



THE UNIVERSITY OF
SYDNEY

Dr Michael Spence AC

Vice-Chancellor and Principal

29 July 2019

Professor Ian O'Connor AC
Chair
The Higher Education Standards Panel

By email: c/- HigherEd@education.gov.au

Dear Professor O'Connor,

Proposed amendments to the *Higher Education Standards Framework (Threshold Standards) 2015 (Threshold Standards)*

Thank you for the opportunity to provide feedback on the two amendments the Higher Education Standards Panel (HESP) has proposed for the Threshold Standards.

We note that, in proposing these amendments, the HESP is seeking to give effect to a recommendation contained in Mr Robert French AC's outstanding *Independent Review of the Freedom of Speech in Australian Higher Education* report.

Specifically, the HESP's proposed amendments to the Threshold Standards would see the words '**freedom of intellectual inquiry**' in Standard 6.1.4 of Part A and '**free intellectual inquiry in its academic endeavours**' in Standard B1.1 of Part B replaced with the words '**freedom of speech and academic freedom**' in both instances.

We further note that making these amendments would bring the terms used in the Threshold Standards into alignment with the terminology used in the *Model Code for the Protection of Freedom of Speech and Academic Freedom in Australia Higher Education Providers* (Model Code) that Mr French has recommended for voluntary adoption by Australian higher education providers.

We have no concerns with the proposed amendments to the Threshold Standards, *per se*. For reasons such as those discussed below, however, we believe the term 'academic freedom' should not be included in the Threshold Standards until after the Parliament has settled the wording of any definition of the concept to be included in the *Higher Education Support Act 2003* (HESA) as also recommended by Mr French.

We note that the wording of the definition of academic freedom recommended by Mr French in his report – and accepted by the Government in its response – has already been recommended for further amendment by a high-level group of university chancellors, which included Mr French. As we wrestle with the practicalities of implementing the Model Code or its principles, we are uncertain about which definition of academic freedom will be proposed for inclusion in the HESA or, indeed, whether it should be further refined.

If the terms of the Model Code as drafted are adopted by the University, they will prevail over any of our non-statutory rules or policies to the extent that there is any inconsistency. Yet in our assessment the University's Charter of Academic Freedom and other supporting policies are already likely to provide clearer and stronger protections for academic freedom than would be delivered through the Model Code's proposed definition. Why should the Model Code's definition of academic freedom prevail over the University's stronger protections of that principle when, for example, investigating and determining a staff or student misconduct matter?

As Mr French noted in his report, there is no internationally settled definition of academic freedom. The Australian Government's world-first efforts to enshrine a definition of academic freedom in legislation and to align the use of terminology across relevant laws and standards are supported. However, it is critical to Australia's system of democracy and the day-to-day affairs of our higher education providers that any definition of academic freedom to be enshrined in law has the broad support of the academic and wider community.

In this regard, we note that the Model Code's proposed definition of academic freedom is silent about the responsibilities that apply to academics when exercising academic freedom. These limitations are accepted internationally as fundamental to the operation of the concept within institutions of higher learning. For example, the American Association of University Professors (AAUP) and the Association of American Colleges and Universities (AACU) have for many decades affirmed these co-relative responsibilities in major policy statements, providing guidance to academics about their utterances as private citizens, in the exercise of their responsibilities to their institutions and students, when undertaking externally sponsored research, or in their conduct when resigning from their institutions.

In that context, in this University, its Charter of Academic Freedom requires that that freedom be exercised according to "the highest ethical, professional and legal standards". That would not be thought by us to be disproportionate or unreasonable to pick up the generic test proposed by Mr French. However, it is a consideration to which no attention has yet been given in the context of the broader public discussion of this issue.

As already noted, the Model Code introduces the test of 'reasonableness and proportionality' when assessing the legitimacy of any limitation on the exercise of either academic freedom or freedom of speech. We are concerned that that test may introduce an element of uncertainty into the operation of our rules and policies. This would be thoroughly undesirable as the need for clarity and certainty in the University's policy framework for protecting and upholding academic freedom is paramount not only so that we provide clear guidance for all members of the University community about appropriate conduct, but especially when we are required to investigate and make decisions about allegations of staff or student misconduct in accordance with our policies and processes.

Mr French held closed consultations with higher education providers during his review. However, as far as we are aware, the academic community and general public were not given an opportunity to provide feedback on his proposed definition of academic freedom before it was received and accepted by the Government. We therefore believe the Government needs to conduct an open consultation process on the definition of academic freedom it proposes to include in the HESA before the amending Bill is introduced to the Parliament.

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We trust this feedback is helpful and look forward to working with the HESP to ensure that its proposed amendments to the Threshold Standards are appropriate, and that they are made once Parliament has confirmed a legislative definition for the concept of academic freedom for the first time, as well as any limitations that might legitimately be imposed upon its exercise.

Your sincerely,

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Michael Spence