21 January 2019

Secretariat for the Review of Freedom of Speech Quality and Access Branch

Higher Education Group

Australian Department of Education and Training GPO Box 9880

Canberra ACT 2601

**By Email:** freedomofspeechreview@education.gov.au

Dear Secretariat

# Review of Freedom of Speech in Australian Higher Education

I refer to the letter from the Hon Robert French AC to Professor Chapman, Vice-Chancellor, Edith Cowan University (**ECU**) dated 29 November 2018, requesting information of relevance to the independent review of policies supporting freedom of expression and intellectual inquiry in Australian higher education (**Review**).

Whilst I understand that the letter predominantly requests information that is not publicly available, some references and links to publicly available documents have been included to provide you with a comprehensive overview of ECU’s approach to freedom of expression and intellectual enquiry and to assist you to locate the relevant documents.

# ECU’s approach to freedom of expression and intellectual inquiry

1. ECU strongly supports the right of all students, staff, and visitors to its campuses to engage in freedom of expression and intellectual inquiry, provided that such activities are consistent with ECU’s values, and our teaching and research activities.
2. ECU’s approach to expressive conduct and academic freedom by students, staff and visitors can be understood by reference to documents which are publicly available on ECU’s website. These are:
	1. the *Edith Cowan University Enterprise Agreement 2017*, which sets out ECU’s commitment to the principles of protecting and promoting intellectual freedom within ECU;
	2. the *Edith Cowan University Act 1984* which states that a function of ECU is to promote critical and free enquiry, informed intellectual discussion and public debate within ECU and in the wider society;
	3. ECU’s Lands and Traffic By-Laws1;

1 This document is available on ECU’s website at <http://www.ecu.edu.au/centres/strategic-and-governance-> services/our-services/ policy-and-legislation/university-statutes-rules-and-by-laws.

* 1. ECU’s Facilities Hire Policy2;
	2. ECU’s Miscellaneous Room Bookings Policy3; and
	3. ECU’s corporate governance policies, including its Code of Conduct, Social Media Policy and Media Policy.

# Requested information

1. ECU’s response to the information requested in the letter is set out below (adopting the same numbering as in the letter).

Item 1: Statutes, regulations or by-laws relating to expressive conduct by staff or students or persons visiting the university to deliver speeches, lectures or otherwise engaging in public discussion

1. ECU’s Lands and Traffic By-Laws govern the actions of persons who attend ECU’s campuses (whether as a student, staff member or visitor). In particular, these By- Laws prevent all persons from doing any of the following without ECU’s authority:
	1. behaving in a manner which is likely to interfere with the enjoyment of any other person who is, or may in the future be, on ECU’s lands, or which interferes with the present or future enjoyment of any person on ECU’s lands;
	2. arranging, advertising or taking part in a fete, concert or other performance on ECU’s lands; or
	3. arranging, advertising or taking part in public speaking or preaching, unless such public speaking or preaching is allowed by law or practice.

Item 2: Administrative codes, policies or principles relating to the above

1. A person (including a student, staff member or visitor) who wishes to deliver a speech or lecture or otherwise engage in public discussion on an ECU campus, may apply to hire an ECU facility in order to do so, subject to the academic timetable, which takes priority over such hiring.
2. ECU has two policies governing the hiring of its facilities:
	1. a Facilities Hire Policy, which governs facilities hire for commercial purposes and sets out the discounted rates of hire available to certain persons and organisations (including certain students, staff, educational instructions, and charitable and not for profit organisations); and
	2. a Miscellaneous Room Bookings Policy which governs room bookings for non- commercial purposes to facilitate normal business outside of ECU’s core academic programs (including staff meetings, seminars, training programs and general teaching requirements).
3. To facilitate the effective operation of the Facilities Hire Policy, ECU has *Work Instruction 2.3.3.13: Facilities Hire*, which outlines our internal processes for

2 This document is available on ECU’s website at <http://intranet.ecu.edu.au/staff/centres/facilities-and-> services/policies-procedures-work-instructions-and-plans/campus-operations-and-resources.

3 This document is available on ECU’s website at <http://intranet.ecu.edu.au/staff/centres/facilities-and-> services/policies-procedures-work-instructions-and-plans/campus-operations-and-resources.

assessing and granting facilities hire applications, and for managing the hiring process.

