

Freedom of Speech and Academic Freedom Policy

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1 PURPOSE

TOP Education Institute/Australian National Institute of Management and Commerce (TOP/IMC) promotes and protects free intellectual inquiry and expression in its learning, teaching, scholarship and research activities.

TOP/IMC aims to:

- (1) Ensure that the freedom of lawful speech of staff and students and visitors to TOP/IMC 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 the Policy.
- (2) Ensure that academic freedom is treated as a defining value by TOP/IMC 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) Affirm the importance of TOP/IMC institutional autonomy under law in the regulation of its affairs, including in the protection of freedom of speech and academic freedom.

2 SCOPE

- (1) The Policy applies to the governing body of TOP/IMC, its officers and employees and its decision-making organs, including those involved in academic governance.
- (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.

3 DEFINITIONS

Academic Freedom is the freedom to conduct research, teach, speak, and publish, *subject to the norms and standards of scholarly inquiry*, without interference or penalty, wherever the search for truth and understanding may lead.

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

- The freedom of academic staff to teach, discuss, and research and to disseminate and publish the results of their research within the norms and standards of scholarly inquiry.
- 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 their personal capacity, in relation to their subjects of and scholarly standards for study and research.
- 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, without constraint imposed by reason of their employment by TOP/IMC, 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 TOP/IMC 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.

Academic Staff comprise all those who are employed by TOP/IMC to teach and/or carry out research and extends to those who provide, whether on an honorary basis or otherwise, teaching services and/or conduct research at TOP/IMC.

External Visiting Speaker is any person who is not an invited visiting speaker and for whom permission is sought to speak on TOP/IMC land or facilities.

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

Invited Visiting Speaker is any person who has been invited by TOP/IMC to speak on TOP/IMC land or facilities. (*Note: The definition of 'TOP/IMC' limits this class of visitor*)

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 for the purposes of this Policy includes all employees of TOP/IMC whether fulltime or part-time and whether or not academic staff.

The 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, 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 or external organisation 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.

TOP/IMC means TOP/IMC as an entity and includes its decision-making organs and officers, its student representative bodies, undergraduate and post-graduate, and any entities controlled by TOP/IMC.

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

4 PRINCIPLES

- (1) Every member of the staff and every student at TOP/IMC enjoys freedom of speech exercised on TOP/IMC land or in connection with TOP/IMC subject only to restraints or burdens imposed by:
 - a. The accepted standards and norms of scholarly inquiry.
 - b. Law, as prevailing under any jurisdiction under which staff and/or students may be operating.
 - c. The reasonable and proportionate regulation of conduct necessary to the discharge of TOP/IMC’s teaching and research activities.
 - d. The right and freedom of others to express themselves and to hear and receive information and opinions.
 - e. The reasonable and proportionate regulation of conduct to enable TOP/IMC to fulfil its duty to foster the wellbeing of students and staff.
 - f. The reasonable and proportionate regulation of conduct necessary to enable TOP/IMC to give effect to its legal duties including its duties to visitors to TOP/IMC.
- (2) Subject to reasonable and proportionate regulation of the kind referred to in the previous Principle, a person’s lawful speech on TOP/IMC’s land or in or in connection with a

TOP/IMC 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 and every student enjoys academic freedom subject only to prohibitions, restrictions or conditions:
- a. Imposed by the accepted and standard expectations of scholarly inquiry.
 - b. Imposed by law as prevailing within any jurisdiction where staff and/or students may be operating.
 - c. Imposed by the reasonable and proportionate regulation necessary to the discharge of TOP/IMC's teaching and research activities.
 - d. Imposed by the reasonable and proportionate regulation necessary to discharge TOP/IMC's duty to foster the wellbeing of students and staff.
 - e. Imposed by the reasonable and proportionate regulation to enable TOP/IMC to give effect to its legal duties.
 - f. Imposed by TOP/IMC by way of its reasonable requirements as to the courses to be delivered and the content and means of their delivery.

The exercise by a member of the academic staff or of a student of academic freedom, subject to the above limitations, shall not constitute misconduct nor attract any penalty or other adverse action.

- (4) In entering into affiliation, collaborative or contractual arrangements with third parties and in accepting donations from third parties subject to conditions, TOP/IMC shall take all reasonable steps to not only minimise any 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, but to ensure that freedom of speech or academic freedom is maintained to the extent possible under any local jurisdiction that may prevail.
- (5) TOP/IMC has the right and responsibility to determine the terms and conditions upon which it shall permit external visitors and invited visitors to speak on TOP/IMC land and use TOP/IMC facilities, and in so doing will expect and require those visitors to adhere to the same standards of academic and scholarly inquiry required of TOP/IMC. In so doing, TOP/IMC may:
- a. Require the person or persons organising the event to comply with TOP/IMC'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 or external visitor to speak on TOP/IMC land or at TOP/IMC facilities where the content of the speech is or is likely to:
 - (i) be unlawful.
 - (ii) prejudice the fulfilment by TOP/IMC of its duty to foster the wellbeing of staff and students.
 - (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 TOP/IMC's character as an institution of higher learning.

- d. Require a person or persons seeking permission for the use of TOP/IMC land or facilities for any 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.
- (6) Subject to the preceding Principles TOP/IMC 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.
- (7) Consistently with this Policy TOP/IMC 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 TOP/IMC'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.

5 PROCEDURES

5.1 Operation

TOP/IMC shall have regard to the Principles of 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.

- (1) Non-statutory policies and rules of TOP/IMC shall be interpreted and applied, so far as is reasonably practicable, in accordance with the Principles of this Policy.
- (2) Any power or discretion under a non-statutory policy or rule of TOP/IMC shall be exercised in accordance with the Principles in this Policy.
- (3) This Policy prevails, to the extent of any inconsistency, over any non-statutory policy or rules of TOP/IMC.
- (4) Any power or discretion conferred on TOP/IMC by a law made by TOP/IMC in the exercise of its delegated law-making powers shall be exercised, so far as that law allows, in accordance with the Principles of this Policy.
- (5) Any power or discretion conferred on TOP/IMC 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 of this Policy.

5.2 Report and Adjudication Process

- (1) Any student, member of academic staff or member of administrative staff who has their freedom of speech or academic freedom impinged or believed to have been impinged or perceives another student's, member of academic staff's or member of administrative staff's freedom of speech or academic freedom to have been impinged may make a

complaint in writing to the Principal and President of TOP/IMC who will provide a report within 2 weeks of receipt of the complaint to the Chair of TOP/IMC Council for adjudication within 2 weeks of the report from the Principal and President.

- (2) The Principal and President of TOP/IMC and the Chair of TOP/IMC Council may collect evidence, including interview information.
- (3) The Chair of TOP/IMC, with or without consulting other members of Council, will determine whether the complaint is upheld and when the complaint is upheld will implement actions to address and resolve the complaint.
- (4) The Chair of TOP/IMC will report their actions to the first meeting of Council after their adjudication of the complaint.

6 RELATED DOCUMENTS

- i. Authorship Policy*
- ii. Bullying Harassment and Discrimination Prevention Policy and Procedure*
- iii. Code of Conduct for Students*
- iv. Employee Handbook*
- v. Research Code of Conduct*
- vi. Staff Code of Conduct*
- vii. Student Academic Integrity Policy*
- viii. Student Complaints and Appeals Policy*

7 VERSION CONTROL

Historical Version	Approved by	Approval Date
2016.08	Academic Board	15 August 2016