

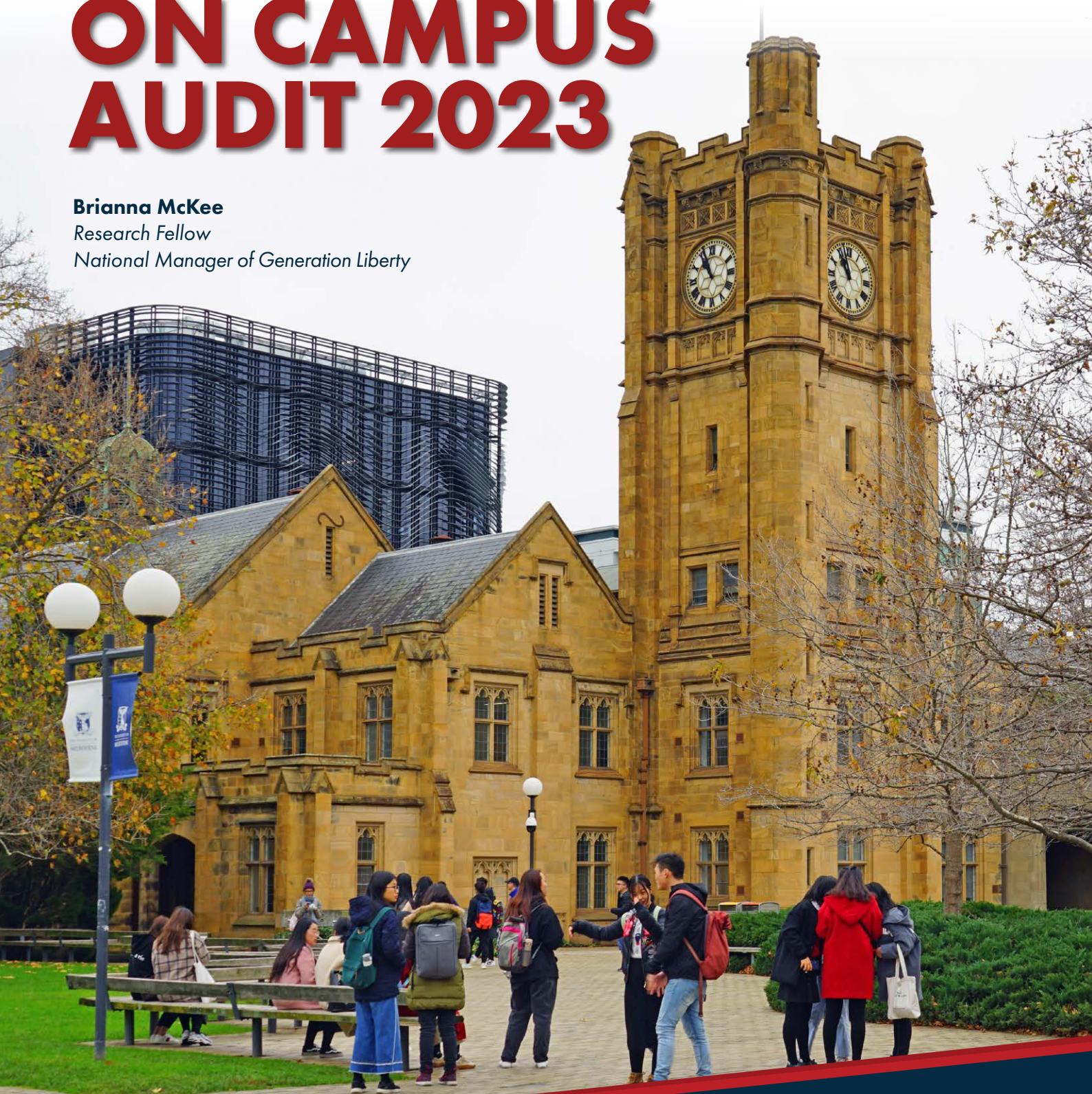
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FREE SPEECH ON CAMPUS AUDIT 2023

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Executive Summary

Australia's universities are failing to protect freedom of speech on campus.

The Institute of Public Affairs' Free Speech on Campus Audit 2023 is the fourth systematic analysis of more than 279 policies at Australia's 42 universities. The Audit rates each university's support for free speech by analysing policies that restrict expression.

In 2023, almost all Australian universities are hostile to freedom of speech on campus:

- 38 of Australia's 42 universities (90%) are rated 'red' for having policies that are hostile to free speech on campus, an increase from 33 in 2018 and 31 in 2017.
- Four of Australia's universities (10%) are rated 'amber' for policies that threaten free speech on campus, a decrease from 8 in 2018 and 10 in 2017.
- Zero universities are rated 'green' for supporting free speech on campus, a decrease of one institution, The University of New England, in 2018.

The total combined hostility scores of all Australian universities has more than doubled since 2016. Notable examples include:

- The University of Wollongong's Inclusive Language Guideline instructs students to avoid words like 'man', 'ladies', 'mothering/fathering' and 'wife'.
- Central Queensland University enforces a protocol that says, 'direct verbal confrontation' and 'expressing disagreement' with Indigenous people should be avoided to 'preserve consensus'.
- Bond University forbids posts which 'can be interpreted to portray' content that is 'injurious or objectionable' to Bond University.

For the first time, the IPA's Free Speech on Campus Audit has scored every Australian university's standalone policy protecting freedom of speech in terms of its inclusion of six pro-freedom provisions contained in the French Model Code.

- Only one-third (33%) of Australia's 42 universities have adopted the six essential pro-free speech criteria contained in the French Model Code.
- The institutions with the best protections for speech are the Australian Catholic University (+8), Canberra University, Deakin University and six others (all +7).
- The institutions with the worst protections for free speech are Flinders University (0), the University of Notre Dame (+1), and Bond University (+1).

