



27 February 2019

The Hon Robert S French AC
Suite 2, Level 13
Allendale Square
77 St George's Terrace
PERTH WA 6000

By email: sulcsj@bigpond.com
Freedom of Speech Review: freedomofspeechreview@education.gov.au

Dear Hon Robert French

Thank you for the opportunity to comment on the draft Model Code for academic freedom and freedom of speech in higher education institutions. The University of South Australia (UniSA) supports the comments made by Universities Australia in its response of 26 February 2019.

In response to various issues in the sector in 2018 with regard to academic freedom and freedom of speech, UniSA has undertaken a review of its own framework to ensure it both meets its obligations under the Higher Education Support Act and the Higher Education Standards Framework. We concur with your view, that despite the commentary of 2018, there is no "free speech crisis", however, we have taken the opportunity to ensure our frameworks are up to date and appropriate.

With regard to the Model Code, we make the following comments:

- Definitions of freedom of speech and academic freedom. UniSA accepts the comments made in your letter of 8 February 2019 with regard to terminology and definition. However, we are concerned that the Model Code, by defining freedom of speech and academic freedom together, continues to conflate the concepts. We are particularly concerned that the treatment of freedom of speech and academic freedom in the Model Code, particularly when considering Principles 1 – 4, confers extensive rights on staff and students that may be at odds with university autonomy and a university's other legislative (e.g. industrial, WHS, Equal Opportunity) and policy (e.g. Intellectual Property and Confidential Information, Codes of Ethical Conduct) responsibilities.
- The intended scope and operation of the code. The "Operation" section of the Model Code implies that Code is intended to have some form of legislative force. In particular, clause 3 and 4 imply that the powers and discretions of a university must be exercised, as far as reasonably practicable, in accordance with the Code. This again raises concerns with regard to institutional autonomy and the interplay with other legislative requirements, such as university Acts of Establishment. More generally, we are concerned that the Code overly constrains the operation of the university, in for example managing its land and facilities (Principles 5 and 6).

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While expressing the above concerns, UniSA also acknowledges the analysis and careful deliberation that you have brought to this issue. We also acknowledge the cautionary comments made in your letter of 8 February 2019 with regard to the current variable treatment of academic freedom and freedom of speech across the sector. Combined with your comments with regard to institutional autonomy our recommendation is that the Model Code be pared back to provide a concise set of definitions and principles that institutions may then adopt within the context of a given institutions policy and legislative environment.

UniSA looks forward to continuing a constructive dialogue with you on this important matter.

Yours sincerely

A handwritten signature in blue ink, appearing to read "David Lloyd". The signature is written in a cursive, flowing style.

Professor David G. Lloyd
Vice Chancellor and President