

## Academic Freedom and Freedom of Speech

<b>Date of approval</b>	7 March 2023	<b>Approved by</b>	Council
<b>Date of effect</b>	7 March 2023	<b>Review date</b>	31 March 2026
<b>Relates to</b>	Council Members Code of Conduct Staff Code of Conduct Student Code of Conduct	<b>Version</b>	v1 2023
<b>Responsible Owner</b>	Executive Dean, Faculty of Tertiary Education and Research		
<b>Functional Manager</b>	Executive Dean, Faculty of Tertiary Education and Research		

### 1. Outline

- 1.1 To describe the rights, expectations and responsibilities of the Batchelor Institute of Indigenous Tertiary Education (the Institute), staff and students in relation to Academic Freedom and Freedom of Speech at the Institute, including:
- 1.1.1 the freedoms related to academic freedom and freedom of speech that are protected by the Institute (Acronyms and Terms),
  - 1.1.2 the circumstances that will warrant the Institute to constrain the exercise of these freedoms (Rights), and
  - 1.1.3 the expectations and responsibilities of staff and students in exercising their rights under this policy (Expectations and Responsibilities).

### 2. Summary

- 2.1 This policy applies to all staff of the Institute, including adjuncts, contractors and volunteers.
- 2.2 While the Institute upholds the concepts and practices of Academic Freedom and Freedom of Speech it does so in relation to the Aboriginal and/or Torres Strait Islander cultural context for which the organisation was created, and as stated in the prologue of the Batchelor Institute of Indigenous Tertiary Education Act 1999 (the Act), namely, to provide for:

*“the tertiary education of indigenous people of Australia and the provision of other educational and training programs and courses, and facilities and resources for research and study, and for related purposes”.*

and in accordance with Councils Vision via the Strategic Plan and the cultural values of the Institute as ratified by the First Nations Committee and outlined below.

2.2.1

<b><i>Principle</i></b>	<b><i>Cultural Value</i></b>
<p><b>To be the leading First Nations Institute in the Country we all have to play our part.</b></p>	<p>The Institute fundamentally centres students and community's needs, all staff participate in our uniqueness and believe in our greatness.</p>
<p><b>First Nations-led-</b> First Nations peoples are leaders and sources of knowledge in all activities from conceptualization to communication. Institute plans, policies and activities are developed according to First Nations' needs, priorities, interests, aspirations and perspectives.</p> <p>The Institute maintains a commitment to excellence and leadership within the sector: Learning on our terms and Putting Students First.</p>	<p>Leadership fosters safety and a sense of belonging for First Nations peoples. We create an environment of excellence where truth, knowledge and wisdom meet though walking along side each other.</p> <p>Guided by western and First Nations leadership and governance models, based on mutual trust and respect and reciprocal learning models.</p>
<p><b>Cultural strength and accountability</b>– The Institute acknowledges diverse First Nations positionalities and experiences as well as responding with integrity to localised (land-based) cultural obligations and responsibilities.</p> <p>The Institute acknowledges, respects and builds on the cultural legacy of First Nations ancestors and knowledge holders.</p>	<p>We are all in relationship with our world and each other. Respectful collaboration and partnership are the essence of being a responsible individual, worker or student at the Institute.</p> <p>Respect for our Elders underpins how we behave in the workplace. Council's visions and Eldership underpin our philosophies and Traditional Owners/custodians and Elders are centred in our practice, through upholding First Nations systems of governance.</p> <p>Our spirit is strong. We sit quietly to hear our ancestors and elders. We speak our languages. We are stewards for our country. We place value on truth telling, healing and love.</p> <p>Cultural mannerisms and behaviours that exist as a minimum to create a culturally safe and respectful working and learning environment.</p>
<p><b>Decolonising Agenda:</b> The Institute is committed to anti-colonial struggles through privileging and prioritising First Nations ways of being (ontologies), ways of knowing (epistemologies), ways of valuing (axiologies), and ways of doing (methodologies).          "We educate to liberate": Realising opportunities; Valuing all forms of scholarship; Decolonisation through education and enquiry.</p>	<p>We have a deep belief in people's right to be heard and live free from colonial violence and racism, this includes lateral violence.</p> <p>The sharing of our stories, in the classrooms, offices and community creates opportunities and potential. We are the future.</p>
<p><b>Unceded sovereignty:</b> The Institute fundamentally recognises and acknowledges First Nations lands and peoples and works to ground knowledge construction research processes, operations and teaching and learning from this position.</p>	<p>Land and our country hold us. We speak back powerfully to those who do not understand or respect this. We are mobilized and actively self-determining.</p>

