



Australian Government
Department of Education,
Skills and Employment

Review of Adoption of the Model Code on Freedom of Speech and Academic Freedom in Higher Education

Australian Government Response



Message from the Hon Alan Tudge MP, Minister for Education and Youth

Strengthening the protection of freedom of speech and academic freedom on our university campuses is a key priority for the Australian Government. Support for these concepts should be defining characteristics of our university sector, and contribute to a healthy, robust democracy.

In response to the 2019 Review of Freedom of Speech in Australian Higher Education Providers undertaken by the Hon Robert French AC, former Chief Justice of the High Court of Australia, the Government has worked with the sector to incorporate his proposed voluntary Model Code into universities' policy frameworks. As part of this work, and to support universities to strengthen their protections for freedom of speech and academic freedom, the Government commissioned Emeritus Professor Sally Walker Review AM to evaluate their progress in implementing the Model Code.

While there has been delay at some institutions due to the impacts of dealing with the COVID-19 pandemic, the majority of universities appear to be largely on track in their efforts to implement the Model Code. Professor Walker has assessed the majority of the 32 universities who advised her they had completed implementation as being either fully or mostly aligned with Model Code. That is not to say that the sector can rest on its laurels.

Professor Walker notes that it is important that the public have confidence that universities are places that value and protect freedom of speech and academic freedom. Her report includes several broad suggestions for universities to improve or better demonstrate their alignment with the Model Code, as well as recommending amendments to the Model Code to address practical issues and improve public confidence in the system. She highlights the need to encourage a stronger role and greater accountability for universities' governing bodies to ensure the alignment of institutional policies with the Model Code's principles and foster a culture in which freedom of speech and academic freedom are valued, nurtured and actively defended.

The Australian Government accepts all five of Professor Walker's recommendations and supports all seven of her suggestions to universities. These proposals will contribute to building institutional and sector resilience and help universities to manage existing and emerging integrity risks. Given the voluntary nature of the Model Code and the importance of institutional autonomy, as emphasised in the French Review, the Government expects that universities will take ownership of the Model Code into the future. I expect the university sector itself to take a leading role to implement this response.

To that end, I thank the Chair of the University Chancellors Council, Mr Stephen Gerlach AM, for agreeing to lead development of an approach to university attestation regarding their management of issues relating to freedom of speech and academic freedom. I also thank Professor Walker for her considered and scholarly report, and all of the stakeholders, including universities, who gave their time and effort to contribute to the review.

The Hon Alan Tudge MP

Minister for Education and Youth

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1. Overview

On 14 November 2018, the former Minister for Education, the Hon Dan Tehan MP, announced an independent review into freedom of speech on Australian higher education campuses, led by the Hon Mr Robert French AC, former Chief Justice of the High Court of Australia. Mr French delivered his final report to the Minister on 19 March 2019. In April 2019, the Government released Mr French's report, accepting all his recommendations, including:

- A voluntary Model Code to strengthen the protection for freedom of speech and academic freedom on higher education campuses.
- Minor amendments to the *Higher Education Support Act 2003* (HESA) and the Higher Education Standards Framework to align the language of relevant provisions with the Model Code. These amendments replace the term 'free intellectual inquiry', with 'freedom of speech and academic freedom'.
- Amending HESA to include a definition of academic freedom based on the Model Code.

Mr Tehan encouraged all higher education providers to adopt the Model Code by institutional regulation or policy. Professor Deborah Terry AO, Chair of Universities Australia (UA), advised Mr Tehan in September 2019 that all UA member Vice-Chancellors intended to write to him by the end of 2019 advising of their progress to adopt, adapt or ensure the principles of the Model Code are reflected in their policies. Through this process and other advice to the Department of Education, Skills and Employment, all university category providers except one indicated they expected to complete their adoption of the Model Code by the end of 2020.