The culture of censorship on campus has been aided by policies that promote a specific woke agenda, thereby limiting viewpoint diversity and debate.

- These goals commonly fall into three areas: Indigenous issues, environmental sustainability, and gender inequality.
- Across Australia's 42 universities there are now 77 policies or strategic commitments pledging allegiance to at least one of the three ideologies listed above.
- Universities adopting a woke agenda as an institutional goal are in direct conflict with free intellectual inquiry.

To protect freedom of speech, it is recommended that Australian universities:

1. Remove policies which undermine free speech.

Freedom of expression is put at risk by university policies which prohibit a wide variety of speech including 'insulting', 'unwelcome' and 'offensive comments'. 'Shouting', 'teasing', 'sarcasm' and 'name-calling' are also forbidden at some institutions.

2. Broaden policies which protect free speech.

In many cases, free speech codes have caused further harm by codifying into official policy concessions that restrict speech deemed 'unsafe' by the reigning woke orthodoxy. Certain caveats in the French Model Code further restrict speech.

3. Abolish policies which take a stand on ideological issues.

Diversity of thought is weakened by policies that promote a specific ideological message (usually on Indigenous, environmental or gender issues). Universities adopting a woke agenda as an institutional goal are in direct conflict with free intellectual inquiry.

Spotlight on policies that threaten freedom of speech

Policies that limit certain types of speech

- The University of Wollongong's Inclusive Language Guideline instructs students to avoid words like 'man', 'mothering/fathering', 'ladies' and 'wife'.
- Curtin University's Communications and Marketing Social Media Guidelines forbid discussions which could be 'construed as offensive' on the grounds of race, religion, gender identity or sexual orientation.
- Murdoch University's Workplace Bullying, Harassment and Discrimination Policy defines harassment as including a 'once-off event' involving 'name calling'.
- Southern Cross University's Social Media Procedures forbid students from typing out a post 'IN UPPER CASE (shouting)'.
- Western Sydney University's Student Misconduct Rule defines general misconduct as 'unreasonably antisocial or offensive' behaviour.

Policies that indirectly limit speech by taking a stand on ideological issues

- Sydney University's Environmental Sustainability Policy 2015 commits to 'integrate environmental sustainability into teaching, learning and research'.
- The Australian National University's Indigenous and Employment Policy recognises that the general working environment requires 'the redress of past social injustice, exploitation and Indigenous employment inequities'.
- Western Sydney University's Gender Equality Procedures and Guidelines claim 'special measures' are needed to improve employment and educational opportunities for women, Indigenous people, and people with a disability.
- Charles Sturt University's Responsible Investment Guidelines claim 'the exploration, development and production of fossil fuels' are 'in conflict with its values'.
- Curtin University pledges to 'promote and foster the development of an environmental ethos and sustainable practices through participation by, and training and education of, staff, students and contractors'.

Introduction

Between 2016 and 2018 the Institute of Public Affairs (IPA) was instrumental in beginning a national debate about the state of freedom of speech on Australian university campuses through the publication of three annual audits of university speech and conduct policies.¹

As a consequence of the concerns highlighted by IPA research, the federal government commissioned the former Chief Justice of the High Court of Australia, Robert French AC to review freedom of speech on university campuses. The final report of the French Review was released in March 2019 and all universities were asked by the government to adopt the French Model Code or adapt it to ensure free speech principles were reflected in their policies.² A subsequent government review into the implementation of the French Model Code carried out by Professor Sally Walker found nine of Australia's 42 universities had fully aligned their policies with the French Model Code; 14 were mostly aligned; four were partly aligned; six were not aligned, while a further eight universities were yet to complete the process and one university did not respond.³

In 2021, the federal government acted again to bolster academic freedom. In April, the education minister released the *Higher Education Standards Framework (Threshold Standards) 2021* to ensure the governing bodies of higher education providers take steps 'to develop and maintain an institutional environment in which freedom of intellectual inquiry is upheld and protected...' In December 2021, the framework was revised to refer specifically to 'freedom of speech and academic freedom.'⁴ A few months earlier, in October 2021, the federal parliament also passed the *Higher Education Support Amendment (Freedom of Speech) Act 2021* to make it a condition of receiving federal funding that 'A higher education provider... must have a policy that upholds freedom of speech and academic freedom.'⁵

It is in the context of these attempted reforms that the *Free Speech on Campus Audit 2023* has been released. Building on the IPA's previous research, the 2023 Audit rates each university's support for free speech by analysing policies that limit the free expression of a broad range of ideas on campus, finding the deterioration of freedom of speech on campus has accelerated since 2018. The Audit also measures the effectiveness of the French Model Code in restoring free speech, finding the code has done little to slow, and in some cases adds to, the deterioration of free speech.

1 Matthew Lesh, *Free Speech on Campus Audit 2016* (Institute of Public Affairs Research Report, May 2016); Matthew Lesh, *Free Speech on Campus Audit 2018* (Institute of Public Affairs Research Report, December 2018).

2 Dan Tehan, 'Adoption of French Model Code Mixed' (Media release, 9 December 2020) <<https://ministers.dese.gov.au/tehan/adoption-french-model-code-mixed>>.

3 Sally Walker, *Review of the Adoption of the Model Code on Freedom of Speech and Academic Freedom* (Report, December 2020).

4 *Tertiary Education Quality and Standards Agency Higher Education Standards Framework Amendment (Threshold Standards—Freedom of Speech and Academic Freedom) 2021* (Cth).

5 *Higher Education Support Amendment (Freedom of Speech) Act 2021* (Cth).

