



FREE SPEECH UNION

ACADEMIC MEMBERSHIP

Submission to University of Auckland regarding Draft Freedom of Expression Statement

Submitted by: Stephanie Martin, Stakeholder Relationships Manager, Free Speech Union

On behalf of: University of Auckland staff members of the Inter-University Council on Academic Freedom, chaired by Prof. Paul Moon (AUT) and Prof. Elizabeth Rata (University of Auckland).

The Inter-University Council on Academic Freedom (IUCAF) is a sub-committee of the Free Speech Union (FSU). We represent academics from across all eight universities in New Zealand and support the coordination of the work the FSU does to promote and defend academic freedom, as a derivative right of free speech for academics and students in higher education.

We write to submit our feedback regarding the University of Auckland's draft Freedom of Expression Statement.



SUBMISSION

Introduction

1. The core purpose and function of a university is truth-seeking, and academic freedom and freedom of expression are essential to the fulfilment of this purpose. University staff and students must be able to freely express and debate controversial or unpopular views.
2. By virtue of their particular role as critic and conscience of society, it is likely that university members will at times wish to criticize popular ideas, widely held beliefs, or even the institution of which they are a member. Academic freedom is the essential protection that enables them to do this. Commensurate with the nature of the university as an institution of higher learning, university members must be free to express, explore, and advocate for, the ideas they regard as most worthy of pursuit, without fear or risk of retribution.
3. Although it is enshrined in legislation (s 267, Education and Training Act 2020), growing evidence, including internal surveys from the University of Auckland, indicate that academic freedom is in a state of decline in New Zealand.
4. We therefore welcome this Statement as a useful clarification of the University's position on, and commitment to, academic freedom.

Statement of support

5. We support the enactment of this draft Freedom of Expression Statement, subject to some minor amendments, specified in this submission.
6. We make the following recommendations to address sections that we identify as having potential implications for academic freedom and freedom of expression. Our suggestions seek to enhance the Statement's clarity, to strengthen its explicit commitment to fostering an open culture of debate and academic rigor, and to ensure optimum consistency with the Education and Training Act 2020.
7. Briefly, we note that the first sentence of the Statement indicates that the University is the critic and conscience of society:



Waipapa Taumata Rau, University of Auckland fulfils its role as critic and conscience of society through the preservation and enhancement of freedom of expression and academic freedom.

8. We wish to clarify our stance that the *University* itself does not fulfil the role of critic and conscience: This role is instead fulfilled by the individual *academics* within the institution. However, we recognise that the phrasing in the Statement maintains consistency with the phrasing in the legislation, and therefore accept the necessity of this terminology.

Recommendations by sentence

To fulfil these commitments, the University actively fosters the free and open discussion of ideas—by its staff and students on any issues, including with the participation of external speakers invited by a staff member, a recognized student association or club.

9. **Recommendation:** Amend sentence four, to read “*the free and open discussion of ideas*” instead of “*constructive debate*”.
10. We support what we interpret as the intent of this sentence, to signal a positive expectation for discourse on university campuses to be good-faith, robust, and geared towards curiosity, enhanced understanding, and problem-solving. This is a helpful step towards a positive vision of academic freedom, in which lively debate supports learning, growth, and collaborative truth-seeking. However, we question whether “*lawful and constructive*” is the optimum phrase to convey this intent, and are also wary of how it may later prove counter-productive.
11. We recognise the potential for this phrase to be invoked in the future to close down debate, or impose control over the way discourse occurs, in a similar fashion to how we have previously seen the phrase “*respectful*” be utilised for such purposes. For example, an individual who shares contentious or offensive ideas might be accused of “*not being constructive*”, or indeed “*being destructive,*” for example, to relationships.
12. The phrase “*constructive*” also connotes the idea that the debate is moving towards an indeterminate ‘good’. What might be considered a ‘good’ outcome is highly subjective, and so this is a difficult premise on which to characterise ideals of discourse.



13. The inclusion of the phrase “*lawful*” is unnecessary, since the prescriptions of law already constitute the parameters of free expression. Any relevant transgressions of those parameters are already covered by other university policies.

14. We therefore recommend that “*constructive debate*” be replaced by “*the free and open discussion of ideas*.” This phrase places the emphasis on *ideas*, rather than the individuals who hold them. In doing so, it encourages an environment of intellectual humility and exploration, and implicitly discourages ad hominem exchanges.

The University may reasonably regulate the time, place, and manner of expression to ensure that it does not unduly disrupt the ordinary activities of the University.

15. **Recommendation:** Amend sentence five, to specify that expression may be regulated where it causes *undue* disruption to the University’s activities.

16. This amendment clarifies that the disruption caused must be *out of the ordinary*, to justify limits to expression. It enhances clarity about the kinds of situations in which this clause may be invoked, as well as serving as a protection against proposed events being prevented for minor reasons.

The University may make ~~provisions and~~ statements on matters directly related to university roles, and functions ~~and duties~~, as defined in s268 (2)(d)(i) and (2)(d)(ii) of the Education and Training Act 2020. including the wellbeing and safety of staff and students, financial and resource management, sustainability, and equity.

17. **Recommendation:** Amend sentence six, to;

- a. Remove the phrase “*duties*”; and
- b. Specify that the roles and functions of the university are those stipulated in the Education and Training Act 2020; and
- c. Remove (or shift) specific references to other university guidelines.

18. Whilst the “*roles and functions*” of universities are clearly defined in legislation, the “*duties*” of the university are less clear. Introducing this subjective term undermines the Statement’s clarity, introduces unnecessary complexity, and opens the door to subjective implementation in the future. To ensure long-term useability of the Statement, we recommend an ‘Occam’s Razor’ approach: Restricting this phrase to “*roles and functions*.”

19. Similarly, specifying that the university’s “*roles and functions*” are those stipulated in the Education and Training Act would provide further clarity and consistency with



relevant legislation. This would enable more consistent interpretation and application of the Statement.

20. If the above recommendations are adopted, the inclusion of a short-list of specific examples becomes redundant. If it is necessary to cross-reference this Statement with other university policies, this could be specified at the end of the statement, for example under a sub-heading entitled “*Related Documents*”.

It will not take positions on matters that do not directly relate to university roles, or functions or duties.

21. **Recommendation:** Amend sentence eight to remove any reference to the university’s “*duties*”.

22. See point 18 above.