

UOW's Response to the Report of the Independent Review of Freedom of Speech in Australian Higher Education Providers

SUMMARY REPORT

MARCH 2020

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Introduction

BACKGROUND

On 14 November 2018, the Commonwealth Minister for Education the Hon. Dan Tehan MP announced an independent review into university Academic Freedom, to be led by the Hon. Mr Robert French AC (former Chief Justice of the High Court of Australia).

Between November 2018 and March 2019, Mr French undertook a two-staged stakeholder consultation process seeking views on the Terms of Reference and a Draft *Model Code for the Protection of Freedom of Speech and Academic Freedom in Australian Higher Education Providers* (Version 1). On 1 March 2019 UOW issued an initial response to the Draft Model Code as well as outlining its existing policy framework. In its initial response, UOW stated:

*'UOW encourages an environment where students and staff can participate in debates and express their views. We uphold the principles of free speech on campus, subject to our duties and obligations at law, and we have operational procedures in place to assess requests for visiting speakers so as to encourage debate while maintaining a safe and respectful university environment...if any additional measures are required, they should be in the form of **high level principles** which universities could draw upon and integrate into their policies and procedures as desired'. [Emphasis added]*

The Independent Review of Freedom of Speech in Higher Education Providers (the French Report) was published in April 2019. The French Report recommended statutory amendments to definitions within the *Higher Education Support Act 2003* (Cth) (HES Act) and the Higher Education Framework (Threshold Standards) 2015 (HE Standards), alongside the voluntary adoption by all Australian higher education providers of the Draft Model Code (Version 2), as 'a means of protecting and enhancing participatory institutional autonomy and the freedoms it should serve'.¹

STATUTORY AMENDMENTS TO HES ACT, TEQSA AND HE STANDARDS

The Australian Government has since endorsed the amendments proposed to the HES Act and HE Standards as recommended by the French Report. Universities Australia has coordinated a sector response to the proposed amendments, which UOW has reviewed and supports.

THE MODEL CODE

In June 2019 a revised Model Code (Version 3) was circulated by the Australian University Chancellors' Council (**Annexure A**), which was the result of a revision by Mr French, as Chancellor of the University of Western Australia, together with the Hon Gareth Evans AC and Mr Peter Varghese AO as the Chancellors of the Australian National University and the University of Queensland respectively. It is this version that the UOW Project Team based its review on.

THE PROJECT

PURPOSE

A UOW Project Team was established in October 2019, tasked with reviewing UOW's legal and policy framework in light of the recommendations made by the French Report including the Model Code (Version 3), in consultation with the UOW community.

¹ Commonwealth Department of Education, *Report of the Independent Review of Freedom of Speech in Australian Higher Education Providers*, French, March 2019, https://docs.education.gov.au/system/files/doc/other/report_of_the_independent_review_of_freedom_of_speech_in_australian_higher_education_providers_march_2019.pdf, viewed in 2019 and 2020. Page 14.

This Project Team consisted of:

- Damien Israel, Chief Operating Officer
- Professor Wilma Vialle, Lead Facilitator
- Professor Greg Rose, Deputy Facilitator
- Cherry Siu-Ho, Director of Governance and Legal Division
- Chelsea Hampel, Director of Business Improvement and Assurance Division
- Zena Churchill, Project Coordinator, Business Improvement and Assurance Division
- Ellen Goh, Project Lead, Governance and Legal Division
- Angus Rogers, Junior Lawyer, Governance and Legal Division
- Tori Funnell, Senior Manager, Governance Unit, Governance and Legal Division
- Sarah Crawford, Manager, Employment Relations, Human Resources Division

UOW's Information Management and Technology Services Division, Student Services Division and Strategic Marketing and Communications Unit assisted with the promotion of the review to the UOW community.

METHODOLOGY

Consultation with the UOW community

The UOW community was invited to contribute to the project via responding to a series of questions crafted around the concepts raised in the French Report. Promotion of the project was communicated to the UOW community via official channels such as the all-staff email newsletter (Universe) and the student administration and communication platform (Student Online Services or SOLS), and a dedicated public website to host briefing material. Feedback from the University community was received through its governance forums (such as Academic Senate) and an online survey. The online survey was initially open from 19 November to 6 December 2019, and was then extended to 31 December 2019. The Lead Facilitator also received written feedback by email.

UOW's legal and policy framework

Annexure B contains a summary map showing an analysis of UOW's legal and policy framework against the Model Code, while **Annexure C** lists all of the legal and policy documents considered by the Project Team.

Benchmarking with Australian institutions

External benchmarking with other Australian Higher Education Providers was undertaken to understand the sector's response to the French Report as well as relevant issues identified by similar internal reviews.

Recommendations

As shown in **Annexure B**, it was found that UOW's existing legal and policy framework is largely consistent with the concepts in the Model Code, indicating that a small number of amendments would be required to achieve alignment with the Objectives of the Model Code (those Objectives are set out in **Annexure A**). Feedback from the UOW community consultation provided guidance on how UOW should approach various aspects of the Model Code. Responses are summarised in the discussion below. The sector benchmarking revealed many varied responses to the Model Code, reflective of the diversity of governance and policy frameworks within the sector.

The Project Team recommended the following:

RECOMMENDATION 1 (see discussion regarding Question 1 below)

That section 1.1 of the *Respect for Diversity Policy* be amended as follows:

The Respect for Diversity Policy provides an outline of the aims and strategies of the University of Wollongong to provide an environment where the diversity of its members is respected. The University seeks to promote freedom of speech while also ~~and~~ equipping all students, staff and affiliates with the understanding necessary to effectively function in a work and study environment that is free from all manifestations of unlawful discrimination, and recognises the positive value of a diverse community of staff, affiliates and students.

Policy approval pathway: minor amendment to policy given that the amendment does not affect the intent of policy to ‘provide an environment where the diversity of its members is respected’.

Delegated authority (section 13.3 of the *Standard on UOW Policy*): Vice-Chancellor

RECOMMENDATION 2 (see discussion regarding Question 2 below)

No change is recommended to UOW’s legal and policy framework regarding public commentary given the existing provisions.

RECOMMENDATION 3 (see discussion regarding Question 3 below)

No change is recommended to UOW’s legal and policy framework to implement the Model Code’s proposed definition of Academic Freedom regarding Academic Staff given the existing *UOW Enterprise Agreement (Academic Staff), 2019*.

RECOMMENDATION 4 (see discussion regarding Question 4 below)

That the *Student Conduct Rules* be amended to:

A) Update section 2.6 titled *Guiding Principles of the University of Wollongong* with the values outlined in *UOW’s Strategic Plan for 2020-2025* and then insert a definition of Academic Freedom as proposed by the Model Code (tracked changes show an amended version for UOW’s context):

Subject to the responsibilities imposed by UOW’s policy documents, ‘Academic Freedom’ for the purposes of ~~this Code~~ these Rules comprises the following elements:

- ~~• the freedom of academic staff to teach, discuss, and research and to disseminate and publish the results of their research;~~
- *the freedom of ~~academic staff~~ and students to engage in intellectual inquiry, to express their opinions and beliefs, and to contribute to public debate, in relation to their subjects of study and research;*
- *the freedom of ~~academic staff~~ and students to express their opinions in relation to the higher education provider in which they work or are enrolled;*
- ~~• the freedom of academic staff to participate in professional or representative academic bodies;~~
- *the freedom of students to participate in student societies and associations.*
- *the autonomy of the higher education provider in relation to the choice of academic courses and offerings, the ways in which they are taught and the choices of research activities and the ways in which they are conducted.*

B) Insert the following clause into section 5 titled ‘Responsibilities’:

UOW supports the right of all students to engage in Academic Freedom. However, the right to Academic Freedom comes with responsibilities. Any exercise of Academic Freedom will be subject to UOW's standards of conduct as set out in relevant policy documents.