<b>Principle</b>	<b>Cultural Value</b>
<b>Strength in Truth:</b>	The Institute accepts the importance of historical truth and commits to fighting the wrongs of historical erasure of First Nations peoples. Commitment to robust dialogue in relation to settler-colonialism and its aftermath.

- 2.2.1a. Academic freedom exists within these frameworks and in an environment of Cultural Safety and Cultural Integrity (defined below) with a belief that everyone has the right to speak their truth, but no-one has the right to racially, culturally, spiritually or on the basis of sexual orientation denigrate or do harm to another.

**Cultural safety**

An environment that is spiritually, socially, and emotionally safe, as well as physically safe for students and staff; where there is no assault challenge or denial of their identity, of who they are, and what they need. It is about shared respect, shared meaning, shared knowledge, and experience of learning together.

**Cultural integrity**

When there is a demonstration of both respect and high regard for Aboriginal and Torres Strait Islander histories, cultures, knowledge systems, and languages; welcome and engage with Aboriginal and Torres Strait Islander families and local community members; and meet the learning needs and aspirations of all Aboriginal and Torres Strait Islander students.

**3. Policy Heading**

**Rights**

- 3.1 Every member of staff and every student enjoys academic freedom subject only to prohibitions, restrictions or conditions imposed by:

- 3.1.1 law; including the Racial Discrimination Act 1975, the Disability Discrimination Act 1992 and the Sex Discrimination Act 1984.
- 3.1.2 the reasonable and proportionate regulation of conduct necessary to enable the Institute to discharge its obligations in relation to:
  - a. the Institute’s teaching and research activities;
  - b. the Institute’s duty to foster the wellbeing of students and staff;
  - c. the Institute’s legal duties;
  - d. the Institute’s reasonable requirements as to programs and courses to be delivered and the means of their delivery. and
  - e. The right and freedom of others to express themselves and to hear and receive information and opinions.

- 3.2 Subject to the limitations in clause 3.1, the exercise by a member of academic staff or of a student of academic freedom will not constitute misconduct nor attract any penalty or adverse action.

- 3.2.1 In entering into affiliation, collaborative or contractual arrangements with third parties and in accepting donations from third parties subject to conditions the

- Institute will: take all reasonable steps to minimise the restrictions or burdens imposed by such arrangement or conditions on the freedom of speech or academic freedom of any member of the academic staff or students undertaking teaching, research or study under the third-party arrangements;
- 3.2.2 Ensure, as far as reasonably possible, that the scholarly contributions of academic staff are accurately represented by third parties, particularly where the third party has commissioned the work.
  - 3.2.3 In that it does not impinge on the rights of others or cause harm/ humiliation or promote violence.
  - 3.2.4 In entering into public discussion that the scholarly contributions of academic staff and HDR candidates are protected by academic freedoms including critiques of behaviours, systemic injustices, structural racism, benevolence and deliberately constructed ignorance.
- 3.3 The Institute may take reasonable and proportionate steps to ensure that students have an opportunity to be fully informed of course content. Academic staff are not however precluded from including content in a course solely on the ground that it may offend or shock any student, class of students or other staff.
- 3.4 Subject to the reasonable and proportionate regulation described in clause 3.3 a person's lawful speech on institute land or in connection with an institute activity will not constitute misconduct or attract a penalty or adverse action by reference only to its content; nor shall the freedom of academic staff to make lawful comment on any issue in their personal capacities be subject to constraint imposed by reasons of their employment by the Institute.
- 3.5 The Institute has the right and responsibility to determine the terms and conditions for the use of its resources and facilities and the basis on which invited or external visitors speak on institute land, in the Institute's name or use Institute facilities or resources. The Institute will consider the intent and functions of the Act in terms of promoting academic standards and informed public debate when making decisions about the use of its resources and facilities and may refuse permission for an invited or external guest to speak on institute land or at institute facilities where the content of the speech is or is likely to:
- 3.5.1 be unlawful;
  - 3.5.2 prejudice the Institute's ability to fulfil its obligations to foster the wellbeing of students and staff; or
  - 3.5.3 involve the uncontested advancement of theories or propositions which purport to be based on scholarship or research, but which fall below scholarly or other standards to such an extent as to be detrimental to the Institute's character as an institution of tertiary education, research and study, and a place of cultural safety and security.

