



Queensland University of Technology

Chancellery

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18 January 2019

The Hon Robert S French AC
Suite 2, Level 13
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Dear Mr French

Thank you for your letter of 29 November 2018, in which you advise of your commission to conduct an independent review of policies supporting freedom of expression and intellectual inquiry in Australian higher education.

I am pleased to attach QUT's response to your request for information regarding the University's policies and activities in this domain. I trust this material will be of assistance to you.

As you foreshadow, QUT will offer further commentary on the fruits of your considerations once they become available. We look forward to other opportunities to engage with the Review, including through our national higher education peak body, Universities Australia. In the meantime, we send best wishes for your deliberations.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Carol Dickenson'.

Professor Carol Dickenson AM
Acting Vice-Chancellor and President

cc freedomofspeechreview@education.gov.au



- 1. University statutes, regulations, rules or by-laws, not available on the University website, relating to expressive conduct by staff or students or persons visiting the University for the purpose of delivering speeches or lectures or otherwise engaging in public discussion.**

All QUT statutes, regulations, rules, by-laws and like directions are available on the University website, including those relating to the matters under review.

- 2. Administrative codes, policies or principles relating to the above including internal audit and risk policies and practices and standard provisions in academic employment contracts.**

QUT Manual of Policy and Procedures: B/8.1 QUT Staff Code of Conduct

8.1.5 Commitment to the system of government¹

This ethics value assumes a system of government based on the rule of law and the accountability of individuals. In common with all citizens, staff members are required to observe the law. However, this obligation does not detract from the traditional right of academics to engage in free enquiry and active criticism on matters of public concern, or to pursue research within their field of expertise on matters which may be controversial or unpopular, even where this involves challenge or criticism to ideas, methods or practices of government or governmental agencies.

QUT Manual of Policy and Procedures: F/3.4 Media Relations

3.4.7 Academic comment in the media²

Academic staff are encouraged to share their expertise with media on matters of community interest and to talk directly to media on matters within their area of qualification and expertise. Comment on matters outside the academic staff member's area of expertise should be made in their capacity as a private citizen.

QUT Enterprise Agreement (Academic Staff) 2014 – 2017³

38. Intellectual and Academic Freedom

38.1 Guarantees of intellectual and academic freedom are essential to the proper functioning of a University culture. The rights of academic freedom that will be recognised and protected, include the rights to:

- (a) pursue critical and open inquiry;*
- (b) participate in public debates and express opinions about issues and ideas related to their field of expertise;*
- (c) participate in established decision making structures and processes within the University; and*
- (d) participate in professional and representative bodies, including trade unions.*

38.2 In the first instance any alleged limitation of these rights will be dealt with under the Grievance Resolution Procedures for Workplace Related Grievances and Bullying in the Manual of Policies and Procedures.

¹ http://www.mopp.qut.edu.au/B/B_08_01.jsp#B_08_01.05.mdoc

² http://www.mopp.qut.edu.au/F/F_03_04.jsp#F_03_04.07.mdoc

³ [https://qutvirtual4.qut.edu.au/c/document_library/get_file?uuid=8ae61735-e08b-4852-8e81-90c2656fafd6&groupId=2016309&filename=QUT%20Enterprise%20Agreement%20\(Academic%20Staff\)%202014-2017.pdf](https://qutvirtual4.qut.edu.au/c/document_library/get_file?uuid=8ae61735-e08b-4852-8e81-90c2656fafd6&groupId=2016309&filename=QUT%20Enterprise%20Agreement%20(Academic%20Staff)%202014-2017.pdf)

38.3 Academic staff members have the right to express unpopular or controversial views, but this does not mean that they have a right to harass, vilify, defame or intimidate.

Queensland University of Technology Act 1998⁴

5 Functions of university

The university's functions are -

- (a) to provide education at university standard; and*
- (b) to provide facilities for, and encourage, study and research; and*
- (c) to encourage the advancement and development of knowledge, and its application to government, industry, commerce and the community; and*
- (d) to provide courses of study or instruction (at the levels of achievement the council considers appropriate) to meet the needs of the community; and*
- (e) to confer higher education awards; and*
- (f) to disseminate knowledge and promote scholarship; and*
- (g) to provide facilities and resources for the wellbeing of the university's staff, students and other persons undertaking courses at the university;*

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

As the topic of expressive behaviour by staff is inherently entangled with the topic of academic freedom, our response to this item is incorporated in the response to item 2, above.

4. The reports of relevant non-confidential reviews which your university may have undertaken in relation to its rules, policies and practices in this area.