Policy approval pathway: By law, any amendments to Rules (such as the Student Conduct Rules) must be approved by University Council.

Authority: University Council

RECOMMENDATION 5 (see discussion regarding Question 5 below)

That the *Respect for Diversity Policy* be amended to include a reference to the *Higher Education Standards Framework (Threshold Standards) 2015* (Cth) in the list of legislation noted at the front of this policy document.

Policy approval pathway: Administrative amendment to policy given that the change is superficial.

Delegated authority (section 12.2 of the *Standard on UOW Policy* and section 51.07 of the *Delegations of Authority Policy*): Senior Deputy Vice-Chancellor, Deputy Vice-Chancellor or Chief Operating Officer.

UOW's starting preference was to adopt 'high level principles' of the Model Code i.e. adopt the Principles and some Definitions, without the Objects, Application and Operational infrastructure of the Model Code. The French Report considered this approach as an acceptable way forward as long as the institution gave serious consideration to the manner of operationalising the principles, the absence of which is likely to diminish their credibility.² The Project Team was of the view that the project methodology adopted gave sufficient serious consideration towards these concerns.

The proposed amendments are dispersed through the UOW policy framework, rather than located within a single source document. However, the rationale for this approach was to maximise integration with UOW's complex policy framework while minimising any unforeseen consequences or confusing well established concepts.

DISCUSSION

The UOW community was asked to consider the following questions relevant to the Model Code (specifically the definition of 'academic freedom' and the Principles):

Question 1: Should Academic Freedom and Freedom of Speech be distinguished any differently to the separation as outlined here and, if so, how?

Question 2: Is public commentary by staff that may impact negatively on the University's reputation a Freedom of Speech issue, or one of Academic Freedom? Why?

Question 3: Do you consider the definitions of Academic Freedom, as outlined in the Academic Staff Enterprise Agreement and the Model Code to be consistent? If not, what changes would you make and to which one?

Question 4: Noting that the current Academic Staff Enterprise Agreement covers only academic staff, please explain why the following persons should or should not be entitled to exercise Academic Freedom:

- a) Students
- b) Professional Services Staff

Question 5: What scholarly expertise, evidence or supporting argument, if any, should expression require in order to be an exercise of Academic Freedom?

² Ibid, page 212.

UOW’s consultation generated 63 unique responses in total, after removing duplicate submissions. Of these, 60 were facilitated through the online submission process, hosted by Qualtrics. There were also two face-to-face consultation sessions, one each with Academic Senate and the Student Advisory Committee. Of the 60 online submissions, 20 were disregarded based on incomprehensible data input (e.g. empty responses); leaving 40 completed online submissions for analysis.

Submissions breakdown:

	Academic staff	Professional services staff	Students	Total
Online survey	13	3	24	40
Via email	12	0	0	12
Total	25	3	24	52

QUESTIONS AND ANALYSIS

Question 1: Should Academic Freedom and Freedom of Speech be distinguished any differently to the separation as outlined here and, if so, how?

The UOW community was presented with the following introductory text:

UOW legislative provisions, policies, procedures and other key documents do not currently address the concept of Freedom of Speech. This is because Freedom of Speech is a common law right enjoyed by any person in Australia. The Model Code does not propose a definition, but the French Report notes that the concept is best understood in reference to the judgment of the High Court in *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 564, where the Court said:

‘Under the legal system based on the common law, ‘everybody is free to do anything subject only to the provisions of the law’, so that one proceeds ‘upon an assumption of freedom of speech’ and turns to the law ‘to discover the established exceptions to it.’

Given the above, and seeking to avoid recent public debates that have confusingly conflated the concepts of Academic Freedom and Freedom of Speech, UOW will consider treating Freedom of Speech issues separately. Therefore, aspects of the Model Code relating to external speakers and their Freedom of Speech would be situated in revisions of other UOW policies, such as in the Protocol Procedure for visitors, and in the Social Media Policy.

A majority of the Academic staff who responded to the online survey took the view that there should be no distinction between the two concepts, with a large number of respondents simply objecting to the adoption of the Model Code in its entirety without articulating whether or not there should be a distinction.

The Professional Services Staff who responded to the online survey were unanimous in their view that Freedom of Speech and Academic Freedom were distinct concepts and should be treated differently. All three respondents acknowledged that Freedom of Speech is an implied right, with two respondents wishing to see this concept acknowledged in UOW policy.

Student responses to the online survey were mixed and there was no clear consensus about whether the two concepts should be separately defined. In contrast, the Student Advisory Council was clear in its feedback that the two concepts be distinguished to clarify roles and responsibilities and were generally supportive of the Model Code.

The overall result was no clear consensus among the UOW community about creating a distinction between Freedom of Speech and Academic Freedom within UOW policy.

However, as shown in **Annexure B** (Objective 1 and 3, and Principle 1), the concept of Freedom of Speech is already embodied within UOW's policy framework. The *Respect for Diversity Policy* is the nearest UOW policy document that encapsulates the concept of Freedom of Speech in its principles and has broad coverage:

'4.1. This Policy is based on the following guiding principle: 1.1 That individuals have the right to express their ideas, theories and opinions while respecting the rights of others without fear of discrimination, harassment or bullying. [And] 3.4...applies to all University of Wollongong students, staff and affiliates studying and/or working on any Australian campus or representing the University in any location within Australia and internationally in any capacity.'

Accordingly, a minor addition to its purpose may satisfy the UOW community's desire to see an express recognition of Freedom of Speech within UOW policy and give it a level of recognition within the policy framework.

Question 2: Is public commentary by staff that may impact negatively on the University's reputation a Freedom of Speech issue, or one of Academic Freedom? Why?

A majority of the Academic staff who responded to the online survey said public commentary about the institution can be both an expression of Academic Freedom and Freedom of Speech, with one respondent observing that 'Loyalty to one's institution may involve criticism of its failings' as they may involve matters of public concern and may not be strictly academic in nature. Public commentary was seen by some respondents as the one area where the two concepts overlap and a distinction is not appropriate – in essence that there should be no limitations or restrictions in a public debate.

The Professional Services Staff who responded to the online survey took a similar view to Academic staff, but recognised that other limitations or restrictions imposed at law (i.e. contractual obligations, confidentiality, defamation etc) had a part to play in moderating public commentary.

Student respondents leaned toward classifying negative public commentary as Freedom of Speech, however the general consensus was that public commentary is a matter of both Academic Freedom and Freedom of Speech; the nuance being in the context of the commentary. For example, commentary outside the scope of expertise or relevance would, according to some students, fall within the remit of Freedom of Speech. The Student Advisory Council also pointed out the importance of the University's reputation and brand to alumni.