### **Expectations and Responsibilities**

- 3.6 The Institute shall uphold and advance academic freedom as a defining value.
- 3.7 When exercising academic freedom, staff and students must:
- 3.7.1 comply with law;
  - 3.7.2 have due regard to the need for reasoned argument, discourse, critique and debate in order to further a positive academic and organisational culture; and
  - 3.7.3 acknowledge that in the furtherance of its teaching, learning and research

principles, the Institute benefits from a diversity of views being voiced and contested. The provisions of this policy do not extend to a duty to protect any persons from feeling offended, shocked or insulted by the lawful speech of another.

- 3.8 When exercising academic freedom, staff must act in good faith, in accordance with their own professional judgement having due regard to the expectations of their discipline, broad scholarly standards and formal accrediting bodies.
- 3.9 Staff and students must not speak on behalf of the Institute (unless officially designated as a spokesperson) and must avoid referencing their institute affiliations when speaking in a personal capacity.

### **Operation**

- 3.10 The Institute shall have regard to the intent and provisions of this policy, when drafting, reviewing, or amending any non-statutory policies or rules and in the drafting, review or amendment of delegated legislation pursuant to any delegated law-making powers.
- 3.11 Non-statutory institute policies or rules shall be interpreted and applied, so far as is reasonably practicable, in accordance with the provisions of this policy.
- 3.12 Any power or discretion under a non-statutory institute policy or rule shall be exercised in accordance with the provisions of this policy.
- 3.13 This policy prevails, to the extent of any inconsistency, over any non-statutory institute policy or rules.
- 3.14 Any power or discretion conferred on the Institute by a law made by the Institute in the exercise of its delegated law-making powers shall be exercised, so far as that law allows, in accordance with the provisions of this policy.
- 3.15 Any power or discretion conferred on the Institute under any contract or workplace agreement shall be exercised, so far as is consistent with the terms of that contract or workplace agreement, in accordance with the provisions of this policy.
- 3.16 The Institute will support staff and students to the extent reasonably practicable in the exercise of their intellectual and academic freedom and freedom of speech rights, including when those rights are exercised in other jurisdictions.

### **Academic Freedom Assessment**

- 3.17 Any request for review or assessment regarding a potential failure to uphold the rights and responsibilities provided for in this policy must be provided in writing to the Chair of the Academic Board.
- 3.18 The Chair of Academic Board will undertake an assessment to determine whether a failure to uphold the rights and responsibilities outlined in this policy has occurred. The Chair of Academic Board may decide to:
  - 3.18.1 resolve the matter locally, with or without corrective actions;
  - 3.18.2 seek advice from an external party or advisory panel constituted by the Chair of Academic Board; or
  - 3.18.3 refer the matter to other appropriate institutional processes, including, but not restricted to, the Institute Council.

- 3.19 The Chair of the Academic Board may delegate the above to a nominee in the event of an actual or perceived conflict of interest or absence.
- 3.20 The outcomes of academic freedom assessments will be reported to the Academic Board.
- 3.21 *Complaint or Grievance with the Assessment or Process.*  
If any party to an Academic Freedom Assessment has a complaint or grievance with the assessment, process or other issue related to the report of potential failure they should:
- 3.21.1 Firstly, make a written submission to the Chair of the Academic Board outlining their issues and potential action they consider should be taken; or if this is deemed inappropriate, or if representations to the Chair of the Academic Board are not deemed to be satisfactory; then
- 3.21.2 Undertake action in accordance with the Complaints and Grievances Policy or the Institute Union Enterprise Agreement.

