

Dear Secretariate

Please find the NTEU's response to a written question on notice from Mr Graham Perrett, in relation to the Parliamentary Joint Committee on Human Rights Inquiry into Antisemitism at Australian Universities (Jan 2025)

Is 'academic freedom' generally a feature of enterprise agreements or employment agreements, which may be relevant to processes seeking to terminate university employees based on statements they have made or other conduct?

Yes, academic freedom and/or intellectual freedom provisions have been negotiated into enterprise agreements by NTEU members at all public universities.

While differing across institutions, the common features of such clauses are:

1. a definition,
2. a statement that exercising academic freedom is a right,
3. proviso that academic freedom cannot be used to vilify, harass or intimidate others and should reflect scholarly norms, and
4. a statement that academic freedom expressed in accordance with the agreement should not be considered to be misconduct.

Since the definitions of academic and/or intellectual freedom in the enterprise agreements universally refer to the right to make comment on areas of expertise and the operations of the university and higher education, without the protection of the enterprise agreement clauses, employees could be disciplined up to and including dismissal through misconduct processes for making public comments that the University determines are inappropriate.

It is important to note that the academic freedom provisions negotiated by NTEU members confer a right on the employee but also a responsibility to exercise that right appropriately. Depending on the strength of the clause they may also confer an obligation on the university not to undermine academic freedom through the use of misconduct provisions.

The most common way that universities have sought to undermine academic freedom is through the adoption of Codes of Conduct that seek to impose strict limitations on behaviour without regard to academic freedom rights, often accompanied by defining breaches of the Code of Conduct as misconduct. Unlike an enterprise agreement that establishes enforceable rights and obligations, the Codes of Conduct are not negotiated and can be changed at any time by the University.

Many universities also restrict academic freedom and freedom of speech through the use of policies, which impose obligations on employees but can provide no legal protections unless the specific policy is referenced in the contract of employment. Universities take

different approaches to the issue of policies in contracts of employment - some contracts expressly state that policies do not form part of the contract of employment, while others state that employees are obliged to comply with all university policies but also expressly state that the university is not bound by those policies.

Enterprise agreement provisions require enforcement through the Fair Work Commission or the Courts where the content of clauses is subject to interpretation and can as a result have variable outcomes. Thus, while NTEU has sought to protect academic freedom through the insertion of strong enterprise agreement provisions, a complementary legislated definition that is as strong and expressly prevents the legitimate exercise of academic freedom being considered misconduct is necessary to assist in protecting academic freedom as both a core right and a defining characteristic of university employment and universities themselves.

For clarity, below is the NTEU's policy on Academic Freedom.

NTEU Position on Academic Freedom:

Intellectual and academic freedom are essential and defining characteristics of autonomous and publicly accountable modern universities.

In the university context, intellectual freedom refers to the right of all staff and students to freely hold political and intellectual views and values and express them publicly, without fear of reprisal or retribution or restriction by university policies and procedures.

Specifically, intellectual freedom includes the right, without fear of harassment, intimidation or unfair treatment, to:

- *Express opinions about the operation of the university and higher education policy more generally;*
- *Pursue critical open enquiry and to discuss freely, teach, assess, develop curricula, publish and, research within the limits of their professional qualifications, competence and professional standards;*
- *Develop, interpret and administer policy and procedures within the limits of their professional qualifications, competence and professional standards;*
- *Participate in public debates and express opinions about issues and ideas related to their discipline area or area of professional expertise;*
- *Participate in professional and representative bodies and to engage in community service;*
- *Express unpopular or controversial views.*
- *Discuss, teach, assess, develop curricula, and engage in community service;*
- *Research and publish;*
- *Publish and speak in public debate constrained by a responsibility to reflect scholarly standards;*

- *Express opinions about the institutions in which they work or are enrolled;*
- *Participate in representative bodies such as the NTEU; and*
- *Participate in decision-making structures and processes within the institution.*

Intellectual freedom rights do not include any right to vilify, harass intimidate or otherwise act unlawfully nor are they intended to protect any person engaging in these forms of behaviour from the operation of relevant laws.

The NTEU does not support the use of managerial tools such as requirements to follow reasonable and lawful directions as a manner of circumventing or inhibiting academic freedom.

At the institutional level, commitment to academic freedom requires the university to:

- *Assert institutional autonomy, and in particular the right to determine for itself, on academic grounds, its research and teaching practices and priorities;*
- *Protect and support staff participation in university governance and representative bodies such as the NTEU;*
- *Protect academic integrity above the private or corporate interests of third parties. In receiving support from corporations or other private interests, higher education institutions must not compromise their autonomy and independence, or that of their staff; and*
- *Support its staff and students in advancing knowledge, ideas, theories and technology, and in serving society at large.*

Academic freedom does not provide protection for actions undertaken in a staff member's personal life or personal capacity. However, NTEU does not believe that universities should unreasonably regulate or control staff members' personal lives.

Like other important academic functions like promotion and publication, NTEU believes that the arbiter of academic freedom should be the staff member's peers, and not administrators or managers.