The 2023 Audit demonstrates a censorious culture has developed at universities which is undermining the battle of ideas on campus. There are multiple contributing factors:

1. Overly broad policies, guidelines and regulations have institutionalised restrictions on free speech and academic freedom.
2. Universities adopting ideological positions relating to climate change, Indigenous issues, and gender as an institutional goal.
3. Free speech policies are limited so severely by caveats they ironically restrict the very speech they were designed to protect.
4. Students are increasingly self-censoring over fears of social ostracism and adverse academic consequences.
5. Speakers, groups, and events have been cancelled and protested against because of influential university players who violently disagree.
6. Trigger warnings (alerts before content that could cause discomfort) and safe spaces are shielding students from debate and controversy.

The enlightenment mission of a university is to strive for empirical truth by facilitating debate and discussion. It is of serious concern that universities are sacrificing intellectual rigour and viewpoint diversity in the name of student 'wellbeing'.

The West and free speech on campus

The downward trend in relation to free speech on campus is evident across the Western world. In the United States, the Foundation for Individual Rights in Education's (FIRE) Spotlight on Speech Codes 2023 found 94 per cent of universities have policies that substantially restrict free speech.⁶ Since 2015, FIRE has logged 237 cases where speakers scheduled to appear at a campus event have faced the threat of 'disinvitation' due to their ideas.⁷ Approximately one-third of all disinvitation attempts for 2022 were directed at speakers brought in to discuss sexual orientation. One incident at Yale University saw lead counsel for the Alliance Defending Freedom (ADF) and executive director of the American Humanist Association Monica Miller shouted down by protestors opposed to the ADF's stance on LGBTQ issues. A second incident saw Mount St. Mary's University cancel a campus lecture by sociology professor Simone Kolysch due to student and faculty protests relating to pro-choice and pro-LGBTQ views.

In the United Kingdom, the Spiked! Free Speech University Rankings 2018 found 94 per cent of British universities censor speech – a sharp rise from 80 per cent in 2015.⁸ In Canada, the Justice Centre for Constitutional Freedoms' Campus Freedom Index 2020 gave 13 of 61 universities an 'F' ranking – up from eight in 2019. Just six universities earned an 'A' grade in 2020 which was a slight increase from 2019

6 Foundation for Individual Rights in Education (FIRE), 'Spotlight on Speech Codes 2023', accessed 23 June 2023 <<https://www.thefire.org/research-learn/spotlight-speech-codes-2023>>.

7 Foundation for Individual Rights in Education (FIRE), 'Campus Disinvitation Database', accessed 23 June 2023 <<https://www.thefire.org/research-learn/campus-disinvitation-database>>.

8 Tom Slater, 'Free Speech University Rankings', *Spiked Online* (24 February 2019) <<https://www.spiked-online.com/free-speech-university-rankings/>>.

when only four universities received an 'A' grade. Some notable incidents included the University of British Columbia shutting down an event featuring journalist Andy Ngo over vaguely termed 'safety' and 'security' concerns. A second incident occurred at Simon Fraser University after a room booking for a panel discussion titled 'How Media Bias Shapes the Gender Identity Debate' was cancelled. This occurred in response to a group of trans activists threatening to physically disrupt the event by engaging in property destruction and false fire alarm activation.

Free speech on Australian university campuses is facing similar pressures. Venues have been cancelled for events, student groups attacked, and excessive security fees required to host controversial speakers. One notable event in 2020 involved protesters verbally abusing and physically threatening a pro-life stall at the University of Sydney during the lead-up to the legalisation of abortion. LifeChoice members reported that their sign and other printed materials were ripped to pieces and thrown at them and police were called to the scene shortly after the event started.⁹ Other high-profile incidents involved students from the University of Sydney heckling former Liberal MP Joe Hockey and former Liberal Prime Minister Malcolm Turnbull in separate incidents in 2022.¹⁰ Trigger warnings, safe spaces and no-platforming activities have been introduced on multiple campuses. More importantly, university policies and guidelines are stopping students from expressing certain ideas.

Why freedom of speech on campus must be protected

Universities have a moral and legal responsibility to safeguard free speech and encourage viewpoint diversity.¹¹ This is important because higher education institutions serve an important social purpose as bastions of learning and academic inquiry. The three core reasons freedom of speech must be upheld on campus are:

1. **To promote and protect free inquiry.**

Free inquiry at universities enables students to pursue truth, knowledge, and innovation. Without free inquiry, universities become nothing more than propaganda-producing outlets. It is the very essence of university life that ideas are debated, either winning or losing the contest of ideas. Universities should nurture curiosity, creativity, and a desire to seek truth. While individuals are rightfully subject to laws that prevent defamation and harassment, policies that go beyond these restrictions are unjustified.

9 Marilyn Rodrigues, 'Pro-Lifers attacked by fellow students', *The Catholic Weekly* (20 November 2020) <<https://www.catholicweekly.com.au/pro-lifers-attacked-by-fellow-students>>.

10 Sarah Sharples, 'Julie Bishop intimidated by angry Sydney university mob but defiant', *The Daily Telegraph* (23 May 2014) <<https://www.dailytelegraph.com.au/newslocal/inner-west/julie-bishop-intimidated-by-angry-sydney-university-mob-but-defiant-/news-story/ee0ed76ede60534a7fdf4e7ba84c9895>>; Daanyal Saeed, 'Malcolm Turnbull, has speaking appearance at University of Sydney derailed by protestors', *The Daily Telegraph* (1 September 2022) <<https://www.dailytelegraph.com.au/newslocal/inner-west/malcolm-turnbull-has-speaking-appearance-at-university-of-sydney-derailed-by-protestors/news-story/e79ad49816078261b9c7d73172974881>>.

