

CODE FOR THE PROTECTION OF FREEDOM OF SPEECH AND ACADEMIC FREEDOM IN THE SYDNEY COLLEGE OF DIVINITY

Preamble

The Teaching Bodies of the SCD operate within a variety of ecclesial contexts, with stakeholders who have a vital interest in the nature and quality of the theological education provided. In exactly the same way as a professional body can be regarded as being an integral part of the educational discipline that prepares for that profession, far from being external, such ecclesial contexts are an internal and integral part of the theological education of the SCD. The principles of freedom of speech and academic freedom are appropriately embedded within our various disciplines in harmony with a self-understanding of theological education as properly integrated within its ecclesial contexts.

Objects

The objects of the Code are:

- (1) To ensure that the freedom of lawful speech of staff and students of the SCD and visitors to the SCD 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 Code.
- (2) To ensure that academic freedom is treated as a defining value by the SCD 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 Code.
- (3) To affirm the importance of the SCD's institutional autonomy under law in the regulation of its affairs, including in the protection of freedom of speech and academic freedom.

Application

- (1) The Code applies to the governing body of the SCD, its officers and employees and its decision-making organs, including those involved in academic governance.
- (2) The Code 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) The Code applies as a part of the overall SCD Policy framework and should be read in conjunction with the Communications Policy and the Freedom of Speech and Academic Freedom Policy.

Definitions

The Code should be read with the definitions in mind. They have been drawn to pick up some important limitations on the freedoms to which it is directed. The definition of the term 'imposed by law' ensures that restrictions imposed by law extend to contractual obligations, duties of confidentiality and restrictions arising from intellectual property rights.

'academic freedom' for the purposes of this Code comprises the following elements:

- the freedom of academic staff to teach, discuss, and research and to disseminate and publish the results of their research;
- 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;
- the freedom of academic staff and students to express their opinions in relation to the SCD and the Teaching Body in which they work or are enrolled;
- the freedom of academic staff, without constraint imposed by reason of their employment, to make lawful public comment on any issue in their personal capacities; subject to the usual disclaimers that their views may not represent those of the SCD or their employer;¹

¹ In relation to the SCD, the SCD Communications Policy includes the automatic disclaimer: 'The official spokesperson for the Council and the College at all times is the Dean'.

- 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 Teaching Bodies 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, subject only to the Governance framework and Policies of the SCD.

‘academic staff’ all those who are employed by the SCD or its Member Institutions 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 within the SCD.

‘external visiting speaker’ any person who is not an invited visiting speaker and for whom permission is sought to speak at facilities within the SCD.

‘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’ any person who has been invited by the SCD or one of its Member Institutions to speak at facilities within the SCD. Note: The definition of ‘SCD and its Member Institutions’ (below) which 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 Code ‘staff’ includes all employees of the SCD or its Member Institutions 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 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 SCD and its Member Institutions’ means the SCD and its Member Institution as entities and includes their decision-making organs and officers, its student representative bodies, undergraduate and post-graduate, and any entities controlled by the SCD or its Member Institutions.

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

Operation

- (1) The SCD shall have regard to the Principles of this Code 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 SCD shall be interpreted and applied, so far as is reasonably practicable, in accordance with the Principles of this Code.
- (3) Any power or discretion under a non-statutory policy or rule of the SCD shall be exercised in accordance with the Principles in this Code.
- (4) This Code 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 SCD by a decision made by the SCD in the exercise of

its delegated decision-making powers shall be exercised, so far as that decision allows, in accordance with the Principles of this Code.

- (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 of this Code.

Principles of the Code

- (1) Every member of the staff and every student at the SCD enjoys freedom of speech exercised on the facilities of SCD or its Member Institutions or in connection with the SCD subject only to restraints or burdens imposed by:
- law;
 - the reasonable and proportionate regulation of conduct necessary to the discharge of the teaching and research activities of the SCD or its Member Institutions;
 - 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 SCD and its Member Institutions to fulfil its duty to foster the wellbeing of students and staff; which may include the request for a disclaimer to be used to the effect that views expressed may not represent those of the SCD or the Member Institution in which they are uttered.
 - the reasonable and proportionate regulation of conduct necessary to enable the SCD to give effect to its legal duties including its duties to visitors to the SCD.
- (2) Subject to reasonable and proportionate regulation of the kind referred to in the previous Principle, a person's lawful speech at the facilities of the SCD or its Member Institutions or in connection with a SCD 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:
- imposed by law;
 - imposed by the reasonable and proportionate regulation necessary to the discharge of the teaching and research activities of the SCD or its Member Institutions;
 - imposed by the reasonable and proportionate regulation necessary to discharge the duty of SCD and its Member Institutions to foster the wellbeing of students and staff;
 - imposed by the reasonable and proportionate regulation to enable the SCD to give effect to its legal duties;
 - imposed by the SCD and its Member Institutions 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 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.
- (5) In entering into affiliation, collaborative or contractual arrangements with third parties and in accepting donations from third parties subject to conditions, the SCD and its Member Institutions 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.
- (6) The SCD and its Member Institutions has the right and responsibility to determine the terms and conditions upon which it shall permit external visitors and invited visitors to speak at and use its facilities and in so doing may:
- (a) require the person or persons organising the event to comply with the its usual 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 at its facilities where the content of the speech is or is likely to:
 - (i) be unlawful;
 - (ii) prejudice the fulfilment by the SCD and its Member Institutions 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 the SCD's character as an institution of higher learning;
 - (d) require a person or persons seeking permission for the use of the facilities of the SCD and its Member Institutions 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.
- (7) Consistently with this Code the SCD and its Member Institutions 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 SCD'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.