

Submission: Draft Recommendation – A Model Code

We welcome the opportunity to provide feedback to the Draft Recommendation – A Model Code (the ‘Code’) written by the Honourable Robert S French AC.

Background

The RMIT University Student Union (RUSU) is the peak representative body for students at RMIT. Established in 1944 RUSU is independent of RMIT and operates under the direction of annually elected student representatives. All students enrolled at RMIT are automatically members of the student union and as such we represent over 85,000 students.

The Code

Whilst we maintain our commitment to the values that have been expressed in the Code to protect freedom of speech and academic freedom at RMIT, we believe the Code could be improved through the incorporation and consideration of the following points:

- (i) **Embed/incorporate existing state and federal legislation regarding rights and responsibilities**

Although the Code states that it is aimed at protecting ‘lawful’ speech, it does not provide a clear or explicit explanation of the fact that lawful speech is limited by various legislation to ensure the protection of the rights of people in the community.

The explanatory document from the Honourable Robert S French refers to UNESCO Recommendations with regards to the definitions of ‘academic freedom’. Further to this, it would be highly beneficial if the Code incorporated aspects of legislation such as the:

Sex Discrimination Act 1984
Racial and Religious Tolerance Act 2001
Charter of Human Rights and Responsibilities Act 2006
Disability Discrimination Act 1992

This will clarify that the Code in actual fact sits within existing state and federal legislation and the general legal obligations of the university.

For example, section (3) of Principles of the Code states:

The exercise by a member of the academic staff or of a student of academic freedom shall not constitute misconduct nor attract any penalty or other adverse action.

This provision does not reflect the legal risks associated with particular types of speech and expression. Even if the Code protects academic freedom to the point of not imposing a penalty or adverse action by the university, it is possible that in some instances there may be civil or criminal consequences. For instance, the *Racial and Religious Tolerance Act 2001* makes particular types of speech and expression unlawful. Particular types of expression can therefore be penalised by law.

- (ii) **Reference the value and protection of diversity and inclusion**

It would be of great value if the application of any Code to protect freedom of speech and expression would also very clearly address commitment to diversity, inclusion, and protection of the university communities from harm. With such diverse student and staff

communities, maintaining strong positions on the protections of the rights and reputations of individuals and groups should be a priority.

For example, international students make up a significant portion of university communities in Australia. Expressing the university's commitment to protect the rights of these individuals and groups would be viewed favourable and provide support to students who may be experiencing marginalisation as a result of language barrier or cultural difference.

A further example can relate to the values that are entrenched in the Disability Discrimination Act 1992 (DDA), which provides protection from harassment and discrimination to people with disabilities. Whilst protecting academic freedoms and freedom of speech, it is crucial that the Code expresses and endorses the values in the DDA in a similar way.