In August 2020, Mr Tehan announced that he had asked Emeritus Professor Sally Walker AM to evaluate university progress aligning their policies with the Model Code. In late August and early September 2020, Professor Walker wrote to universities, university networks, unions, student associations, state and territory education ministers and other stakeholders to seek comments on the review's Terms of Reference. The department wrote to all universities on Professor Walker's behalf to seek information about how their policies address each element of the Model Code. Professor Walker also met with Universities Australia, the Chair of the University Chancellors Council (UCC) and the Tertiary Education Quality and Standards Agency (TEQSA).

The UCC proposed a number of minor amendments to the Model Code, which the UCC Chair Mr Stephen Gerlach AM, the Chancellor of Flinders University, provided to the department in September 2020 in response to Professor Walker's request for comment on her terms of reference.

Professor Walker provided her final report to the Government in November 2020. The Government released the report and provided Professor Walker's individual evaluations to each university on 9 December 2020. She made five recommendations to Government and seven suggestions to assist providers, as well as identifying three exemplars: La Trobe University, the University of Sydney, and RMIT University.

Table 1 shows Professor Walker's assessed categories of alignment with the Model Code and the number of universities in each category.

Table 1—Categories of alignment in the Walker Review

Rating in Walker Review	Number of universities
Fully aligned	9
Mostly aligned with a small number of areas of non-alignment	14
Partly aligned with significant areas that are not aligned	4
Not aligned	6
Would be aligned if implemented	2
Not yet aligned	6
No response provided	1

Source: S. Walker (2020) Review of the Adoption of the Model Code on Freedom of Speech and Academic Freedom, p. 27

The Government challenges those universities not assessed as being fully or mostly aligned to go further in reviewing their statutes and policies to achieve consistency with the Model Code. The simplest way to deliver this is to adopt the Model Code as an institutional policy with clear and explicit capacity to override any other policy that could be read as being inconsistent with the Model Code. However, all relevant policies would benefit from being reviewed to ensure alignment with the Model Code. If universities were to act persuasively on Professor Walker’s advice, it could avoid the need for further regulation in the future to ensure that alignment.

Following release of the review report, the department shared Professor Walker’s individual evaluations with universities. A number of institutions have subsequently provided further updates on implementation. Staff in the department are available to discuss Professor Walker’s assessments and, where needed, provide a sounding board for universities’ further actions in response.

2. Terms of reference

The terms of reference for the review were to:

1. Validate the alignment of universities' suite of relevant policies with the principles of the Model Code on freedom of speech and academic freedom in higher education providers;
2. Consider whether there are areas of particular strength or weakness in institutional responses and offer any suggestions to institutions where she considers alignment with the Model Code could be improved;
3. Identify exemplars of particularly good practice that could be shared or promoted within the higher education sector;
4. Provide advice to the Minister for Education on the overall alignment of universities policies with the principles of the Model Code and, if warranted, any suggestions on how the alignment could be further improved;
5. Provide advice to the Minister for Education on whether the Code needs further refinement or change.

3. Recommendations, suggestions and response

The Government’s response to each suggestion and recommendation is set out in Table 2 and Table 3 below.

Table 2: Suggestions to providers in the Walker Review

Suggestion	Response	Responsibility
<p>1. Universities should adopt a single, overarching code or policy dealing with freedom of speech and academic freedom.</p>	<p>The Australian Government endorses this suggestion and supports its adoption by universities.</p> <p>In the absence of an overarching policy, university policies and protections in relation to freedom of speech and academic freedom are more difficult to demonstrate, understand and implement.</p>	Universities
<p>2. Those universities whose policies do not already do so, should strengthen alignment with the Model Code by making it clear that academic freedom and freedom of speech are of such value that they will not be restricted or burdened except by restrictions or burdens permitted by their freedom of speech and academic freedom policy or code.</p>	<p>The Australian Government endorses this suggestion and supports its adoption by universities.</p> <p>Institutions should have explicit policies that clearly articulate limits on academic freedom and freedom of speech. Such statements are important so university communities are aware of the importance and limits of their freedom of speech and academic freedom, and also to guide administrators.</p>	Universities
<p>3. Universities should remove from their definition of “academic freedom” limitations that are not included in the Model Code definition.</p>	<p>The Australian Government endorses this suggestion and supports its adoption by universities.</p> <p>Institutions that include limitations on freedom of speech or academic freedom in institutional policies that appear to go beyond those articulated in the Model Code would need to clearly explain and justify how they are consistent with the Model Code.</p>	Universities