1. As the work instruction is an internal document, it is not publicly available on ECU’s website. Accordingly, a copy of the work instruction is **enclosed** with this letter.
2. In accordance with this work instruction, when assessing a new application to hire an ECU facility, ECU will:
	1. review the application and all supporting information;
	2. make contact with the relevant Schools and/ or Centres and confirm the suitability of the applicant’s application if it is considered that the applicant or proposed use of the facilities has the potential to conflict with ECU’s values or teaching and research activities; and
	3. if the applicant or proposed use of the facilities is found to be inconsistent with ECU’s values or teaching and research activities, this finding will be escalated to the appropriate manager who will then liaise further with the applicant.
3. ECU will generally apply greater scrutiny to applications in circumstances where ECU proposes to offer the applicant a discount to the hiring fee, as such discount may be viewed as ECU’s implied endorsement of the person or organisation and the information being disbursed.
4. ECU has formal Venue Hire Terms and Conditions which apply to all facilities hire applications, a copy of which is **enclosed** with this letter. Under these terms and conditions, all advertising material and handouts are required to be approved by ECU prior to distribution.
5. ECU maintains a Facilities and Services Centre - Business Risk Register to identify, document and manage the risks to which its facilities and services centres are exposed, including risks associated with the hiring of ECU’s facilities. **Enclosed** with this letter is an extract from the 2017/2018 Register. The Register is currently being reviewed and updated, however as at the date of this letter the 2019/2020 Register has not been formally adopted.
6. ECU recognises that, in addition to expressive conduct on campus, students, staff and visitors may engage in freedom of expression and intellectual inquiry through social media platforms. ECU encourages and supports the responsible use of social media by students and staff and recognises the importance of these social media tools and platforms as a means of communication. ECU has adopted various policies and guidelines in relation to the responsible use of social media by students and staff, as discussed below.

Item 3: Any of the above categories which deal with the topic of academic freedom

1. ECU is committed to the principles of protecting and promoting academic freedom within the University.
2. ECU requires that persons who communicate ideas, facts, views and opinions do so in a professional and ethical manner and in a way that does not harass, vilify, intimidate or defame others or ECU in accordance with ECU’s Code of Conduct and other corporate policies.
3. ECU actively encourages its staff members to engage with the media in their area of expertise, and implements a number of procedures to ensure that such interaction is appropriate in the circumstances and does not negatively impact the reputation of ECU.
4. ECU’s commitment to academic freedom is outlined in its Enterprise Agreement and the *Edith Cowan University Act 1984* (refer to paragraph 2 above). ECU does not have a standalone policy that deals exclusively with academic freedom as it considers the right to academic freedom is adequately protected by its existing policies and procedures.
5. ECU’s Social Media and Media Policies govern a variety of circumstances which may be relevant to the right to academic freedom, including the making of public and private statements in relation to political or social matters by staff members4.
6. ECU has adopted Guidelines for the Responsible Use of Social Media, which are set out as an appendix to ECU’s Social Media Policy. ECU has also released a Social Media @ ECU Student Guide and a Social Media @ ECU Staff Guide which include practical suggestions to assist students and staff to use social media responsibly5.

Item 4: Reports of relevant non-confidential reviews undertaken in this area

1. ECU undertakes reviews of its internal practices, policies and procedures relating to freedom of expression and intellectual inquiry as required.
2. In 2017, ECU elected to reject a facilities hire application by an organisation proposing to hold a seminar on its campus related to pranic crystal healing. Following receipt of letters of concern from the public, ECU conducted further enquiries into the organisation and the content of the seminar and ultimately determined that the seminar did not align with the University’s evidence-based approach to teaching and research in dietetics and was inconsistent with our research activities in this discipline.
3. ECU subsequently commenced an internal review of all persons and organisations that were currently hiring, or proposing to hire, its facilities, to ensure that such persons and organisations, and the purposes for which its facilities were being hired, were appropriately aligned with ECU’s values and teaching and research activities.
4. Recent examples of circumstances in which ECU has applied greater scrutiny to facilities hire applications following its internal review include:
	1. an organisation sought to host an event on campus for the purpose of showing a film in a language other than English and did not provide details of the content of the film to ECU; following further discussions with the potential hirer, it was agreed that the content of the film would be vetted by an appropriate third party to ensure alignment with ECU’s values and teaching and research activities; upon conclusion of the vetting process, the event then proceeded;
	2. an organisation sought to use ECU’s facilities to present a course and intended to charge participants a fee for undertaking the course, in circumstances where ECU had waived its facilities hire fee for the organisation; ECU sought to determine how the funds raised by the organisation were to be applied to ensure

4 Copies of these policies are available on ECU’s website at <http://intranet.ecu.edu.au/staff/centres/brand-and-> marketing/policies-and-guidelines.

5 These guides are available on ECU’s website at <http://intranet.ecu.edu.au/learning/learning-> technologies/social-media.

that such application was not contrary to its values, or teaching and research activities; and

* 1. a reputable organisation, well aligned with ECU’s values and teaching and research activities, was unable to afford to safely secure the area it proposed to hire; following further discussions with the potential hirer the booking was ultimately rejected on the basis that it posed a potential safety risk to students, staff and visitors.

Item 5: Observations which may be helpful to the Review

1. ECU considers that the documents described above and enclosed with this letter provide a framework that adequately promotes and protects the rights of students, staff, and visitors to engage in freedom of expression and intellectual inquiry.
2. This framework achieves an acceptable balance between promoting and protecting these rights and respecting and ensuring that persons act in accordance with ECU’s core values and consistent with our teaching and research activities, particularly in circumstances where there is potential for ECU’s reputation to be impacted by a perceived implied endorsement of the expressive conduct.

If you have any queries, or require additional information, please contact Mr Clarke Drury, Manager, Legal and Integrity by email at: c.drury@ecu.edu.au or by phone on 08 6304 2158.

Yours faithfully,

# Professor Arshad Omari Senior Deputy Vice-Chancellor Edith Cowan University