There are currently no reports of non-confidential reviews in relation to this topic.

5. Any observations that you would like to make which you think might be helpful to the Review.

QUT considers that the issues which the Review is tasked to consider are perhaps not systemic. Controversy will arise from time to time over speakers and speech acts, as much in universities as in other institutions, but these debates are, in fact, most frequently instances of freedom of expression rather than of its suppression, bearing in mind that both protest and scholarly criticism are themselves speech acts. In public commentary, 'freedom of expression' has been latterly evoked very loosely in the breach: contrary to the entitlements claimed by some parties, freedom of expression does not entail freedom from critique; nor does it exempt a speaker from the obligation to adduce evidence in reasoned debate, especially on a platform provided by an institution of higher learning. We suggest that close scrutiny of recent alleged breaches of freedom of expression is likely to reveal that the crisis alleged by some commentators is less significant than supposed.

Additionally, the merits of cases of genuine contestability over freedom of expression and academic freedom are so intrinsically dependent upon the contingencies as to be soluble only on a case-by-case basis, with reference to the existing well-understood general principles. This is one reason for scepticism that a Model Code would prove beneficial.

Another reason is that the university sector already shares a very clear understanding of the principles governing its responsibilities concerning freedom of expression and academic freedom, developed over many centuries of scholarly tradition and nuanced in keeping with contemporary societal expectations and standards. These principles include the rigorous defence of scholars speaking within their fields of expertise, and the promotion of the contestability of ideas on rational, evidence-based terms expressed in respectful, orderly debate.

⁴ Queensland University of Technology Act 1998. In force (Queensland).
<https://www.legislation.qld.gov.au/view/html/inforce/current/act-1998-004>

As you would be aware, the Universities Australia Plenary on 30 October 2018 unanimously reiterated our sector's long-standing commitment to the founding ideals of our university communities:

*"Australian universities restate our enduring commitment to academic freedom and intellectual inquiry. We also restate our enduring commitment to freedom of expression on our campuses and among our staff and students."*⁵

At least across the community of Australian universities, these principles are deeply understood, closely scrutinised and faithfully applied in an extraordinarily wide range of specific circumstances. Further, there do not seem to be cases of egregious misalignment on this matter among the non-university higher education providers. In light of this, it is not apparent that a need exists for 'a sector-led code of conduct', as mooted in your enquiry's terms of reference; indeed, even a well-executed attempt at codification may risk diminishing the scope of current protections. In addition, some may argue, respectfully, that any draft Model Code that were to emerge from the present Review could hardly be characterised as 'sector-led' and, in this respect, may prove antagonistic to its own objectives.

Finally, it is important for the Review's integrity that it avoids reliance upon or even reference to the plethora of commentary on this matter that emanates from arguably non-expert sources. The recent contribution of the Institute of Public Affairs (IPA) – the so-called *Free Speech on Campus Audit 2018*⁶ – is an example. In our view, it is fundamentally flawed in its conception: while the Audit scores QUT negatively for possessing anti-discrimination policies, characterising these as inherently antagonistic to freedom of expression, we would argue that, on the contrary, anti-discrimination policies help to promote freedom of expression by striving to create the conditions under which all voices can be heard, and not only those of hegemonic, mainstream or numerically dominant groups. Ironically, the Higher Education Standards Framework (Threshold Standards) 2015, on which the IPA relies quite heavily in formulating its position, itself promotes the right to freedom from discrimination, as outlined in its associated Explanatory Statement.⁷

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⁵ Universities Australia, 'Freedom of Expression Alive and Well on Australian Uni Campuses.' Media release, 14 November 2018. <https://www.universitiesaustralia.edu.au/Media-and-Events/media-releases/Freedom-of-expression-alive-and-well-on-Australian-uni-campuses#.XDvp8exyWHk>

⁶ Institute of Public Affairs, *Free Speech on Campus Audit 2018*. 10 December 2018. <https://ipa.org.au/wp-content/uploads/2018/12/Free-Speech-on-Campus-Audit-2018.pdf>. See also 'Appendix 2: Full list of university policies and actions.' <https://ipa.org.au/wp-content/uploads/2018/12/Free-Speech-on-Campus-Audit-2018-Appendix-2.pdf>

⁷ Explanatory Statement: Tertiary Education Quality and Standards Agency Act 2011: Higher Education Standards Framework (Threshold Standards) 2015. In force (Commonwealth). <https://www.legislation.gov.au/Details/F2015L01639/Explanatory%20Statement/Text>