As shown in **Annexure B** (Objectives, definitional element (3) of Academic Freedom and Principle 2 which relates to Freedom of Speech), the approach to public commentary by the UOW community (whether it be an expression of Academic Freedom or Freedom of Speech) is broader and better explained operationally within UOW's existing policy framework than in the Model Code. Participation in public debates is encouraged by UOW policy, specifically in:

Use of the University Name in Public Statements Policy (section 1):

Members of the University Community are encouraged to participate in public debate on issues of professional and public concern. This policy stipulates how the University of Wollongong's name should be used in relation to public statements made by members of the University Community.

and also UOW's Enterprise Agreement with Academic staff (clause 16.1.3):

In the performance of their duties academic staff members have a right to (16.1.3) participate in University and public debates and express opinions, including unpopular or controversial opinions about issues and ideas.

Broadly, this right may cover negative commentary about the university.

The mapping also shows that UOW policy covers a broader community through the inclusion of former staff and students, and addresses more specifically the capacity in which the statement is made (professional

expertise or in a private capacity). The approach seeks to strike the right balance between UOW’s legal obligations to protect staff and students from harmful conduct while allowing lively and robust debates; this approach largely accords with how the UOW community responded to the survey question.

Question 3: Do you consider the definitions of Academic Freedom, as outlined in the Academic Staff Enterprise Agreement and the Model Code to be consistent? If not, what changes would you make and to which one?

The UOW community was presented with the following side-by-side comparison:

Model Code	UOW (Academic Staff) Enterprise Agreement, 2019
‘academic freedom’ for the purposes of this Code comprises the following elements:	<u>16.Academic Freedom</u>
1. the freedom of academic staff to teach, discuss, and research and to disseminate and publish the results of their research;	16.1. The University is committed to the protection and promotion of intellectual freedom within the University. In the performance of their duties academic staff members have a right to:
2. the freedom of academic staff and students to engage in intellectual inquiry, to express their opinions and beliefs, and to contribute to public debate, in relation to their subjects of study and research;	16.1.1. Pursue critical and open inquiry;
3. the freedom of academic staff and students to express their opinions in relation to the higher education provider in which they work or are enrolled;	16.1.2. Research and publish;
4. the freedom of academic staff to participate in professional or representative academic bodies;	16.1.3. Participate in University and public debates and express opinions, including unpopular or controversial opinions about issues and ideas;
5. the freedom of students to participate in student societies and associations.	16.1.4. Participate in an appropriate form in decision making processes and structures germane to their field of expertise and onus of responsibility within the University;
6. the autonomy of the higher education provider in relation to the choice of academic courses and offerings, the ways in which they are taught and the choices of research activities and the ways in which they are conducted.	16.1.5. Teach, assess and develop curricula within the processes laid down by the University;
	16.1.6. Be involved in the processes of Academic Senate; and
	16.1.7. Participate in professional and representative bodies, including unions, and engage in community service without fear of harassment, intimidation, bullying or unfair treatment.
	16.2. Notwithstanding the rights expressed in sub-clause 16.1, no staff member has the right to harass, vilify, bully, intimidate, act vexatiously or defame.

The majority of both Academic staff and Professional Services Staff respondents felt the comparative definitions were inconsistent, with the Enterprise Agreement clause seen as superior to the Model Code, therefore, in the opinion of some, rendering moot the need for a Model Code. A majority of respondents considered the Model Code to be too restrictive, for example clause 16.1.3 of the Enterprise Agreement was viewed as superior to (2) of the Model Code because of the restrictive words ‘in relation to their subjects of study and research’ when engaging in intellectual inquiry. However, most respondents agreed that Academic Freedom should be extended to Professional Services Staff and students, and some considered adopting (3) and (6) of the Model Code.

The paramount concern for students was the omission in UOW policy of an express right to Academic Freedom that benefits students. Of particular concern for some was that the Model Code, whilst better at explaining Freedom of Speech, did not adequately address some aspects of the Enterprise Agreement pertaining to Academic Freedom.

Available information from the sector revealed that no university has adopted the proposed definition of Academic Freedom proposed by the French Report without amendments, with many universities preferring to adapt the Model Code according to their own diverse policy framework.

Question 4: Noting that the current Academic Staff Enterprise Agreement covers only academic staff, please explain why the following persons should or should not be entitled to exercise Academic Freedom:

- **Students**
- **Professional Services Staff**
-

The French Report quoted the work of Universities UK in the ongoing definitional challenge of Academic Freedom, and that the concept is intrinsic to the nature of universities and the role of academics.³ However, the French Report proposed extending the right to students (Principle (3) of the Model Code).⁴

Unsurprisingly, all respondents were of the belief that all students and staff at the university should be afforded Freedom of Speech. However, the respondents disagreed about the extent to which Academic Freedom should be extended to Professional Services Staff and students.

Generally, the Academic staff who responded to the online survey were content to extend the same rights of Academic Freedom to students as outlined in the Enterprise Agreement. However, several Academic staff cautioned that even though students are ‘partners in the education process’ the freedom should be tempered by the level of ‘academic authority’ within their relevant expertise (i.e. study area). One Academic staff member who responded to the online survey articulated this as a sliding scale of experience and responsibility with respect to both Professional Services Staff and students:

Students are evidently part of the intellectual processes of the university and should be included in the freedoms and disciplinary structures of higher learning. Postgraduates...especially. Professional Services Staff...may have academic qualifications, but do not (unless enrolled as a student) have freedoms to speak about work within the university’s scholarly community except in so far as their work entails administration of it.

For the Professional Services Staff who responded to the online survey, the general view was that Academic Freedom should be available to staff who participate in research, teaching or professional bodies, but otherwise was not relevant to the discharge of their employment duties. Regarding students, the respondents supported students’ right to Academic Freedom given that they are expected to ‘participate in various bodies and debate questions’ in the classroom.

Feedback from the Student Advisory Council and a majority of the students who responded to the online survey agreed that they should be entitled to Academic Freedom, with one respondent explaining that the role of students ‘from time immemorial has been to challenge the established order’. At present, students felt that the student voice in academic processes was overlooked and desired greater recognition in the areas of research, debate and learning. Some students held concerns regarding victimisation and censorship, explaining that they feared to participate in academic processes because they had experienced repression in the classroom – either due to the teacher’s agenda or disregard for the student experience.

Mapping of the Model Code against UOW’s policy framework (**Annexure B**) reveals that students and Professional Services Staff have appropriate opportunities to engage in academic matters within the University. Students are a part of the University under the UOW Act, and have representation at University Council and Academic Senate. UOW also has a Student Advisory Council to advise, consult and make recommendations to the University on matters affecting the academic and social wellbeing of students. Similarly, Professional Services Staff have representation at University Council and Academic Senate and have opportunity to engage in consultation about a range of staff issues, which may include academic matters.

In summary, the results of this project indicate that Academic staff do not wish to disturb the agreed definition and constraints on Academic Freedom (per UOW’s Enterprise Agreement) and therefore any further extensions of this concept should sit elsewhere if it applies to students and Professional Services Staff. Given

³ Commonwealth Department of Education (n 2), page 49.

⁴ Ibid, from page 217.

that both Academic staff and Professional Services Staff felt that Academic Freedom should only apply to Professional Services Staff in the performance of their duties (i.e. as a member of a governance forum such as Academic Senate) then no change is recommended to UOW's policy framework.