## 4 Responsibilities

Responsibilities are as outlined in Sections 2 and 3 above.

## 5 Acronyms & Terms

<b>Acronym/Term</b>	<b>Definition/Description</b>
<b>academic freedom</b>	<p><b>academic freedom</b> means the following:</p> <ul style="list-style-type: none"> <li>(a) the freedom of academic staff to teach, discuss, and research and to disseminate and publish the results of their research;</li> <li>(b) 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;</li> <li>(c) 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;</li> <li>(d) the freedom of academic staff to participate in professional or representative academic bodies;</li> <li>(e) the freedom of students to participate in student societies and associations;</li> <li>(f) the autonomy of the higher education provider 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.</li> </ul> <p>Schedule 1 (Dictionary) <i>Higher Education Support Act 2003</i></p>

<b>Acronym/Term</b>	<b>Definition/Description</b>
<b>academic staff</b>	Includes all those engaged by the Institute to teach, and/or carry out research, regardless of their employment status (casual/sessional, ongoing, adjunct, honorary, visiting) and includes all those engaged by the Institute in Vocational Education and Training.
<b>freedom of speech</b>	Relates to the freedom of staff and students to make lawful public comment on any issue in their personal capacity. This includes all forms of expressive conduct – including oral and written speech, creative works and activity whether communicated in person or via social media.
<b>intellectual freedom</b>	Includes the rights related to academic freedom and freedom of speech that are protected by the Institute.
<b>staff</b>	Means individuals who are employed or remunerated, either directly or indirectly, by the Institute; and includes adjuncts, contractors, volunteers, and external members of Institute committees. Contractors do not include trade contractors such as those employed by Campus Operations
<b>the duty to foster the wellbeing of staff and students</b>	<ol style="list-style-type: none"> <li>1. 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 academic or intellectual freedom.</li> <li>2. The duty to foster the wellbeing of staff and students supports reasonable and proportionate measures to prevent or proscribe any person from using lawful speech which a reasonable person would regard, in the circumstances, both as likely to humiliate, or intimidate, harass or bully other persons; and as being intended to have any of those effects.</li> <li>3. This duty does not extend a protection from feeling shocked, insulted or offended by the lawful speech of another</li> </ol>
<b>intellectual freedom</b>	Includes the rights related to academic freedom and freedom of speech that are protected by the Institute.
<b>staff</b>	means individuals who are employed or remunerated by the Institute; and also includes adjuncts, contractors and volunteers.
<b>the duty to foster the wellbeing of staff and students</b>	<ol style="list-style-type: none"> <li>1. 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 academic or intellectual freedom.</li> <li>2. The duty to foster the wellbeing of staff and students supports reasonable and proportionate measures to prevent or proscribe any person from using lawful speech which a reasonable person would regard, in the circumstances, both as likely to humiliate, or intimidate, harass or bully other persons; and as being intended to have any of those effects.</li> <li>3. This duty does not extend a protection from feeling shocked, insulted or offended by the lawful speech of another.</li> </ol>

## 6 Supporting Documents

- *Batchelor Institute of Indigenous Tertiary Education Act 1999,*
- Batchelor Institute of Indigenous Tertiary Education Union Enterprise Agreement,
- Council Members Code of Conduct,
- Staff Code of Conduct,
- Student Code of Conduct,
- Staff Conduct Rules,
- Student Conduct Rules, and
- Research Policy.

## 7 Related documents

- *Higher Education Support Act 2003,*
- *Higher Education Standards Framework (Threshold Standards) 2021,*
- Guidance Note: Academic Leadership, TEQSA
- Report of the Independent Review of Freedom of Speech in Australian Higher Education Providers, March 2019 (French Review), and
- Review of the Adoption of the Model Code on Freedom of Speech and Academic Freedom, December 2020 (Walker Review).

## 8 Modification history

<i>Date</i>	<i>Version</i>	<i>Authority</i>	<i>Section Modified - Details</i>
7 March 2023	v1 2023	Council	New policy – this policy replaces the Free Intellectual Inquiry Policy

## 9 Feedback

If you have any comments or feedback about this policy, please contact the Executive Dean, Faculty of Tertiary Education and Research.