

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

By Email: freedomofspeechreview@education.gov.au

Dear Justice French,

I refer to your letter, dated 29 November 2018, requesting information as part of the independent review of policies supporting freedom of expression and intellectual inquiry in Australian higher education. The University of Melbourne welcomes the opportunity to provide input.

The University of Melbourne has a significant responsibility to promote and protect freedom of expressive conduct, or 'freedom of speech', within the University and broader community. The promotion of critical and free enquiry, informed intellectual discourse and public debate within the University and in wider society, is embedded as an Object of the University in its enabling legislation – Section 5 of the *University of Melbourne Act 2009*.

Freedom of speech is also a core value for the University and is reflected in our policies and practices. The following is information on this subject not already on the public record or easily accessible on the University website. We trust that it will be of assistance in the review.

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 University statutes, regulations, rules and policies are available to the public on the University website at: <https://about.unimelb.edu.au/strategy/governance/regulatory-framework/legislative-framework>. Except as indicated in the responses below, there are no other instruments with relevant content.

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**

(a) University protocol for major events

The University has protocols and processes in place to ensure that any public gatherings or debates which promote critical and free enquiry are conducted safely and in the spirit of the University legislation. Major events involving VIPs, events attracting significant media or public interest, or those events likely to generate controversy are managed in accordance with these protocols and processes.

(b) Academic Staff Employment Contract Standard Terms and Conditions

The academic staff contract includes the following provisions:

30 RESPONSIBILITIES OF UNIVERSITY STAFF

The University expects all staff to maintain a high standard of conduct and work performance, and to observe standards of courtesy and fairness in dealing with students, members of the public and other staff. At all times the rights, duties and aspirations of others are to be respected.

.....

30.1 Personal behaviours

Staff are expected to:

- Perform their duties professionally with skill, care and diligence using authority fairly, observing relevant Acts, regulations, Awards, Agreements, Policies and Procedures.
- Respect the opinions and beliefs of others and their right to practice their beliefs.

- Comply with the Discrimination, Sexual Harassment and Bullying Procedure and treat others fairly and equitably, irrespective of race, disability, religion, cultural background, sexual orientation, age and marital status, and will not engage in harassing, bullying and discriminatory behaviour.

A similar provision is included in the professional staff contract.

(c) The Appropriate Workplace Behaviour Policy – <https://policy.unimelb.edu.au/MPF1328>

The University's Appropriate Workplace Behaviour Policy includes the following relevant sections:

Section 4.2

4.2. Consistent with the University's strategic imperatives in the pursuit of excellence, the University's values are:

- (a) maintaining the highest international standards of ethics and quality in research, teaching and administration;
- (b) advancing the intellectual, cultural, economic and social welfare of communities, and recognising the particular needs and aspirations of Indigenous Australians;
- (c) to preserve, defend and promote the traditional principles of academic freedom in the conduct of its affairs, as set out in the Academic Freedom of Expression Policy (MPF1224), so that all scholars at the University are free to engage in critical enquiry, scholarly endeavour and public discourse without fear or favour;

Section 6.6

6.3. Employees engaged in external employment must not:

- (c) take any action or make any statement as part of their external employment or consultancy which may serve to bring the University into disrepute by association (save for action or statements that accord with the Academic Freedom of Expression policy (MPF1224); or ...

(d) The Research Integrity and Misconduct Policy – <https://policy.unimelb.edu.au/MPF1318>

The University's Research Integrity and Misconduct Policy includes a section which states explicitly that research methods and results should be open to scrutiny and debate.

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

Academic freedom of expression is fundamental to the academic pursuits of the University and is protected in the terms and conditions of employment of University academic staff, and in University policy.

The following instruments address **academic freedom**.

- (a) *Section 24 of the University of Melbourne Council Regulation* states that 'Council may set principles for the University regarding the rights and responsibilities related to academic freedom of expression'. https://about.unimelb.edu.au/_data/assets/pdf_file/0030/19578/Council-Regulation-v06-11-Dec-2018.pdf
- (b) These principles are set in the Council-approved University policy known as the '*Academic Freedom of Expression Policy*' (MPF1224) (see **Appendix A**). <https://policy.unimelb.edu.au/MPF1224>
- (c) The principles pertaining to academic freedom are also embedded in employment conditions. The University's *Enterprise Agreement 2018*, which is pending Fair Work Commissioner approval, contains the following provision:

2.13. ACADEMIC FREEDOM OF EXPRESSION

2.13.1. The Parties agree to act in a manner consistent with the protection and promotion of Academic Freedom within the University.

2.13.2. The University promotes and protects Academic Freedom of Expression, as set out separately in University Policy.

2.13.3. The University will have regard to the principles of Academic Freedom of Expression when assessing, determining and actioning matters set out in this Agreement relating to performance, academic non-confirmation and, pursuant to clause 1.35.3, misconduct.