Students, on the other hand, have a different role to play in the academic process. Recognition of students' right to Academic Freedom is best achieved with the consequential changes to the Student Conduct Rules to reflect the implementation of UOW's Strategic Plan for 2020-2025 in Quarter 1 in 2020 as approved by University Council in December 2019. Section 6 of the Student Conduct Rules will change to reflect the reformulated values of:

1. *INTELLECTUAL OPENNESS - We are driven and determined, yet collegial and ethical in all that we do. We are always looking to serve our communities and share our knowledge and expertise with them for mutual betterment.*
2. *EXCELLENCE AND DEDICATION - We work tirelessly to excel in our research and education, and to address complex, real-world problems in partnership with our communities.*
3. *EMPOWERMENT AND ACADEMIC FREEDOM - We celebrate the freedom to have different opinions and different ideas. We encourage the asking of difficult questions and discovery of innovative solutions.*
4. *MUTUAL RESPECT AND DIVERSITY - We aspire to set the standard for inclusiveness, diversity and equity. We welcome – and benefit from – the diversity of our communities within Australia and internationally. We will continue to champion Aboriginal and Torres Strait Islander Reconciliation.*
5. *RECOGNITION AND PERFORMANCE - We celebrate the hard work and dedication of our staff and recognise and reward their achievements. We expect all our staff to meet the challenges of our changing world by seizing opportunities that deliver continuous improvement.*

Accordingly, there is support for inserting an amended definition of Academic Freedom similar to that proposed by the Model Code at the same time, to bolster these values.

Question 5: What scholarly expertise, evidence or supporting argument, if any, should expression require in order to be an exercise of Academic Freedom?

Generally, Academic staff were of the opinion that no restrictions should be placed on Academic Freedom given the difficulty of defining appropriate expertise and that it also relied on the judgement of an arbiter to define what is 'scholarly expertise'. One Academic staff member simply suggested that 'an academic or research student can demonstrate recognised scholarly expertise in that area of research by evidence of a third party publication in that general field, i.e. other than by self-publication such as in a blog, Facebook or vanity press'. On the other hand, Academic staff had reservations about how Professional Services Staff and students would appropriately exercise Academic Freedom in the absence of a peer-reviewed framework. Some Academic staff acknowledged that 'views arising outside of published research are not scholarly...but are still expressions of Academic Freedom informed by expertise...by [Teachers, professional staff engaging] in teaching support processes and students who have completed taught subjects'.

The Professional Services Staff were unanimous in their view that any claim of Academic Freedom be supported by scholarly expertise. One respondent proposed that 'at a minimum [it requires] a willingness to defend one's argument based on new evidence. It only ceases to be an academic argument when no evidence can be provided and a counter-argument is dismissed without evidence'. Another suggested that 'if there is no expertise involved then we are not talking about Academic Freedom but merely freedom of expression'.

Student respondents to the online survey were mixed, possibly due to confusion over the question. However, of those who answered the question, students expressed the belief that verifiable supporting evidence, research

and/or data is necessary to support an argument and invoke Academic Freedom. This position was echoed by the Student Advisory Council.

The words ‘scholarly standards’ only appears once in version 3 of the Model Code and is without definition. Instead, the Model Code addresses appropriate behaviours for debate, and speaks to fostering the wellbeing of staff and students (refer to the definitions and Principles 1, 3, 6(c)(ii) and 8). This duty is imposed on the university by virtue of Principle 1 (regarding freedom of speech) and Principle 3 (regarding Academic Freedom).

Several universities preferred this behavioural approach. For example, USYD considered civility in debate as an important aspect of Academic Freedom and Deakin University described the duty to foster the wellbeing of staff and students as a useful guide in deciding on an organisational response. Similarly, the University of Melbourne took the approach that the right of Academic Freedom comes with responsibilities and outlined how debates should be facilitated: *Academic Freedom of Expression Policy* (section 4.6):

- (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.*

UOW’s policy framework seeks to balance the duties and responsibilities between members of the UOW community and in many respects articulates these better than the Model Code (see **Annexure B**).

If the purpose of the Model Code’s duty to foster the wellbeing of staff and student is simply to implement a level of consistency with section 6.1.4 of the HE Standards that ‘*The governing body takes steps to develop and maintain an institutional environment in which...the wellbeing of students and staff is fostered...*’ then a simple acknowledgment within the *Respect for Diversity Policy* was felt to be satisfactory.

Additional question not asked of the UOW Community: How does UOW approach non-UOW community members seeking to speak or use campus facilities?

This question was not put to the UOW community, as initial assessments by the Project Team concluded that operational procedures regarding non-UOW community members e.g. affiliates, visitors or members of the public, were well established in UOW’s legal and policy framework.

Conclusion

The review work completed by the UOW Project Team found that UOW’s legal and policy framework is largely consistent with the principles proposed by the Model Code and the French Report. Additionally, UOW’s legal and policy framework largely accords with the UOW community’s expectations and attitudes towards the expression of Freedom of Speech and Academic Freedom. Accordingly, a small number of policy amendments were recommended to further strengthen and promote UOW’s position. UOW’s resulting approach aligns with those of many Australian universities who have similarly chosen to adopt the principles of the Model Code via a variety of amendments within their existing policy frameworks.

Since the conclusion of the project, the recommendations have been approved by UOW Council at its meeting of 14 February 2020, and the recommended policy changes came into effect shortly after.

ANNEXURE A – THE MODEL CODE (VERSION 3)

A Model Code for the Protection of Freedom of Speech and Academic Freedom in Australian Higher Education Providers

Objects

The objects of the Code are:

- (1) To ensure that the freedom of lawful speech of staff and students of the university and visitors to the university is treated as a paramount value and therefore is not restricted nor its exercise unnecessarily burdened by restrictions or burdens other than those imposed by law and set out in the Principles of the Code.
- (2) To ensure that academic freedom is treated as a defining value by the university and therefore not restricted nor its exercise unnecessarily burdened by restrictions or burdens other than those imposed by law and set out in the Principles of the Code.
- (3) To affirm the importance of the university's institutional autonomy under law in the regulation of its affairs, including in the protection of freedom of speech and academic freedom.

Application

- (1) The Code applies to the governing body of the university, its officers and employees and its decision-making organs, including those involved in academic governance.
- (2) The Code also applies to student representative bodies to the extent that they have policies and rules which are capable of being applied to restrict or burden the freedom of speech of anyone, or academic freedom.

Definitions

'academic freedom' for the purposes of this Code comprises the following elements:

- the freedom of academic staff to teach, discuss, and research and to disseminate and publish the results of their research;
- the freedom of academic staff and students to engage in intellectual inquiry, to express their opinions and beliefs, and to contribute to public debate, in relation to their subjects of study and research;
- the freedom of academic staff and students to express their opinions in relation to the higher education provider in which they work or are enrolled;
- ~~the freedom of academic staff, without constraint imposed by reason of their employment by the university, to make lawful public comment on any issue in their personal capacities;~~
- the freedom of academic staff to participate in professional or representative academic bodies;
- the freedom of students to participate in student societies and associations.
- the autonomy of the higher education provider in relation to the choice of academic courses and offerings, the ways in which they are taught and the choices of research activities and the ways in which they are conducted.

'academic staff' all those who are employed by the university to teach and/or carry out research and extends to those who provide, whether on an honorary basis or otherwise, teaching services and/or conduct research at the

university.

‘external visiting speaker’ any person who is not an invited visiting speaker and for whom permission is sought to speak on the university’s land or facilities.

‘imposed by law’ in relation to restrictions or burdens or conditions on a freedom include restrictions or burdens or conditions imposed by statute law, the common law (including the law of defamation), duties of confidentiality, restrictions deriving from intellectual property law and restrictions imposed by contract.

