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**Office of the
Vice-Chancellor**

The Hon Robert S French AC
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By email: freedomofspeechreview@education.gov.au

Dear Mr French

Thank you for your letter of 8 February 2019 providing an update on the review you have undertaken of freedom of speech in higher education providers and sharing the Draft Model Code. We welcome this development and are supportive of the proposed approach. The Draft Model Code is well crafted and will assist the sector by clarifying the scope of academic freedom and how this must be balanced against other interests.

We do have two specific suggestions to further strengthen the document. The first relates to the ‘duty to foster the wellbeing...’ section. The first dot point defines it as including ‘*the duty to ensure that no member of staff and no student suffers unfair disadvantage or unfair adverse discrimination by reason of their inherent attributes*’.

We are concerned that ‘inherent’ may be too narrowly defined as essential or ‘innate’ attributes—whereas some areas of profound discrimination may not be related to inherent, but cultural attributes. We are of the view that this broader scope should be captured in order to avoid vexatious definitional arguments about what is, or is not, ‘inherent’. Part of our caution here is based on ongoing debates in other areas, about ‘inherent requirements’ legislation and its application in study and workplaces. As a minimum, we believe it should cover those attributes protected at law.

The second suggestion relates to how this Draft Model Code interacts with University Behaviour Policies. We have noted that the core principle of balance is captured in the third dot point in the ‘duty to foster the wellbeing of staff and students’ section specifying that it ‘*supports reasonable and proportionate measures to prevent any person from using lawful speech which is intended to insult, humiliate or intimidate other persons and which a reasonable person would regard, in the circumstances, as likely to have one or more of those effects*’. Further, this protection is then reflected in various principles of the Code as a qualifier to the rights and freedoms that the draft code provides.

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We believe, however, that it would be helpful for universities if the Draft Model Code dealt more explicitly with how it interacts with University Behaviour Policies. It is part of the rights in a plural society for institutions to establish the interaction and conduct between its members. More specifically, it is reasonable for communities to set a culture of respectful communication that may have a higher standard than not being offensive. We think it is important to highlight that universities are a particular kind of community, for which civil and collegial communication and dialogue is of the essence. Indeed, these are essential elements which are the very basis for being able to enjoy academic freedom, so rather than seeing academic freedom and fostering wellbeing as necessarily in tension, we think that inclusion of a positive link between academic freedom and collegial behaviour could be a useful addition to this draft.

For the record, we have recently revised our University Behaviour Policy and this was a subject of lively feedback during the consultation process with our University community. To signal our view on the important interplay between academic freedom and respectful behaviour we have included the following statement in our policy:

‘Maintenance of academic freedom is a principle value of the University, as supported by a Governance Level Principle “Academic Freedom” and in policy. The provisions in this behaviour policy do not seek in any way to limit that. In conduct between members of the University, this policy establishes expectations consistent with the collegial and community nature of a University which is itself the foundation of the ability to have academic freedom.’

Thank you again for the opportunity to provide comment on the Draft Model Code. Please do not hesitate to contact me if you would like to discuss any of these points further.

Yours sincerely

Professor Rufus Black
Vice-Chancellor

21 February 2019