11 Matthew Lesh, *Free Speech on Campus Audit 2018* (Institute of Public Affairs Research Report, December 2018).

2. **To promote and protect viewpoint diversity.**

Students who are not exposed to perspectives which differ from their own are intellectually untested and unprepared for post-university life. Students who have been coddled at university assume a similar culture exists in the workplace and the political sphere, an expectation which has a dampening effect on our intellectual culture. It is the role of universities to foster critical thinking, to challenge young people to challenge their own ideas, as well as the ideas of others. If some ideas cause discomfort, this should provide an even stronger incentive to explore them.

3. **To promote and protect democracy.**

Democratic liberalism as a system of government is founded upon the right to freely express diverse viewpoints. Any threat to viewpoint diversity threatens free speech, and any threat to free speech threatens democracy. Censorship of ideas on campus contributes to more polarised political debate, as it precludes people being able to disagree with each other in a civil manner. Today's students are tomorrow's voters, politicians, judges, public servants, and educators. In order to encourage open and informed debate in the future, free speech must be defended on campus today.

To restore freedom of speech on campus, universities must remove policies that undermine free speech by seeking to prevent hurt feelings, unwelcome comments, or conduct deemed offensive by the overly sensitive. They must broaden policy protections for free speech and abolish policies which demand the uncritical and unqualified acceptance of agendas around issues like sustainability, Indigenous history, and gender equality.

As a baseline, universities should not be imposing stricter limits on freedom of expression than the limits imposed by law. Ideally, they should offer as much protection as possible given their special position as centres of learning. When universities deal with allegedly offensive, insulting, or humiliating speech, they should at the very least assess these types of speech as objectively as possible rather than basing their judgement on the subjective reactions of individuals.

The scope of restrictions is sometimes limited by adding a provision which requires that a 'reasonable person' consider the speech in question offensive, insulting, humiliating, or intimidating. A further safeguard is to stipulate that the speaker intended to cause the effects listed above. French acknowledges that the word 'offensive' may be 'too broad' to be used even when subjected to these tests.

Findings

Hostility Score

The 2023 Audit includes a Hostility Score representing the extent to which a university's policies restrict free speech. The higher the score the more hostile the institution. Each policy is categorised as either red, amber, or green. Red policies explicitly restrict free speech, and increase an institution's Hostility Score by three points. Amber policies potentially restrict free speech, and increase an institution's Hostility Score by one point. Green policies do not restrict free speech and have no impact on the Hostility Score. A university with one red policy, two amber policies and three green policies will receive a red traffic light ranking overall and a score of five.

Hostility ratings

The overall rating of an institution is based on its most severe policies (for example, a university that adopts a red policy is given an overall red rating). Of Australia's 42 universities, 38 (90 per cent) are rated red for implementing policies that are hostile to freedom of speech, four (10 per cent) are rated amber for implementing policies that could threaten freedom of speech, and no universities are rated green.

Table 1: Free Speech on Campus Audit 2023 ratings

Rating 2023	Policy
Red (university adopts policies that unambiguously restrict free speech)	38 (90%)
Amber (university adopts policies that potentially restrict free speech)	4 (10%)
Green (university has not adopted policies that restrict free speech)	0

Figure 1: Number of universities rated red, amber, and green for policies that are hostile to free speech in 2023

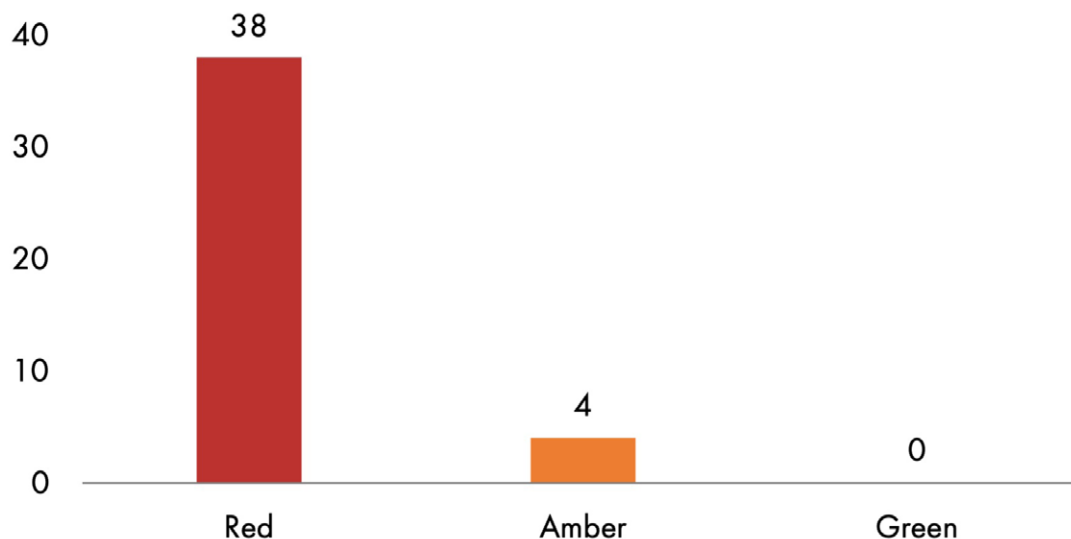


Table 2: Hostility score and policy rating, by university

University	Hostility Score	Policy Rating
Western Sydney University	26	Red
Victoria University	22	Red
University of Newcastle	21	Red
Murdoch University	20	Red
University of Wollongong	19	Red
Curtin University	16	Red
Charles Sturt University	15	Red
Federation University	15	Red
Queensland University of Technology	15	Red
University of South Australia	14	Red
Swinburne University of Technology	14	Red
Edith Cowan University	13	Red
University of Western Australia	12	Red
University of Technology, Sydney	11	Red
Australian Catholic University	11	Red
Bond University	10	Red
University of Canberra	10	Red
Southern Cross University	10	Red
La Trobe University	10	Red
James Cook University	10	Red
Charles Darwin University	10	Red
University of Tasmania	10	Red
University of Southern Queensland	9	Red
Central Queensland University	9	Red
Griffith University	8	Red
Macquarie University	8	Red
University of Sydney	8	Red
University of Adelaide	7	Red
University of Sunshine Coast	7	Red
University of Melbourne	7	Red
Deakin University	7	Red
Notre Dame University	7	Red
Flinders University	6	Red
Monash University	6	Red
Torrens University	6	Red
University of Divinity	6	Red
University of New South Wales	6	Red
University of Queensland	5	Red
University of New England	4	Amber
Royal Melbourne Institute of Technology	3	Amber
Australian National University	3	Amber
Carnegie Mellon University	1	Amber