‘invited visiting speaker’ any person who has been invited by the university to speak on the university’s land or facilities. For the purposes of this definition, ‘the university’ includes its decision-making organs and officers; its student representative bodies, undergraduate and post-graduate; any clubs, societies and associations recognized by its decision-making organs or student representative bodies; and any entities controlled by the university.

~~Note: The definition of ‘university’ which limits this class of visitor.~~

‘non-statutory policies and rules’ means any non-statutory policies, rules, guidelines, principles, codes or charters or similar instruments.

‘speech’ extends to all forms of expressive conduct including oral speech and written, artistic, musical and performing works and activity and communication using social media; the word ‘speak’ has a corresponding meaning.

‘staff’ for the purposes of this Code ‘staff’ includes all employees of the university whether fulltime or part-time and whether or not academic staff.

‘the duty to foster the wellbeing of staff and students’;

- includes the duty to ensure that no member of staff and no student suffers unfair disadvantage or unfair adverse discrimination on any basis recognised at law including race, gender, sexuality, religion and political belief;
- includes the duty to ensure that no member of staff and no student is subject to threatening or intimidating behaviour by another person or persons on account of anything they have said or proposed to say in exercising their freedom of speech;
- supports reasonable and proportionate measures to prevent any person from using lawful speech which a reasonable person would regard, in the circumstances, as likely to humiliate or intimidate other persons and which is intended to have either or both of those effects;
- does not extend to a duty to protect any person from feeling offended or shocked or insulted by the lawful speech of another.

~~‘the university’ means the university as an entity and includes its decision making organs and officers, its student representative bodies, undergraduate and post graduate, and any entities controlled by the university.~~

‘unlawful’ means in contravention of a prohibition or restriction or condition imposed by law.

Operation

- (1) The university shall have regard to the Principles of this Code in the drafting, review or amendment of any non-statutory policies or rules and in the drafting, review or amendment of delegated legislation pursuant to any delegated law- making powers.
- (2) Non-statutory policies and rules of the university shall be interpreted and applied, so far as is reasonably practicable, in accordance with the Principles of this Code.
- (3) Any power or discretion under a non-statutory policy or rule of the university shall be exercised in accordance with the Principles in this Code.
- (4) This Code prevails, to the extent of any inconsistency, over any non-statutory policy or rules of the university.
- (5) Any power or discretion conferred on the university by a law made by the university in the exercise of its delegated law-making powers shall be exercised, so far as that law allows, in accordance with the Principles of this Code.
- (6) Any power or discretion conferred on the university under any contract or workplace agreement

shall be exercised, so far as it is consistent with the terms of that contact or workplace agreement, in accordance with the Principles of this Code.

Principles of the Code

- (1) Every member of the staff and every student at the university enjoys freedom of speech exercised on university land or in connection with the university subject only to restraints or burdens imposed by:
 - law;
 - the reasonable and proportionate regulation of conduct necessary to the discharge of the university's teaching and research activities;
 - the right and freedom of others to express themselves and to hear and receive information and opinions;
 - the reasonable and proportionate regulation of conduct to enable the university to fulfil its duty to foster the wellbeing of students and staff;
 - the reasonable and proportionate regulation of conduct necessary to enable the university to give effect to its legal duties including its duties to visitors to the university.
- (2) Subject to reasonable and proportionate regulation of the kind referred to in the previous Principle, a person's lawful speech on the university's land or in or in connection with a university activity shall not constitute misconduct nor attract any penalty or other adverse action by reference only to its content; nor shall the freedom of academic staff to make lawful public comment on any issue in their personal capacities be subject to constraint imposed by reason of their employment by the university.
- (3) Every member of the academic staff and every student enjoys academic freedom subject only to prohibitions, restrictions or conditions:
 - imposed by law;
 - imposed by the reasonable and proportionate regulation necessary to the discharge of the university's teaching and research activities;
 - imposed by the reasonable and proportionate regulation necessary to discharge the university's duty to foster the wellbeing of students and staff;
 - imposed by the reasonable and proportionate regulation to enable the university to give effect to its legal duties;
 - imposed by the university by way of its reasonable requirements as to the courses to be delivered and the content and means of their delivery.
- (4) The exercise by a member of the academic staff or of a student of academic freedom, subject to the above limitations, shall not constitute misconduct nor attract any penalty or other adverse action.
- (5) In entering into affiliation, collaborative or contractual arrangements with third parties and in accepting donations from third parties subject to conditions, the university shall take all reasonable steps to minimise the restrictions or burdens imposed by such arrangements or conditions on the freedom of speech or academic freedom of any member of the academic staff or students carrying on research or study under such arrangements or subject to such conditions.
- (6) The university has the right and responsibility to determine the terms and conditions upon which it shall permit external visiting speakers ~~visitors~~ and invited visiting speakers ~~visitors~~ to speak on university land and use university facilities and in so doing may:
 - (a) require the person or persons organising the event to comply with the university's booking procedures and to provide information relevant to the conduct of any event, and any public safety and security issues;

- (b) distinguish between invited visiting speakers ~~visitors~~ and external visiting speakers ~~visitors~~ in framing any such requirements and conditions;
- (c) refuse permission to any invited visiting speaker ~~visitor~~ or external visiting speaker ~~visitor~~ to speak on university land or at university facilities where the content of the speech is or is likely to:
 - (i) be unlawful; or
 - (ii) prejudice the fulfilment by the university of its duty to foster the wellbeing of staff and students.
 - ~~(iii) involve the advancement of theories or propositions which purport to be based on scholarship or research but which fall below scholarly standards to such an extent as to be detrimental to the university's character as an institution of higher learning;~~
- (d) refuse permission to any external visiting speaker to speak on university land or at university facilities where the content of the speech is or is likely to involve the advancement of theories or propositions which purport to be based on scholarship or research but which fall below scholarly standards to such an extent as to be detrimental to the university's character as an institution of higher learning.
- (e) require a person or persons seeking permission for the use of university land or facilities for any external visiting speaker to contribute in whole or in part to the cost of providing security and other measures in the interests of public safety and order in connection with the event at which the external visiting speaker ~~visitor~~ is to speak.
- (7) Subject to the preceding Principles the university shall not refuse permission for the use of its land or facilities by an external visiting speaker ~~visitor~~ or invited visiting speaker ~~visitor~~ nor attach conditions to its permission, solely on the basis of the content of the proposed speech by the visitor.
- (8) Consistently with this Code the university may take reasonable and proportionate steps to ensure that all prospective students in any of its courses have an opportunity to be fully informed of the content of those courses. Academic staff must comply with any policies and rules supportive of the university's duty to foster the wellbeing of staff and students. They are not precluded from including content solely on the ground that it may offend or shock any student or class of students.

ANNEXURE B – UOW’S LEGAL AND POLICY FRAMEWORK

Overall, the Model Code (Version 3) is largely consistent with UOW’s policy framework. This conclusion is supported by the findings of a recent external review of UOW Council and the mapping exercise shown in the table further below.