Suggestion	Response	Responsibility
<p>4. Every university, even those that have adopted paragraph (4) of the <i>Operation</i> section of the Model Code, should undertake a project, within a defined period of time, to review all its policies, rules and codes to ensure that they are not inconsistent with the university’s freedom of speech and academic freedom code or policy.</p>	<p>The Australian Government endorses this suggestion and supports its adoption by universities.</p>	<p>Universities</p>
<p>5. All universities, even those that have adopted paragraphs (3) and (5) of the <i>Operation</i> section of the Model Code, should review at least their rules, codes and policies dealing with the matters identified in paragraph 2.5.4, that is:</p> <ul style="list-style-type: none"> • Student Misconduct Policies • Codes of Conduct applying to Staff • Codes of Conduct applying to Students • Bullying, Discrimination and Harassment Policies or Procedures • Policies regarding the Hire or Use of University Facilities. <p>If these include provisions that leave room for the exercise of administrative discretions or evaluative judgments that could limit freedom of speech or academic freedom, they should be amended so as to make it clear that the power or discretion must be exercised in accordance with the university’s freedom of speech and academic freedom code or policy.</p> <p>[Note: more is required than simply providing that these policies are to be ‘read with’ or ‘subject to’ the university’s code</p>	<p>The Australian Government endorses this suggestion and supports its adoption by universities.</p>	<p>Universities</p>

Suggestion	Response	Responsibility
or policy dealing with freedom of speech and academic freedom.]		
<p>6. Academic freedom provisos or requirements of a kind not authorised by the <i>Principles of the Code</i> section of the Model Code should be designated as ‘expectations’ with which students and staff should comply, but that the policy or code must make it clear that failure to meet these expectations is not sanctionable, that is, it will not constitute misconduct or attract any penalty or adverse action.</p>	<p>The Australian Government endorses this suggestion and supports its adoption by universities.</p> <p>The Government does not consider that reference to provisions or requirements such as ‘reputation’, ‘scholarly standards’, ‘professional standards’ or similar concepts that are not explicitly identified in the Model Code are consistent with the intent of the Model Code.</p>	Universities
<p>7. Universities should consider ways of continuously reinforcing the university’s commitment to freedom of speech and academic freedom. This could take the form of a briefing as part of the university’s induction programs for new staff, new members of the academic board and for new members of the governing body; time could be scheduled for periodic discussion at faculty, academic board and governing body meetings. Induction programs for students could also incorporate a session aimed at educating them about their rights to academic freedom and freedom of speech.</p>	<p>The Australian Government endorses this suggestion and supports its adoption by universities.</p> <p>Effective induction and communication materials are important to ensure that staff, students and visitors understand their rights and obligations in relation to freedom of speech and academic freedom. It is also important for administrators to understand the limits to and protections for freedom of speech and academic freedom.</p>	Universities

