 'law' is a reference to the law governing that campus or those operations.

## 1. Policy Principles

- 1.1 Every member of the University enjoys freedom of speech exercised on University property or in connection with the University, subject only to restraints or burdens imposed by:
  - law;
  - the reasonable and proportionate regulation of conduct necessary to the performance of the University's education and research activities;
  - the right and freedom of others to express themselves and to hear and receive information and opinions;
  - the reasonable and proportionate regulation of conduct to enable the University to fulfil its duty to foster the wellbeing of students and staff; and
  - 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.
- 1.2 Subject to reasonable and proportionate regulation of the kind referred to in the previous clause, a person's lawful speech on University property 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 or engagement by the University.
- 1.3 Every member of the academic staff and every student enjoys academic freedom, subject only to prohibitions, restrictions or conditions imposed by:
  - law;
  - the reasonable and proportionate regulation necessary to the performance of the University's education and research activities;
  - the reasonable and proportionate regulation necessary to discharge the University's duty to foster the wellbeing of students and staff;
  - the reasonable and proportionate regulation to enable the University to give effect to its legal duties; and

- the University by way of its reasonable requirements as to the courses to be delivered and the content and means of their delivery.
- 1.4 The exercise of academic freedom by an academic staff member or student, subject to the above limitations, shall not constitute misconduct nor attract any penalty or other adverse action.
- 1.5 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 the academic staff or students carrying on research or study under such arrangements or subject to such conditions
- 1.6 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 University property and in so doing may:
  - 1.6.1 require the person or persons organising the event to comply with the University's Standard Conditions of Hire and to provide information relevant to the conduct of any event, and any public safety and security issues;
  - 1.6.2 distinguish between invited visiting speakers and external visiting speakers in framing any such requirements and conditions;
  - 1.6.3 refuse permission to any invited visiting speaker or external visiting speaker to speak on University property where the content of the speech would or would be likely to:
    - 1.6.3.1 be unlawful;
    - 1.6.3.2 prejudice the fulfilment by the University of its duty to foster the wellbeing of staff and students; and/or
    - 1.6.3.3 involve the advancement of theories or propositions that 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.
  - 1.6.4 require a person or persons seeking permission for the use of University property 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.
- 1.7 Subject to the preceding clauses, the University shall not refuse permission for the use of University property by an external 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.
- 1.8 Consistently with this policy, the University may take reasonable and proportionate steps to ensure that all prospective students in any course of study have the opportunity to be fully informed of the content of those courses.
  - 1.8.1 Academic staff must comply with any policies 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.

## 2. Policy Operation

- 2.1 The University shall have regard to the Principles of this policy in the development, review or amendment of all other policies of the University and in the drafting, review or amendment of the Monash University Statute or any regulations made under it.
- 2.2 All other University policies shall be interpreted and applied, so far as is reasonably practicable, in accordance with section 1 of this policy. This policy should also be read in conjunction with clause 10.2 of the Monash University Enterprise Agreement (Academic and Professional Staff) 2019.
- 2.3 Any power or discretion conferred on the University by the Monash University Statute or the regulations made under it shall be exercised, so far as the Statute or the regulations allow, in accordance with section 1 of this policy.
- 2.4 Any power or discretion under another University policy shall be exercised in accordance with section 1 of this policy.
- 2.5 Where a question arises under this policy, it will be resolved in accordance with the University's ordinary decision-making processes. The Vice-Chancellor is the final decision-maker within the University for questions that arise under this policy, except in relation to a matter arising from or in respect of a member of the Monash University Council or a Council committee, in which case the Chancellor shall be the final decision-maker.

## DEFINITIONS

<p>Academic freedom</p>	<p>For the purposes of this policy, ‘academic freedom’ comprises:</p> <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 University;</li> <li>● the freedom of academic staff to participate in professional or representative academic bodies;</li> <li>● the freedom of students to participate in student societies and associations.</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>
<p>Academic staff</p>	<p>For the purposes of this policy, ‘academic staff’ are all those employed or engaged by the University to teach and/or carry out research, including under supervision, regardless of the basis on which they are employed. It extends to those who provide, whether on an honorary or adjunct basis or otherwise, education services and/or conduct research at the University.</p>
<p>Course of study</p>	<p>A number of units of study extending over a period of time leading to a degree or other award.</p>
<p>Duty to foster the wellbeing of staff and students</p>	<p>For the purposes of this policy, ‘the duty to foster the wellbeing of staff and students’:</p> <ul style="list-style-type: none"> <li>● includes the duty to ensure that no member of staff and no student suffers unfair disadvantage or unlawful discrimination;</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>
<p>External visiting speaker</p>	<p>Any person who is not an invited visiting speaker and who has sought (either by themselves or through an agent) permission to speak on University property.</p>
<p>Imposed by law</p>	<p>In relation to restrictions or burdens or conditions on a freedom, includes 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.</p>
<p>Invited visiting speaker</p>	<p>Any person who has been invited by the University to speak on University property. For the purposes of this definition, ‘the University’ includes the University’s decision-making organs and officers; its undergraduate and postgraduate student representative bodies; any clubs, societies and associations recognised by its decision-making organs or student representative bodies; and any entities controlled by the University.</p>
<p>Members of the University</p>	<p>Members of the University consist of:</p> <ul style="list-style-type: none"> <li>● the Council;</li> <li>● the staff;</li> <li>● the students;</li> <li>● honoraries (including adjuncts); and</li> <li>● the emeritus professors of the University.</li> </ul>
<p>Non-statutory policies</p>	<p>Means any non-statutory policies, procedures or schedules of the University.</p>

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	For the purposes of this policy 'staff' includes all professional and academic (including casuals) University staff.
University property	Means any real or personal property controlled by Monash University or any of its subsidiaries, including any online platform or channel. Control of an online platform or channel does not extend to the 'tagging' or similar by a person who is not a member of the University of a communication on that platform or channel.
Unlawful	Means in contravention of a prohibition, restriction or condition imposed by law.

## GOVERNANCE

Supporting procedures	n/a
Supporting schedules	n/a
Associated policies	<a href="#">Equal Opportunity Policy</a> <a href="#">Ethics Statement</a> <a href="#">Integrity &amp; Respect Policy</a> Media & Social Media Policy <i>[forthcoming]</i> <a href="#">Monash College Student Code of Conduct</a> <a href="#">Policy Framework Policy</a> <a href="#">Student General Conduct Policy</a>
Policy owner	President & Vice-Chancellor
Legislation mandating compliance	Higher Education Standards Framework (Threshold Standards) 2015 (Cth) Higher Education Support Amendment (Freedom of Speech) Act 2021 (Cth) Monash University Act 2009 (Vic) Occupational Health and Safety Act 2004 (Vic)
Category	Governance
Approval	Monash University Council 12 MAY 2021 MEETING 2/2021 / AGENDA ITEM 9.3
Endorsement	Academic Board 5 MAY 2021 MEETING 2/2021 / AGENDA ITEM 12.1
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