MAPPING OF THE MODEL CODE (VERSION 3) AGAINST UOW’S LEGAL AND POLICY FRAMEWORK

MODEL CODE (VERSION 3)	INTERSECTION KEY: UOW’S POSITION IS • CONSISTENT • LARGELY CONSISTENT • INCONSISTENT	UOW’S LEGAL AND POLICY FRAMEWORK	
Objects	1. To ensure that the freedom of lawful speech of staff and students of the university and visitors to the university is treated as a paramount value and therefore is not restricted nor its exercise unnecessarily burdened by restrictions or burdens other than those imposed by law and set out in the Principles of the Code.		<ul style="list-style-type: none"> - Freedom of lawful speech as an existing common law right but not treated as a paramount value by UOW and is an implied rather than an express right - <u>UOW Act</u>, s6 Object and functions ‘participation in public discourse’ - <u>Inclosed Lands Protection Act 1901</u> (NSW) - <u>UOW 2030 and Beyond</u>, Our Values ‘intellectual openness’ and ‘empowerment and academic freedom’ - <u>Student Conduct Rules</u>, s2 (6) - <u>University Code of Conduct</u> (applies to staff and affiliates), s7 - <u>Campus Access and Order Rules</u>, s1 - <u>Respect for Diversity Policy</u> (applies to staff, students and affiliates), s 4
	2. To ensure that academic freedom is treated as a defining value by the university and therefore not restricted nor its exercise unnecessarily burdened by restrictions or burdens other than those imposed by law and set out in the Principles of the Code.		<ul style="list-style-type: none"> - <u>UOW Act</u>, s6 Object and functions ‘scholarship’ and ‘free inquiry’ - <u>University Code of Conduct</u>, s7 ‘intellectual freedom’ and ‘academic freedom’ - <u>UOW 2030 and Beyond</u>, Our Values ‘intellectual openness’ and ‘empowerment and academic freedom’ - <u>UOW Enterprise Agreement Academic Staff 2019</u>, s16 ‘Academic Freedom’ - <u>Student Conduct Rules</u>; s 2(6) ‘Statement of values – academic integrity’
	3. To affirm the importance of the university’s institutional autonomy under law in the regulation of its affairs, including in the protection of freedom of speech and academic freedom.		<ul style="list-style-type: none"> - <u>UOW Act</u>, s6 Object and functions of the university; s16 Functions of Council - <u>University Code of Conduct</u>, s7 University resources and

MODEL CODE (VERSION 3)		INTERSECTION KEY: UOW'S POSITION IS	UOW'S LEGAL AND POLICY FRAMEWORK
		<ul style="list-style-type: none"> • CONSISTENT • LARGELY CONSISTENT • INCONSISTENT 	
			reputation <ul style="list-style-type: none"> - <u>Campus Access & Order Rules, s4</u> - <u>Social Media Policy</u> - <u>Use of the University Name in Public Statements Policy</u>
Application	1. The Code applies to the governing body of the university, its officers and employees and its decision-making organs, including those involved in academic governance.	UOW policy does not (at the time of analysis) recognise the Model Code.	UOW policies have wide coverage as described above. University Council members are covered by their own Code of Conduct.
	2. The Code also applies to student representative bodies to the extent that they have policies and rules which are capable of being applied to restrict or burden the freedom of speech of anyone, or academic freedom.		The UOW Students' Advisory Council, Wollongong Undergraduate Student Association and Wollongong Postgraduate Student Association have their own constitutions outside direct UOW control. UOW can seek to influence and, in relation to the use of resources, apply UOW policy such as: <ul style="list-style-type: none"> - <u>Campus Access & Order Rules, s4</u> - <u>Social Media Policy</u> - <u>Use of the University Name in Public Statements Policy</u> - <u>Student Conduct Rules</u>
Definitions	'academic freedom' for the purposes of this Code comprises the following elements:		
	<ul style="list-style-type: none"> • the freedom of academic staff to teach, discuss, and research and to disseminate and publish the results of their research; 		<ul style="list-style-type: none"> - <u>UOW Act, s6 Object and functions</u> - <u>UOW Enterprise Agreement Academic Staff 2019, s16 Academic Freedom</u>
	<ul style="list-style-type: none"> • the freedom of academic staff and students to engage in intellectual inquiry, to express their opinions and beliefs, and to contribute to public debate, in relation to their subjects of study and research; 	UOW's position is stronger and more broadly applicable than the Model Code.	<ul style="list-style-type: none"> - As above for Academic staff. - Terms of Reference for Academic Senate - <u>Student Conduct Rules: s 2.6 'Statement of values – academic integrity' and 6 'Academic Conduct</u> - <u>UOW Act, ss 4 and 6 'scholarship' and 'free inquiry'</u> - <u>Use of the University Name in Public Statements Policy, s5</u> - <u>Respect for Diversity Policy (applies to staff, students and affiliates), s4</u>

MODEL CODE (VERSION 3)	INTERSECTION KEY: UOW'S POSITION IS <ul style="list-style-type: none"> • CONSISTENT • LARGELY CONSISTENT • INCONSISTENT 	UOW'S LEGAL AND POLICY FRAMEWORK
<ul style="list-style-type: none"> • the freedom of academic staff and students to express their opinions in relation to the higher education provider in which they work or are enrolled; 	UOW's position is consistent with the Model Code and broader (applies to former staff) and better explained operationally.	<ul style="list-style-type: none"> - <u>UOW Enterprise Agreement Academic Staff 2019</u>, s42.9.2 - <u>University Code of Conduct</u>, s 9 - <u>Student Conduct Rules</u>, s 4.12 - <u>Social Media Policy</u>, section 8(1,2); section 9 (1a,b,c,d,f); Appendix 1 - <u>Use of the University Name in Public Statements Policy</u>, s1
<ul style="list-style-type: none"> • the freedom of academic staff to participate in professional or representative academic bodies; 		<u>UOW Enterprise Agreement Academic Staff 2019</u> , s 16
<ul style="list-style-type: none"> • the freedom of students to participate in student societies and associations. 	Students are free to organise unless they are seeking financial support for such activities from the university (UOW Act, s 28).	<u>UOW Act</u> , s 28(1)(n)(viii)
<ul style="list-style-type: none"> • the autonomy of the higher education provider in relation to the choice of academic courses and offerings, the ways in which they are taught and the choices of research activities and the ways in which they are conducted. 		<u>UOW Act</u> , s 6
<p>'academic staff' all those who are employed by the university to teach and/or carry out research and extends to those who provide, whether on an honorary basis or otherwise, teaching services and/or conduct research at the university.</p>	UOW's definition is stronger and more broadly applicable.	<ul style="list-style-type: none"> - <u>UOW Enterprise Agreement Academic Staff 2019</u>, 4.1 'Application' - <u>UOW Act</u>, s 4 '(c) - <u>Appointment of Visiting and Honorary Academics Policy</u>, s 4.1 'Policy Principles'. - <u>University Code of Conduct</u>, s7 'intellectual freedom' and 'academic freedom'
<p>'external visiting speaker' any person who is not an invited visiting speaker and for whom permission is sought to speak on the university's land or facilities.</p>		<ul style="list-style-type: none"> - <u>Protocol Procedure</u> s 7 (NB does not apply to students) - <u>Inclosed Lands Protection Act 1901</u> (NSW) - <u>Campus Access & Order Rules</u> s 4 (1d and f) 'Entrants' - <u>Appointment of Visiting and Honorary Academics Policy</u>, s 4.1 'Policy Principles'. - <u>Casual Room Booking and Common Teaching Guidelines</u>, s10.1 External Booking Requests https://www.uow.edu.au/about/services/book-teaching-facilities/