2.13.4. The University confirms the University Council's resolution that the Academic Freedom of Expression Policy will not be reviewed until 31 December 2022 and, accordingly, the Parties agree that the Academic Freedom of Expression Policy in place during bargaining will not be amended or rescinded throughout the life of the Agreement or up to and including 31 December 2022, whichever comes first.

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.

The University has no reports of relevant non-confidential reviews.

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

The University of Melbourne supports the recent submission of the Group of Eight in response to the review. We agree with its emphasis on the importance of ensuring universities have autonomy in regulating their policies and practices in this area, and do not believe there is evidence of a 'crisis' of freedom of speech in Australian universities. Nonetheless, we view the responsibility of protecting and promoting freedom of speech very seriously and as part of our commitment to serving the Victorian, Australian and international communities and the public interest.

The University recognises the distinction between the general concepts of freedom of speech and academic freedom. We support the separation of academic freedom and freedom of speech policies, noting that freedom of speech is a much broader concept than the principle of academic freedom. Freedom of speech is regulated in the general legal framework and applies to a larger group of constituents, beyond the academy.

To this end, we are in the process of developing a policy to clarify and consolidate existing guidelines, rules, practices and processes related to freedom of speech. This policy will sit alongside the University's existing Freedom of Academic Expression Policy and, like the latter policy, it will be submitted for approval by the University Council – the University's highest decision-making authority. We anticipate that the new policy will be considered and approved by Council within the first Quarter of 2019.

Should you be interested in discussing any of the above, my office would be pleased to arrange a meeting. Carol Boles would be pleased to assist - cboles@unimelb.edu.au or by phone (03) 8344 6134. You may also wish to contact Professor Richard James, Deputy Vice-Chancellor Academic and Undergraduate r.james@unimelb.edu.au, who is leading the development of the University's Freedom of Speech Policy.

Thank you once again for the opportunity to provide input into the review.

Yours sincerely,



Professor Duncan Maskell
Vice-Chancellor

15 / 1 / 2019

cc: Professor Richard James, Deputy Vice-Chancellor (Academic and Undergraduate) University of Melbourne

Enclosed

Academic Freedom of Expression Policy (MPF1224)

1. Objective

The objectives of this policy are to elucidate the:

- (a) right to academic freedom of expression; and
- (b) responsibilities of scholars in exercising academic freedom of expression.

2. Scope

This policy applies across the University.

3. Authority

This policy is made under the [University of Melbourne Act 2009 \(Vic\)](#) and the [Council Regulation](#).

4. Policy

Right to academic freedom of expression

4.1. A core value of the University of Melbourne is to preserve, defend and promote the traditional principles of academic freedom in the conduct of its affairs, so that all scholars at the University are free to engage in critical enquiry, scholarly endeavour and public discourse without fear or favour.

4.2. Accordingly, the University supports the right of all scholars at the University to search for truth, and to hold and express diverse opinions. It recognises that scholarly debate should be robust and uninhibited. It recognises also that scholars are entitled to express their ideas and opinions even when doing so may cause offence. These principles apply to all activities in which scholars express their views both inside and outside the University.

4.3. The liberty to speak freely extends to making statements on political matters, including policies affecting higher education, and to criticism of the University and its actions.

4.4. Scholars at the University should expect to be able to exercise academic freedom of expression and not be disadvantaged or subjected to less favourable treatment by the University for doing so.

Responsibilities of scholars in exercising academic freedom of expression

4.5. Like all rights, the right to academic freedom of expression carries responsibilities. Scholars may hold their own views and speak freely on all topics, even outside their expertise, and even identifying themselves as members of the University. However, if they speak in public on topics outside their expertise, they should consider whether it is reasonable in the circumstances to link their comments to their association with the University.

4.6. Academic freedom of expression is subject to the following principles:

- (a) all discourse must be undertaken reasonably and in good faith; and
- (b) all discourse should accord with principles of academic and research ethics, where applicable. For example, reasons should be given for an argument so that those who wish to respond have a basis to do

so and speakers may need to state affiliations (including speciality), sources, funding and potential conflicts of interest. The University recognises that these principles may vary according to the context in which the discourse occurs.

POLICY APPROVER

Council

POLICY STEWARD

Academic Secretary

REVIEW

This policy is to be reviewed by 16 March 2021.

VERSION HISTORY

| Version | Approved By | Approval Date | Effective Date | Sections Modified |
|---------|---|-----------------|-----------------|---|
| | Council | | | Previously Standing Resolution of Council. |
| 1 | President Academic Board (authorised by Academic Board) | 08 October 2012 | 08 October 2012 | New version arising from the Policy Simplification Project. Loaded into MPL as Version 1. |
| 2 | - | -- | | Version 2 made in error. |
| 3 | Council | 16 March 2016 | 21 July 2016 | New version arising from policy consolidation project. |
| 4 | Council | 30 May 2018 | 30 May 2018 | Review date changed from 16/03/2021 to 31/12/2022. |