

Policy No	P31	Version	2
Approved by ABG on	1 February 2024	Scheduled review date	February 2029

1. Purpose

The purpose of this code is to ensure the protection of Freedom of Speech and Academic Freedom at the National Institute of Organisation Dynamics Australia (NIODA).

2. Scope

The code relates to NIODA's governing bodies and committees, candidates, students, staff and visitors.

3. Policy Statement

This policy has the following important objectives:

- a) To ensure that the freedom of lawful speech of staff, candidates, students and visitors to NIODA is treated as a paramount value, its exercise is not burdened by restrictions other than those imposed by law and set out in the Principles of the Code.
- b) To affirm the importance of NIODA's institutional autonomy under the law in the regulation of its affairs, including in the protection of freedom of speech and academic freedom.

4. Principles of the code

- 4.1. Every member of the staff and every student and candidate at NIODA enjoys the freedom of speech exercised at NIODA activities or in connection with NIODA, subject only to restraints or burdens imposed by:
 - law
 - the reasonable and proportionate regulation of conduct necessary to the discharge of NIODA's teaching and research activities
 - 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 NIODA to fulfil its duty to foster the wellbeing of candidates/students and staff
 - the reasonable and proportionate regulation of conduct necessary to enable NIODA to give effect to its legal duties including its duties to visitors.
- 4.2. Subject to reasonable and proportionate regulation of the kind referred to in the previous Principle, a person's lawful speech shall not constitute misconduct nor attract any penalty or other adverse action by reference only to its content
- 4.3. Every member of the academic staff and every student and candidate 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 NIODA's teaching and research activities
 - imposed by the reasonable and proportionate regulation necessary to discharge NIODA's duty to foster the wellbeing of candidates/students and staff
 - imposed by the reasonable and proportionate regulation to enable NIODA to give effect to its legal duties;
 - imposed by NIODA by way of its reasonable requirements as to the courses to be delivered and the content and means of their delivery
- 4.4. The exercise by a member of the academic staff or of a student or candidate of academic freedom, subject to the above limitations, shall not constitute misconduct nor attract any penalty or other adverse action
- 4.5. In entering into affiliation, collaborative or contractual arrangements with third parties and in accepting donations from third parties subject to conditions, NIODA 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 candidates/students carrying on research or study under such arrangements or subject to such conditions.
- 4.6. NIODA has the right and responsibility to determine the terms and conditions upon which it shall permit external visitors and invited visitors to speak at NIODA activities and use NIODA facilities and in so doing may:
- (a) require the person or persons organising the event to comply with NIODA's 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 NIODA activities where the content of the speech is or is likely to:
 - (i) be unlawful
 - (ii) prejudice the fulfilment by NIODA of its duty to foster the wellbeing of staff, candidates 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 NIODA's character as an institution of higher learning.
 - (d) require a person or persons seeking permission for the use of NIODA facilities 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.
- 4.7. Subject to the preceding Principles NIODA shall not refuse permission for the use of NIODA activities or facilities by an external visitor or invited visitor nor attach conditions to its permission, solely on the basis of the content of the proposed speech by the visitor.

- 4.8. Consistently with this Code, NIODA may take reasonable and proportionate steps to ensure that all prospective candidates/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 NIODA's duty to foster the wellbeing of staff, candidates and students. They are not precluded from including content solely on the ground that it may offend or shock any student or class of candidates/students.

5. Definitions

'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, candidates 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, candidates and students to express their opinions in relation to the higher education provider in which they work or are enrolled
- the freedom of academic staff, without constraint imposed by reason of their employment by NIODA, to make lawful public comment on any issue in their personal capacities
- the freedom of academic staff to participate in professional or representative academic bodies
- the freedom of candidates/students to participate in candidate/student societies and associations
- 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

'academic staff' all those who are employed by NIODA to teach, supervise and/or carry out research and extends to those who provide, whether on an honorary basis or otherwise, teaching or supervisory services and/or conduct research at NIODA.

'external visiting speaker' any person who is not an invited visiting speaker and for whom permission is sought to speak at NIODA's activities.

'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 NIODA to speak at NIODA activities.

'NIODA' means NIODA as an entity and includes its decision-making organs and officers, candidates and students, and any entities controlled by NIODA.

'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 NIODA whether full time or part-time and whether or not academic staff.

'the duty to foster the wellbeing of staff, candidates and students'

- includes the duty to ensure that no member of staff and no student or candidate 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 or candidate 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.

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

6. Responsibilities

- 6.1. NIODA 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.
- 6.2. Non-statutory policies and rules of NIODA shall be interpreted and applied, so far as is reasonably practicable, in accordance with the Principles of this Code.
- 6.3. Any power or discretion under a non-statutory policy or rule of NIODA shall be exercised in accordance with the Principles in this Code.
- 6.4. This Code prevails, to the extent of any inconsistency, over any non-statutory policy or rules of NIODA.
- 6.5. Any power or discretion conferred on NIODA by a law made by NIODA in the exercise of its delegated law-making powers shall be exercised, so far as that law allows, in accordance with the Principles of this Code.
- 6.6. Any power or discretion conferred on NIODA 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.

7. Grievances

Grievances relating to freedom of speech and academic freedom should be taken up as per the NIODA Grievance Policy. The Grievance Policy is published on the NIODA website www.nioda.org.au/policies.

8. Related Documents

Free Intellectual Enquiry Policy

Grievance Policy

Report of the Independent Review of Freedom of Speech in Australian Higher Education Provides, March 2019. The Hon Robert S French AC.