MODEL CODE (VERSION 3)	INTERSECTION KEY: UOW'S POSITION IS • CONSISTENT • LARGELY CONSISTENT • INCONSISTENT	UOW'S LEGAL AND POLICY FRAMEWORK
		- <u>Guidelines for the use of UOW Common Teaching Spaces</u> ,
<p>'imposed by law' in relation to restrictions or burdens or conditions on a freedom include restrictions or burdens or conditions imposed by statute law, the common law (including the law of defamation), duties of confidentiality, restrictions deriving from intellectual property law and restrictions imposed by contract.</p> <p>'invited visiting speaker' any person who has been invited by the university to speak on the university's land or facilities. For the purposes of this definition, 'the university' includes its decision-making organs and officers; its student representative bodies, undergraduate and postgraduate; any clubs, societies and associations recognised by its decision-making organs or student representative bodies; and any entities controlled by the university.</p>	UOW has limited control to regulate the affairs of its 'student representative bodies, undergraduates and postgraduate; any clubs, societies and associations recognised by its decision-making organs or student representative bodies' therefore such speakers should be considered as 'external visiting speakers' and managed accordingly.	<ul style="list-style-type: none"> - <u>Protocol Procedure s 7</u> (NB does not apply to students) - <u>Inclosed Lands Protection Act 1901</u> (NSW) - <u>Campus Access & Order Rules s 4</u> (1d and f) - <u>Appointment of Visiting and Honorary Academics Policy</u>, s 4.1 'Policy Principles'.
<p>'non-statutory policies and rules' means any non-statutory policies, rules, guidelines, principles, codes or charters or similar instruments.</p>		<u>Standard on UOW Policy</u>
<p>'speech' extends to all forms of expressive conduct including oral speech and written, artistic, musical and performing works and activity and communication using social media; the word "speak" has a corresponding meaning.</p>		<ul style="list-style-type: none"> - <u>UOW Enterprise Agreement Academic Staff 2019</u>, s 16 - <u>Social Media Policy</u>
<p>'staff' for the purposes of this Code 'staff' includes all employees of the university whether fulltime or part-time and whether or not academic staff.</p>		<ul style="list-style-type: none"> - <u>University Code of Conduct</u> - <u>Academic & Professional Staff Enterprise Agreements</u>.
<p>'the duty to foster the wellbeing of staff and students'</p>		Note: the Model Code proposes that the duty is on the <i>university</i> to foster the wellbeing of staff and students.
<ul style="list-style-type: none"> • includes the duty to ensure that no member of staff and no student suffers unfair disadvantage or unfair adverse discrimination on any basis recognised at law including race, gender, sexuality, religion and political belief; 	UOW's position is stronger and balances the duty between the University and the UOW community.	<ul style="list-style-type: none"> - <u>UOW Enterprise Agreement Academic Staff 2019</u>, s 16 - <u>Work Health and Safety Act 2011</u> (NSW), ss 7 and 28. 'Health' means physical and psychological health. - <u>Respect for Diversity Policy s4</u> (1.1). This policy reflects the

MODEL CODE (VERSION 3)	INTERSECTION KEY: UOW'S POSITION IS • CONSISTENT • LARGELY CONSISTENT • INCONSISTENT	UOW'S LEGAL AND POLICY FRAMEWORK
		principles of the following legislation: <ul style="list-style-type: none"> - Age Discrimination Act 2004 (Cth) - Anti Discrimination Act 1977 (NSW) - Disability Discrimination Act 1992 (Cth) - Multicultural NSW Act 2000 (NSW) - Racial Discrimination Act 1975 (Cth) - Sex Discrimination Act 1984 (Cth) - <u>Inclusive Language Guideline</u> - <u>University Code of Conduct s6</u> - <u>Student Conduct Rules, s 2 (6)</u>
<ul style="list-style-type: none"> • includes the duty to ensure that no member of staff and no student is subject to threatening or intimidating behaviour by another person or persons on account of anything they have said or proposed to say in exercising their freedom of speech; 	UOW's position is stronger and reflects the position at law.	<ul style="list-style-type: none"> - <u>UOW Enterprise Agreement Academic Staff 2019, s 16</u> - <u>Work Health and Safety Act 2011 (NSW), ss 7 and 28.</u> 'Health' means physical and psychological health. - <u>Work Health and Safety Policy</u> - <u>Overcrowding in Teaching Spaces Procedure</u> - <u>Respect for Diversity Policy s4 (1.1)</u> - <u>University Code of Conduct s6</u> - <u>Student Conduct Rules, s 2 (6)</u>
<ul style="list-style-type: none"> • supports reasonable and proportionate measures to prevent any person from using lawful speech which a reasonable person would regard, in the circumstances, as likely to humiliate or intimidate other persons and which is intended to have either or both of those effects; 		<ul style="list-style-type: none"> - <u>UOW Enterprise Agreement Academic Staff 2019, s 16</u> - <u>Workplace Health and Safety Policy</u> - <u>Respect for Diversity Policy s 4 (1.1)</u> - <u>Risk Management Guidelines</u> - <u>University Code of Conduct s 6</u> - <u>Student Conduct Rules, s 2 (6)</u>
<ul style="list-style-type: none"> • does not extend to a duty to protect any person from feeling offended or shocked or insulted by the lawful speech of another. 	UOW's position is stronger and includes this element in its duty by referencing 'offensive behaviour' and 'terminology'.	<u>Respect for Diversity Policy, s 4.1.1.2</u>
'unlawful' means in contravention of a prohibition or restriction or condition imposed by law.		UOW continually endeavours to comply with its obligations imposed by law.

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		<ul style="list-style-type: none"> • CONSISTENT • LARGELY CONSISTENT • INCONSISTENT 	
Operation	1. The university shall have regard to the Principles of this Code in the drafting, review or amendment of any non-statutory policies or rules and in the drafting, review or amendment of delegated legislation pursuant to any delegated law- making powers.	UOW policy does not (at the time of analysis) recognise the Model Code.	
	2. Non-statutory policies and rules of the university shall be interpreted and applied, so far as is reasonably practicable, in accordance with the Principles of this Code.		
	3. Any power or discretion under a non-statutory policy or rule of the university shall be exercised in accordance with the Principles in this Code.		
	4. This Code prevails, to the extent of any inconsistency, over any non-statutory policy or rules of the university.		
	5. Any power or discretion conferred on the university by a law made by the university in the exercise of its delegated law-making powers shall be exercised, so far as that law allows, in accordance with the Principles of this Code.		
	6. Any power or discretion conferred on the university under any contract or workplace agreement shall be exercised, so far as it is consistent with the terms of that contract or workplace agreement, in accordance with the Principles of this Code.		
Principles of the Code	1. Every member of the staff and every student at the university enjoys freedom of speech exercised on university land or in connection with the university subject only to restraints or burdens imposed by:	Inconsistencies: <ul style="list-style-type: none"> - Freedom of lawful speech is implied in UOW's policy framework, but not express. - It is important to note that the Model Code did not attempt to define 'freedom of speech' and therefore creates uncertainty as to the reach of the right granted under the Model Code. - The 1st, 2nd and 4th 	See <u>above</u> for context of 'freedom of lawful speech' within UOW's legal and policy framework, and also the <u>duty to foster the wellbeing of students and staff</u> .
	<ul style="list-style-type: none"> • law; 		
	<ul style="list-style-type: none"> • the reasonable and proportionate regulation of conduct necessary to the discharge of the university's teaching and research activities; 		
	<ul style="list-style-type: none"> • the right and freedom of others to express themselves and to hear and receive information and opinions; 		
	<ul style="list-style-type: none"> • the reasonable and proportionate regulation of conduct to enable the university to fulfil its duty to foster the wellbeing of students and staff; • the reasonable and proportionate regulation of conduct necessary to enable the university to give effect to its legal duties including 		