Changes in hostility to free speech since previous Audits

The 2023 Audit found the number of red rated Australian universities for policies which impact free speech increased from 33 to 38, while amber universities for policies dropped by 50 per cent from eight to four. Australia’s one institution that received a green rating for policies in 2018, the University of New England, became an amber institution. Carnegie Mellon University was the only amber rated institution in 2018 which remained amber in 2023.

Table 3: Universities that changed ratings between 2018 and 2023

University Rating	2018 Audit	2023 Audit
University of New England	Green	Amber
University of Sydney	Amber	Red
Deakin University	Amber	Red
Melbourne University	Amber	Red
University of Southern Queensland	Amber	Red
Griffith University	Amber	Red
University of Divinity	Amber	Red
Royal Melbourne Institute of Technology	Red	Amber
Australian National University	Red	Amber

Figure 2: Total number of red, amber and green rated universities between the 2016 and 2023 Audits

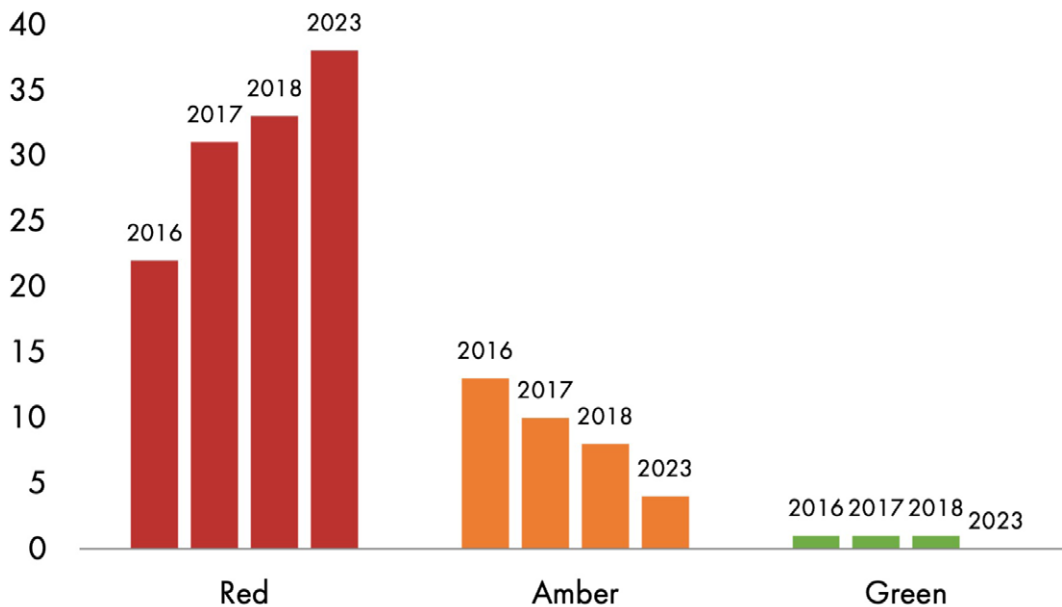


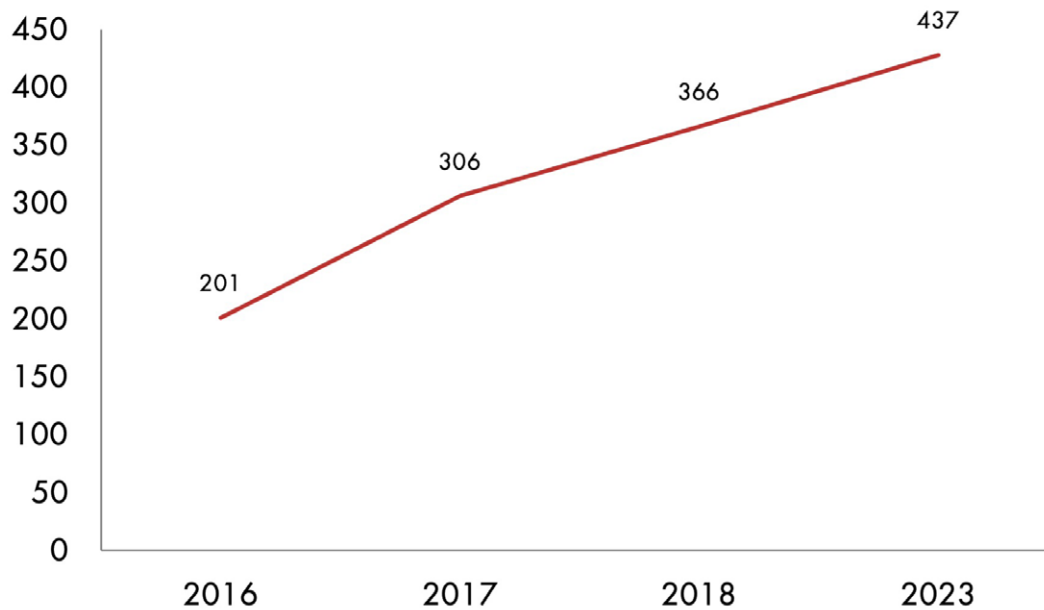
Table 4: Policy changes between the 2016 and 2023 Audits