Table 3: Recommendations arising from the Walker Review

Recommendation	Response	Responsibility
<p>1. If the <i>Higher Education Support Act 2003 (Cth)</i> is amended to include the definition of ‘academic freedom’ in the UCC version of the Model Code, the Model Code should be amended by:</p> <p>(i) replacing the definition of ‘academic freedom’ in the Model Code with the definition of ‘academic freedom’ in the UCC version of the Model Code; and</p> <p>(ii) replacing paragraph (2) of the <i>Principles of the Code</i> section in the Model Code with paragraph (2) of the <i>Principles of the Code</i> section in the UCC version of the Model Code.</p>	<p>Agree.</p> <p>The UCC proposal is broadly consistent with Mr French’s Model Code. Mr French is himself a member of the UCC, as the Chancellor of the University of Western Australia, and has indicated he is not opposed to the UCC proposal.</p> <p>Amendments to the <i>Higher Education Support Act 2003</i> currently under consideration in the House of Representatives as part of the Higher Education Support Amendment (Freedom of Speech) Bill 2020 include a definition of academic freedom that is consistent with the UCC proposal.</p>	<p>Australian Government</p>
<p>2. The Model Code should be amended by inserting a note to the <i>Operation</i> section that provides:</p> <p>‘As an alternative to adopting some or all of paragraphs (2), (3), (4) and (5) of the <i>Operation</i> section of the Model Code, a university may confirm that it has brought all its existing policies and rules into alignment with the <i>Principles of the Code</i>.’</p>	<p>Agree.</p> <p>The Australian Government endorses this addition to the Model Code to ensure the flexibility to respond in ways that meet institutional needs is fully understood.</p> <p>This amendment is consistent with the Model Code and allows some flexibility in implementation without compromising protection for freedom of speech and academic freedom.</p>	<p>Australian Government</p> <p>Universities</p>
<p>3. The Model Code should be amended by inserting a note to paragraph (2) of the <i>Application</i> section that provides:</p> <p>‘Where a student representative body is a separate legal entity, the university will use its best endeavours to encourage it to adopt the university’s policy on freedom of speech and academic freedom.’</p>	<p>Agree.</p> <p>The Australian Government endorses this addition to the Model Code to ensure independent student representative bodies are held accountable for their protection of free speech and academic freedom.</p> <p>Student representative bodies at many universities are independently incorporated, and it may not be possible for a university to force a student body to adopt the university’s freedom of speech and academic freedom policies.</p>	<p>Australian Government</p> <p>Universities</p>

Recommendation	Response	Responsibility
<p>4. The Model Code should be amended to include a requirement that the university’s governing body prepares an annual attestation statement regarding freedom of speech and academic freedom and that this is published in the university’s annual report; at a minimum, this must identify the university’s main policy or policies regarding freedom of speech and academic freedom and state whether, in the opinion of the governing body, they are consistent with the Model Code.</p> <p>(i) the first attestation statement to be published should explain what has been done to respond to the information provided by the Department regarding the assessment of the alignment of the university’s policy or policies with the Model Code;</p> <p>(ii) a small group of Chancellors, chaired by the Chair of the UCC, should be asked to develop a template identifying other mandatory and optional matters to be included in the annual freedom of speech and academic freedom attestation statement made by the governing body and published in the annual report.</p>	<p>Agree.</p> <p>The Australian Government endorses this addition to the Model Code to ensure universities are seen to be demonstrating their commitment to freedom of speech and academic freedom through public reporting on their approach to managing related issues throughout the year.</p> <p>The Chair of the University Chancellors Council has agreed to establish and lead a panel of university Chancellors to develop a template attestation statement that universities could use to outline their approach to freedom of speech and academic freedom on an annual basis. Membership of the panel has been agreed to include the Hon John Brumby AO, Chancellor of La Trobe University, the Hon Julie Bishop, (Australian National University), Ms Belinda Hutchinson AC (the University of Sydney), Professor Peter Shergold AC (Western Sydney University) and Mr Paul Jeans (the University of Newcastle).</p>	<p>Australian Government</p> <p>Universities</p>

Recommendation	Response	Responsibility
<p>5. The need for a complaints process to be included in the Model Code could be the subject of future consideration.</p>	<p>Agree.</p> <p>The Australian Government endorses this addition to the Model Code but notes that universities are already required to have in place a comprehensive approach to managing complaints about any aspect of their operations, including their management of issues relating to freedom of speech and academic freedom.</p> <p>The Higher Education Standards Framework requires higher education providers to have and publish grievance processes, and to document and record responses to formal complaints, allegations of misconduct, breaches of academic or research integrity and critical incidents. Complaints processes must include the capacity for independent third-party review where a complainant feels their concern has not been adequately addressed. Universities established under state, territory or Commonwealth legislation are also subject to oversight and scrutiny by the relevant ombudsman and integrity bodies.</p>	<p>Australian Government</p> <p>Universities</p>