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its duties to visitors to the university.	limitations serve to balance the relationship between the University, staff, students and visitors. - There are difficulties with the 3 rd (who are 'others?') and 5 th (should visitors be called out?) dot points.	
2. Subject to reasonable and proportionate regulation of the kind referred to in the previous Principle, a person's lawful speech on the university's land or in or in connection with a university activity shall not constitute misconduct nor attract any penalty or other adverse action by reference only to its content; nor shall the freedom of academic staff to make lawful public comment on any issue in their personal capacities be subject to constraint imposed by reason of their employment by the university.	While the inclusion of the words 'reasonable and proportionate regulation' is an important qualifier, UOW land is private land and reserves the right to exclude persons from its property where it has been deliberately misled about the proposed content / speech.	See <u>above</u> for context of 'freedom of lawful speech' within UOW's legal and policy framework. - <u>Inclosed Lands Protection Act 1901</u> (NSW) - <u>Use of the University Name in Public Statements Policy</u> , s 6.1
3. Every member of the academic staff and every student enjoys academic freedom subject only to prohibitions, restrictions or conditions: • imposed by law; • imposed by the reasonable and proportionate regulation necessary to the discharge of the university's teaching and research activities; • imposed by the reasonable and proportionate regulation necessary to discharge the university's duty to foster the wellbeing of students and staff; • imposed by the reasonable and proportionate regulation to enable the university to give effect to its legal duties; • imposed by the university by way of its reasonable requirements as to the courses to be delivered and the content and means of their delivery.	UOW students do not have an express right to academic freedom.	See <u>above</u> for context and definition of 'academic freedom' within UOW's legal and policy framework.
4. The exercise by a member of the academic staff or of a student of	UOW students do not have an	<u>UOW Enterprise Agreement Academic Staff 2019</u> , s 42.9.2

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academic freedom, subject to the above limitations, shall not constitute misconduct nor attract any penalty or other adverse action.	express right to Academic Freedom.			
5. In entering into affiliation, collaborative or contractual arrangements with third parties and in accepting donations from third parties subject to conditions, the university shall take all reasonable steps to minimise the restrictions or burdens imposed by such arrangements or conditions on the freedom of speech or academic freedom of any member of the academic staff or students carrying on research or study under such arrangements or subject to such conditions.	UOW policies reference Academic Freedom rather than Freedom of Speech, and third party arrangements do not expressly refer to Academic Freedom or Freedom of Speech as conditions.	<ul style="list-style-type: none"> - Tertiary Education Quality and Standards Agency Act 2011, s 26 - UOW Enterprise Agreement Academic Staff 2019, s 16 - <u>Philanthropic Fundraising, Gift Acceptance and Recognition Policy</u>, s 6 - <u>Commercial Research Policy</u>, s 23.2.4 - Intellectual Property Policy and Commercial Research Policy suite - <u>Assessment of New Collaborative Delivery Procedure</u>, s 4.19 		
6. The university has the right and responsibility to determine the terms and conditions upon which it shall permit external visiting speakers and invited visiting speakers to speak on university land and use university facilities and in so doing may:	UOW's procedures are more comprehensive, from booking procedures to conduct. UOW also does not distinguish between external and invited visiting speakers.	<p>See <u>above</u> commentary for context and definition of 'external visiting speakers' and 'invited visiting speakers', as well as the <u>duty to foster the wellbeing of staff and students</u>.</p> <ul style="list-style-type: none"> - <u>Protocol Procedure</u> s 7 (NB does not apply to students) - <u>Inclosed Lands Protection Act 1901</u> (NSW) - <u>Campus Access & Order Rules</u> s 8.b - <u>Appointment of Visiting and Honorary Academics Policy</u>, s 4.1 'Policy Principles'. - <u>Guidelines for the Use of UOW Common Teaching Spaces</u>, 		
(a) require the person or persons organising the event to comply with the university's booking procedures and to provide information relevant to the conduct of any event, and any public safety and security issues;				
(b) distinguish between invited visiting speakers and external visiting speakers in framing any such requirements and conditions;				
(c) refuse permission to any invited visiting speakers or external visiting speakers to speak on university land or at university facilities where the content of the speech is or is likely to:				
(i) be unlawful; or				
(ii) prejudice the fulfilment by the university of its duty to foster the wellbeing of staff and students.				
(d) Refuse permission to any external visiting speaker to speak on university land or at university facilities where the content of the speech is or is likely to involve the advancement of theories or propositions which purport to be based on scholarship or research but which fall below scholarly standards to such an extent as to be detrimental to the university's character as an institution of higher learning.				

MODEL CODE (VERSION 3)	INTERSECTION KEY: UOW'S POSITION IS <ul style="list-style-type: none"> • CONSISTENT • LARGELY CONSISTENT • INCONSISTENT 	UOW'S LEGAL AND POLICY FRAMEWORK
(e) require a person or persons seeking permission for the use of university land or facilities for any external visiting speaker to contribute in whole or in part to the cost of providing security and other measures in the interests of public safety and order in connection with the event at which the external visiting speaker is to speak.		
7. Subject to the preceding Principles the university shall not refuse permission for the use of its land or facilities by an external visiting speaker or invited visiting speaker nor attach conditions to its permission, solely on the basis of the content of the proposed speech by the visitor.		See above.
8. Consistently with this Code the university may take reasonable and proportionate steps to ensure that all prospective students in any of its courses have an opportunity to be fully informed of the content of those courses. Academic staff must comply with any policies and rules supportive of the university's duty to foster the wellbeing of staff and students. They are not precluded from including content solely on the ground that it may offend or shock any student or class of students.		See above commentary regarding the <u>duty to foster the wellbeing of staff and students</u> , as well as <u>academic freedom</u> for academic staff. <u>UOW Course Handbook</u>

ANNEXURE C – ALPHABETICAL LIST OF UOW LEGISLATION, AGREEMENTS, POLICY AND DOCUMENTS CONSIDERED

- Academic Senate - Terms of Reference
- Appointment of Visiting and Honorary Academics Policy
- Assessment of New Collaborative Delivery Procedure
- Campus Access and Order Rules
- Casual Room Booking and Common Teaching Guidelines
- Commercial Research Policy
- Guidelines for the use of UOW Common Teaching Spaces
- *Inclosed Lands Protection Act 1901* (NSW)
- Inclusive Language Guideline
- IP Policy suite
- Overcrowding in Teaching Spaces Procedure
- Philanthropic Fundraising, Gift Acceptance and Recognition Policy
- Protocol Procedure
- Respect for Diversity Policy
- Risk Management Guidelines
- Social Media Policy
- Standard on UOW Policy
- Student Conduct Rules,
- *Tertiary Education Quality and Standards Agency Act 2011* (Cth)
- University Code of Conduct
- UOW 2030 and Beyond,
- *University of Wollongong Act 1985* (NSW)
- UOW Course Handbook
- UOW Enterprise Agreement Academic Staff, 2019
- Use of the University Name in Public Statements Policy
- *Work Health and Safety Act 2011* (NSW)
- Work Health and Safety Policy