Policy Rating	2016 Audit	2017 Audit	2018 Audit	2023 Audit
Red	28 (67%)	31 (73%)	33 (79%)	38 (90%)
Amber	13 (31%)	10 (24%)	8 (19%)	4 (10%)
Green	1 (2%)	1 (2%)	1 (2%)	0

Total Hostility Score

The 'Total Hostility Score' is the sum of the individual 'Hostility Score' rankings of each university. Each red ranked policy increases an institution's hostility score by three points, and each amber policy increases the hostility score by one point. The Total Hostility Score across all institutions has increased substantially since the first Freedom of Speech on Campus Audit. In the 2016 Audit, the total score across all universities was 201. As of the 2023 Audit, the score has now reached 437. This indicates a 117 per cent increase between 2016 and 2023.

Figure 3: Change in Total Hostility Score of Australian universities between 2016 and 2023 Audits



Free Speech Code Score

Freedom of speech and academic freedom policies

In 2018, just nine (21 per cent) of Australia's 42 universities had an explicit policy that protected free intellectual inquiry. By 2023, due to government action, all but two universities had a standalone policy. However, some of these policies leave universities in a worse position than before.

This is because the free speech codes which universities introduced fall short of the protections offered in French's Model Code by:

1. Adding a new provision which makes the free speech code subject to other university policies (these typically include the code of conduct or enterprise bargaining agreement).
2. Omitting a provision allowing staff and students to criticise the university.

Furthermore, those policies that do in fact align with the model code are in themselves problematic as French's document has a number of weaknesses:

1. French's definition of 'the duty to foster the wellbeing of staff and students' includes 'speech which a reasonable person would regard, in the circumstances, as likely to humiliate or intimidate'. Humiliation is an inherently subjective term that can be interpreted broadly.
2. The provision that allows universities to refuse permission to any external visiting speakers where the content of the speech falls below scholarly standards and could undermine the university's 'character as an institution of higher education'.

First, French's decision to include a provision forbidding speech likely to humiliate is at odds with his broader analysis. In his review, French claims: 'The imposition of tighter limits on the freedom by higher education providers, than the limits imposed by the general law, requires powerful justification having regard to the societal value attached to the freedom.'¹² This claim clashes with the provision relating to humiliation which appears to go further than legally stated limitations on speech. French, ironically, seems to fall into the very trap he encourages universities to avoid. Section 18C of the *Racial Discrimination Act 1975* makes it unlawful to humiliate 'because of the race, colour, national or ethnic origin of the other person or group.' The model code goes further by forbidding any speech that humiliates. To ban speech that humiliates is to suggest that it is comparable to discrimination, harassment and bullying. It is profoundly detrimental to free speech on campus to equate humiliation with harm and to claim that it could endanger student wellbeing.

¹² Robert French, *Report of the Independent Review of Freedom of Speech in Australian Higher Education Providers* (Department of Education and Training (Cth), 27 March 2019).

The second issue relates to the following provision which allows universities to 'refuse permission to any external visiting speaker ... where the content of the speech is or is likely to involve the advancement of theories or propositions ... which fall below scholarly standards to such an extent as to be detrimental to the university's character as an institution of higher learning.'¹³ This is problematic considering the growing push for universities to take a side on contested ideological issues relating to climate, gender, and Indigenous affairs. By adopting a stance on these issues, universities treat a contested issue as decided, and position themselves against any and all opposing viewpoints. It is unlikely the university will publish scholarship that disagrees with its own settled position. It is possible they will claim alternative views fall below scholarly standards and could damage the university's reputation by citing the absence of supporting scholarship in the area. However, the lack of scholarship which opposes popular ideological narratives is also attributable to long-term sector-wide support for one side of the debate. The settled position therefore goes unchallenged in perpetuity and any meaningful debate is stifled.

Finally, it is arguably redundant for French to distinguish between academic freedom and freedom of speech. The protection of free speech should be broad enough to include academic freedom. If the right to free speech is to mean anything, it must give academics the right to publicly discuss genuinely held opinions.

Adoption of the French Model Code by Australian universities

The 2023 Audit has calculated a 'Free Speech Code Score' for each university. This is based on the combined total of two separate scores. Firstly, a score for the similarity of their free speech code to the original French Model Code (The French Code Adaptation Score). Secondly, extra points are added for university policies which do not include the French Model Code's provision on 'humiliation', and which include a protection for free speech in their founding legislation or statutes.

Free Speech Code Score: Worst Offenders

- Flinders University (+0)
- Notre Dame University (+1)
- Bond University (+1)

Free Speech Code Score: Best Performers

- Australian Catholic University (+8)
- Divinity University, Canberra University, Deakin University, La Trobe University, University of New South Wales, Newcastle University (+7), Federation University (+7) and the University of Technology, Sydney (+7)

¹³ Ibid.

