



Dr Michael Spence AC
Vice-Chancellor and Principal

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Mr David Learmonth
Deputy Secretary - Higher Education, Research and International
Commonwealth Department of Education
Canberra ACT 2601

By email: david.learmonth@education.gov.au; HigherEd@education.gov.au

Dear Mr Learmonth,

Thank you for the opportunity to provide feedback on the amendments the Government has proposed for the *Higher Education Support Act 2003* (HESA) in response to recommendations of the Independent Review of Freedom of Speech in Australian Higher Education Providers (the French Review). As you are aware, we have kept the Department informed about our response to the French Review since mid-2019.¹

We are participating in the sector's discussions about the proposed HESA amendments. At this early stage in those deliberations it would be premature for us to make specific recommendations about the changes we think should be made to the Government's legislative proposals. However, as our Charter adopts an amended version of the definition of academic freedom recommended by Mr French (and now proposed for inclusion in the HESA) we thought it important to ensure the Department is aware of the key changes we made to Mr French's definition (with his endorsement) and our reasons for making them.

Please find attached a version of Mr French's academic freedom definition showing in mark-up the key amendments adopted in our Charter. We made changes to address two main areas of concern.

First, we concluded that the academic/professional staff distinction the Model Code created was unhelpful in our context due to the blurred roles of many members of our staff and because we do not think that there can be a community discourse where there is a group free to speak about a particular subject and another group not free to speak about the very same issue. For example, we not only have professional staff contributing to a wide variety of academic activities, but we have academic and professional staff who are simultaneously students of the University. There are also professional staff whose expertise is recognised by faculties and schools by the award of academic titles and other means. We also thought it vital

¹ Our Senate adopted a new Charter for the Protection of Freedom of Speech and Academic Freedom (Charter) on 9 December 2019, which took effect on 1 January 2020. The Charter is publicly available through our policy register and can be accessed easily by typing 'Charter of Freedom of Speech and Academic Freedom' into our policy register's search field: <https://sydney.edu.au/policies/>

to acknowledge that our professional staff are valued members of the University community – who have the same freedom as academic staff to express their lawful views about the University.

We addressed these concerns by amending the Model Code so that it applies to all staff and adopting a definition of staff which includes all employees and affiliates of the University. Additionally, we made it plain in our definition of academic freedom that it was a freedom available to all staff but in the course of their academic activities. As Mr French acknowledged in his report and Model Code, there is a range of circumstances when a higher education provider may legitimately place limitations on the exercise of academic freedom. Amendments elsewhere in our Charter's Principles therefore make it clear that we set the scholarly standards by which our academic activities will be conducted.

Second, we concluded that the freedom of our staff to make lawful public comment on issues in their personal capacities did not sit well in a definition of academic freedom. It is a freedom which is available to all members of the University community and we made this clear in our Charter by moving the fourth dot point of Mr French's recommended definition to a stand-alone articulation of the freedom of speech principle.

Without wishing to pre-empt the issues and recommendations Universities Australia and the Group of Eight may make in their submissions, we raise the following additional issues for the Department's early consideration:

- Once in place as proposed, the HESA definition of academic freedom will set the threshold standards that all higher education providers must satisfy for registration and re-registration with the Tertiary Education Quality and Standards Agency (TEQSA). Noting the wide variety and missions of providers registered with TEQSA and the Government's support for provider diversity we query whether the implications of the proposed amendments have been fully assessed. The Government's objective may be better served by leaving 'academic freedom' undefined in the HESA (as is proposed for 'freedom of speech') and allowing providers to determine the scope appropriate for their circumstances as we have done in responding to Mr French's report.
- If the term 'academic freedom' is to be defined in the HESA, it will require changes to clarify scope, remove overlaps with freedom of speech issues and provide flexibility to allow TEQSA to accommodate a diversity of provider approaches to upholding academic freedom.
- The HESA may also benefit from the inclusion of a provision recognising – as Mr French did in his report – that higher education providers can set reasonable limits on the exercise of academic freedom.

We will be working with our peak bodies over the coming days to help prepare sector-wide submissions and recommendations for your Department's consideration.

In the meantime, should you or your staff wish to discuss any of these issues with us, in the first instance please do not hesitate to contact me or Mr Tim Payne, Director, Higher Education Policy and Projects in my office: tim.payne@sydney.edu.au, 02 9351 4750, 0427 892 669.

Yours sincerely,

(Signature removed)

Professor Stephen Garton
Acting Vice-Chancellor

Attachment University of Sydney changes to the French Model Code relevant to the
Government's proposed amendments to the *Higher Education Support Act*
2003

Attachment

University of Sydney changes to the French Model Code relevant to the Government's proposed amendments to the *Higher Education Support Act 2003*

Definitions

'academic freedom' for the purposes of these Principles ~~is Code~~ comprises the following elements:

- the freedom of ~~academic~~ staff, in the course of their academic activities, to ~~teach~~ educate, discuss, ~~or~~ and research and to disseminate and publish the results of ~~their research~~ those activities;
- the freedom of ~~academic~~ staff and students, in the course of their academic activities, 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~~ those activities;
- the freedom of academic staff and students to express their opinions in relation to the higher education provider University in which they work or are enrolled;
- ~~the freedom of academic staff, without constraint imposed by reason of their employment by the university, 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 and associations;
- the freedom of students to participate in student societies and associations.
- the autonomy of the ~~higher education provider~~ University 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 the university to teach and/or carry out research and extends to those who provide, whether on an honorary basis or otherwise, teaching services and/or conduct research at the university.~~

New or amended relevant definitions included in the University of Sydney's Charter

staff for the purposes of these Principles, includes all employees and affiliates of the University.

University of Sydney: Moved into the University Charter's Freedom of Speech Principles as recommended by the Working Group established by the Australian University Chancellors Council, which included Mr French.

USyd Charter Principle number 2: "Nothing in any non-statutory policy or rule of the University shall restrict or inhibit the freedom of staff to make public comment on any issue in their personal capacities."

student	<p>for the purposes of these Principles, is a person who is defined as a student by the University of Sydney Student Charter 2020, which presently provides that a student is a person who is:</p> <ul style="list-style-type: none">• currently admitted to candidature in an award course at the University; or• a non-award student, exchange student or study abroad student.
University	<p>means the body corporate incorporated under Section 5 of the University of Sydney Act 1989.</p>
University community	<p>means staff and students of the University.</p>