

Attachment 1: NTEU Briefing Paper

Intellectual Freedom

Background

IMPORTANT– it should be noted that the only legally enforceable protections for academic freedom are in the collective agreements. – the Steele Case is an illustration of this.

The Steele case at the University of Wollongong in 2001 and 2002 highlighted the need for commitments to intellectual freedom in university Agreements. In that case, the University summarily dismissed an academic staff member (without following the misconduct procedures in the Agreement) after the staff member publicly stated that he had been instructed to alter students' marks.

In the light of that case in particular, and in accordance with the Union's long-standing policy on protection of intellectual freedom, intellectual freedom was prioritised in the 4th Round of bargaining. Due to the wide agenda in that Round, and the introduction of the HEWRRs which required aggressive "simplification" of Agreements, in most cases Branches ended up with a statement of principles on intellectual freedom without much more. In some cases this applied to academic staff only, or to staff "within their area of expertise." Round 5 presents an opportunity to augment University commitments to protecting intellectual freedom.

Model Clause

1. The parties to the Agreement are committed to act in a manner consistent with the protection and promotion of intellectual freedom within the University.
2. Intellectual freedom includes:
 - a) the rights of all staff and students of higher education institutions to participate in decision-making processes and structures within their institution, including the right to express opinions about the operations of that institution and higher education policy more generally.
 - b) the rights of academic staff to pursue critical and open inquiry and to freely discuss, teach, assess, develop curricula, publish and research.
 - c) the right to participate in public debates and express opinions about issues and ideas related to their discipline area and about the institution within which they work or higher education issues more generally.
 - d) the right of all staff to participate in professional and representative bodies, including unions, and engage in community service without fear of harassment, intimidation or unfair treatment.
 - e) the right to express unpopular or controversial views, but this does not mean the right to harass, vilify or intimidate.
 - f) the procedures that protect staff from arbitrary dismissal for exercising the above rights.
3. In relation to governance, the University will encourage staff to actively participate in the operation of the institution and in the community. The institution will ensure that all governing bodies of the University operate in a transparent and accountable manner, encouraging freedom of expression and thought.
4. The parties agree to establish a committee comprising an equal number of institutional and NTEU nominees to review current policies and practices to ensure that they do not conflict with or interfere with such rights; and to make any necessary amendments consistent with the commitment to intellectual freedom. The review is to be completed within 6 months of the date of lodgement of the Agreement.
5. The University will adopt fair and transparent procedures for the protection of 'whistleblowers' within the institution, such procedures being identical to the disciplinary procedures of the University. These procedures will determine whether the action(s) of the staff member concerned constitutes

misconduct. A finding of misconduct arising from such procedures may only be made if the staff member acted both in bad faith and committed misconduct as defined.

Explanation of the Clause

The model clause above is necessarily comprehensive, as it seeks to assist branches in developing claims to ensure the institution protects and promotes intellectual freedom as well as encouraging the participation of staff and students in the professional and representative bodies of the institution.

However, the mandatory settlement point only requires a statement of principles protecting and promoting intellectual freedom. In achieving this, it is useful to ensure the statement of principles also commits the University to act in accordance with those principles, as this give us an avenue to deal with any improper action through the dispute-settling procedures (eg paragraph 1 above).

Arguments for the Claim

- In order for universities to fulfil their important role as critic and conscience of society, staff must be permitted to act as public intellectuals, and contribute to public debates without fear or favour.
- The nature of research is that it constantly uncovers new ideas and challenges existing ways of thinking. By its very nature, this means that some research, and public commentary relating to that area, can be unpopular or inconvenient for the University. However if staff fear, even mistakenly, that the University will take disciplinary action in response to inconvenient or unpopular activities, including research and public commentary, they will be less likely to undertake that research. This has a chilling effect on the nation's research output. One way the University can prevent this from occurring is to make a public commitment to the protection of intellectual freedom.
- Similarly, the reputation of the University is best protected by investigating accusations, for example, of mismanagement rather than instituting disciplinary proceedings against the accuser. If there are serious matters to be dealt with (such as soft marking, for instance) they should be dealt with rather than covered up – and staff will simply not raise such issues if they are worried about disciplinary action. Again, the University's best line of defence is to protect whistleblowers rather than target them.
- General staff should also be able to comment publicly on the governance of the university, just as academic staff should, and on other issues within their area of expertise. Why have a commitment to intellectual freedom for some staff and not for others, especially when the University has the defence of being able to institute misconduct procedures against general staff in usually more direct a fashion than against academic staff?