Table 5: Australian university free speech policy alignment with the Model Code (0 = lowest possible score, 8 = highest)

University	French Model Code Adaption Score	Extra Points	Free Speech Code Score
Flinders University	0	0	0
Notre Dame University	0	1	1
Bond University	1	0	1
University of Wollongong	0	2	2
Griffith University	2	0	2
Western Sydney University	2	1	3
University of the Sunshine Coast	2	1	3
Charles Darwin University	3	0	3
University of New England	3	0	3
University of Melbourne	2	2	4
Victoria University	2	2	4
Macquarie University	3	1	4
University of Tasmania	3	1	4
Southern Cross University	3	2	5
Edith Cowan University	4	1	5
Charles Sturt University	4	1	5
University of South Australia	4	1	5
Curtin University	4	1	5
Murdoch University	4	1	5
University of Queensland	5	0	5
Queensland University of Technology	5	0	5
James Cook University	5	0	5
Torrens University	5	0	5
Swinburne University	5	0	5
Royal Melbourne Institute of Technology	5	1	6
University of Sydney	5	1	6
Monash University	5	1	6
Carnegie Mellon University	6	0	6
University of Western Australia	6	0	6
Australian National University	6	0	6
Central Queensland University	6	0	6
University of Southern Queensland	6	0	6
Adelaide University	6	0	6
Federation University	6	1	7
University of Technology, Sydney	6	1	7
Newcastle University	6	1	7
University of New South Wales	6	1	7
La Trobe University	6	1	7
Deakin University	6	1	7
Canberra University	6	1	7
Divinity University	6	1	7
Australian Catholic University	6	2	8

Common departures from the French Model Code

Code supersedes all other policies: For free speech codes to effectively protect free speech, they must supersede all other non-statutory policies of the university. Each code must:

1. Include provision four from the French Model Code: 'This Code prevails, to the extent of any inconsistency, over any non-statutory policy or rules of the university.'
2. The code must be equal to or greater than other non-statutory policies in terms of documentary status.

As it stands, 50 per cent of the free speech codes (21/42) fail to offer one or both of these protections. Among them are four of the Group of Eight universities: the University of Sydney, the University of Melbourne, the University of Queensland, and Monash University.

Academic freedom definition adopted in full: Free speech codes must include the full definition of Academic Freedom provided in the French Model Code. However, nearly one-third of universities (12/42) fail to offer this protection. The fifth point in the definition of Academic Freedom was most regularly left out by university free speech codes:

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.

Among those universities missing the full definition of Academic Freedom provided in the French Model Code are the University of Wollongong, the University of Tasmania and the University of New England.

Visitors not banned solely due to content: This provision from the French Model Code ensures that visiting speakers cannot be banned from universities based purely on the content of their speech.

Subject to the preceding Principles the university shall not refuse permission for the use of its land or facilities by an external visitor or invited visitor nor attach conditions to its permission, solely on the basis of the content of the proposed speech by the visitor.

However, there were 10 universities which failed to offer this protection, including the University of Melbourne and Bond University.

Lawful speech may cause offence: If students and staff are to express their views freely, they must be able to run the risk of causing offence. This is because offence is an inherently subjective term which can be interpreted to limit a broad range of speech. The French Model Code offers protection for content which may 'shock' or 'offend' and states that the university's duty to foster the wellbeing of staff and students:

Does not extend to a duty to protect any person from feeling offended or shocked or insulted by the lawful speech of another.

It reiterates this again in relation to course content:

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.

There are 17 universities which fail to offer at least one of two protections for speech or course content which could offend.

Does not include humiliation provision: This is one departure from the French Model Code which benefits free speech on campus. The provision in question is included in 'the duty to foster the wellbeing of staff and students':

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.

Restricting speech that 'humiliates' is deeply problematic for the same reasons French gives to defend a provision allowing speech that 'offends'. Both humiliation and offence can be defined broadly and interpreted subjectively. They are therefore open to exploitation. French's provision is further exposed because it extends to censoring speech 'likely to humiliate'.

There were nine universities which avoided this pitfall and did not include the provision in their free speech codes. These were:

1. Australian Catholic University
2. Notre Dame University
3. Southern Cross University
4. The University of Melbourne
5. University of South Australia
6. University of Tasmania
7. University of Wollongong
8. Victoria University
9. Western Sydney University

Southern Cross University and the University of Wollongong do not have official standalone policies that protect academic freedom and freedom of speech but neither do they have provisions banning speech which could cause a student to feel 'humiliated'. In some ways this puts them in a better position than other universities. When creating official policy around a right like free speech, the harm caused by concessions can often outweigh the good provided by protections. Arguably this has been the outcome at several of Australia's universities due to the introduction of the French Model Code.

Three case studies on the impact of the French Model Code

1. Carnegie Mellon University
2. Australian Catholic University
3. New England University

Case Study: Carnegie Mellon University's Freedom of Expression Policy

Carnegie Mellon, one of Australia's two international universities, offers greater protection for free speech than the nation's public universities. The broad protections for free speech and limited number of caveats in this policy should serve as a model for all public universities. An excerpt is reproduced below.

Carnegie Mellon University values the freedoms of speech, thought, expression and assembly - in themselves and as part of our core educational and intellectual mission. If individuals are to cherish freedom, they must experience it. The very concept of freedom assumes that people usually choose wisely from a range of available ideas and that the range and implications of ideas cannot be fully understood unless we hold vital our rights to know, to express, and to choose. The university must be a place where all ideas may be expressed freely and where no alternative is withheld from consideration. The only limits on these freedoms are those dictated by law and those necessary to protect the rights of other members of the University community and to ensure the normal functioning of the University.

Rights: On Carnegie Mellon's campus, anyone may distribute printed material, offer petitions for signature, make speeches, and hold protests or demonstrations outside university buildings. All such activities must be peaceful, avoiding acts or credible threats of violence and preserving the normal operation of the university. No event shall infringe upon the rights or privileges of anyone not in sympathy with it, and no one will be permitted to harm others, damage or deface property, block access to university buildings or disrupt classes. The enforcement of these conditions will not depend in any way on the message or sponsorship of the act or event. When guests are invited by a recognized campus organization, they may express their ideas not because they have a right to do so, but because members of the campus community have a right to hear, see, and experience diverse intellectual and creative inquiry. Defending that right is a fundamental obligation of the university. Controversy cannot be permitted to abridge the freedoms of speech, thought, expression or assembly. They are not matters of convenience, but of necessity.

Case study: Australian Catholic University

The Australian Catholic University's (ACU) free speech code is an exemplar of the genuine protection of viewpoint diversity and freedom of expression. The code includes all the elements of the French Model Code that protect free speech and excludes those which undermine it - like the humiliation provision. ACU's code goes above and beyond the requirements of the French Model Code by giving it 'statute' status and clearly stating it supersedes all policies of the university including other statutes. It addresses the necessity for universities to maintain a safe and civil environment on their campuses without abandoning open debate. The result is a document that provides broad protection for freedom of speech.

Case study: New England University

The University of New England (UNE) is an interesting case because the implementation of the French Model Code has arguably hindered rather than helped freedom of speech on campus. Not only did UNE leave out key provisions of the French Model Code that protect free speech, but it includes provisions which detract from free speech, such as the humiliation provision. UNE does not provide a full definition of academic freedom, does not protect visitors from being banned solely due to content and fails to protect speech which might cause offence. Before the introduction of the code, the university's policies provided limited restrictions on free speech. UNE was the only institution to receive a green hostility rating in the IPA's Free Speech on Campus Audit 2018. In 2023 UNE is an amber institution with one of the lowest freedom scores (3). From a policy perspective, freedom of speech has suffered serious losses at UNE due to the introduction of the French Model Code.

Analysis of case studies: These three case studies highlight a key problem with the application process for free speech codes at Australian universities. The flexibility given universities to adapt the French Model Code to their unique needs enabled UNE to adopt a code which left out protections included by most other institutions. At the other end of the spectrum, the Australian Catholic University produced a code that far exceeded the protections set out in the French Model Code. In hindsight it is clear that some sort of enforcement of a minimum standard could have been helpful. However, given the concessions which limit free speech in the French Model Code, this may have caused more harm than good.

Policies that threaten freedom of speech

University policies, created under legislation that establishes the institution, have formal legal standing.¹⁴ The three main types of policies that directly limit free speech address:

1. Harassment and Bullying
2. Conduct and Misconduct
3. Social Media and IT

Harassment and bullying policies

Policies that forbid offensive behaviour, hurt feelings, or unwelcome comments seriously undermine free speech on campus. They are often worded in a vague and broad manner. They encourage students and academics to avoid airing potentially controversial ideas and can be used to punish people for expressing an opinion.

Spotlight on bullying and harassment policies

- Bond University includes 'offensive language', 'shouting', 'sarcasm' and 'ridicule' as examples of bullying.
- La Trobe University defines bullying as 'jokes', 'teasing' and 'nicknames' and can be 'unintentional'.
- Adelaide University says harassment can be a 'one-off' incident which causes 'unintended' offence.
- Torrens University defines harassment as 'unwelcome and unsolicited' comments which makes someone feel 'offended' or 'humiliated'.

Conduct and misconduct policies

These have the same effect as bullying and harassment policies and are riddled with vague and subjective terms that are open to arbitrary interpretation. Policies that forbid 'harm', 'antisocial behaviour' and 'offence' present a serious risk to free speech on campus.

Spotlight on conduct and misconduct policies

- Western Sydney University defines general misconduct as 'behaving in an unreasonably antisocial or offensive manner for any reason'.
- Flinders University says a 'single incident' of 'disrespectful behaviour' may constitute misconduct.
- Griffith University defines misconduct as 'an act or omission which may endanger the safety or health of any person'.
- Victoria University defines an 'inflammatory comment' as a type of general misconduct.

¹⁴ Former Chief Justice of Australia Robert French has discussed the legal standing of policies: see Robert French, 'Free Speech and the Law on Campus — Do We Need a Charter of Rights for Universities?' (8th Austin Asche Oration, Charles Darwin University and the Australian Academy of Law, 17 September 2018).

Social media and IT policies

Social media policies and information technology policies can be more wide-ranging than the policies discussed above. Ultimately, they limit free expression both on and off campus, often restricting personal use of social media and forbidding students from criticising their university online.

Spotlight on social media and IT policies

- Bond University forbids posts which ‘can be interpreted to portray’ content that is ‘injurious or objectionable’ to Bond University.
- Charles Sturt University forbids student from ‘inciting negative or degrading dialogue’.
- Curtin University says that posts on the university’s social media channels must not ‘risk potential brand damage’ and posts that are ‘not on topic’ could be moderated.
- Federation University requires that the institution’s ‘reputation and that of its staff and students is enhanced and not compromised through the use of social media’.

All three types of policies require students to determine a fellow student’s subjective individual sensitivity before speaking. It requires people to read the minds of others before making comments – an impossible task. In practice, university bans can be applied to anything from jokes that some might find offensive to ideas that could make classmates feel uncomfortable.

Are limitations on broad policies working?

There are two tests being used by universities which apply to policies which restrict free expression (misconduct, bullying and harassment policies). The tests add caveats which restrict the scope of the restrictions on expression thereby protecting free speech. These are the:

1. Repeated Activity Test
2. Reasonableness Test

The ‘repeated activity test’ is an objective measurement that rules out once-off incidents. Behaviour that constitutes bullying, harassment or misconduct must be repeated more than once. However, the ‘reasonableness test’ is a subjective measurement which can be interpreted broadly. What is reasonable for one person may not be considered reasonable by another. Using a subjective condition to limit a subjective policy ultimately just compounds the issue. This is especially the case given the tertiary-led push to deny ‘truth’ and ‘objectivity’. This was highlighted in Sydney University’s Unlearn campaign in 2017 which sought to break down accepted definitions like right and wrong, good and bad, truth and falsehood. It is difficult to see how justice will be served in a post-truth environment where truth and falsehood are determined by individual feelings rather than objective standards.

The culture of censorship on campus

Conclusions of the French Review

French concluded there was not sufficient evidence to 'establish a systemic pattern of action' by universities against freedom of speech or academic freedom. However, he noted the action which had been taken by universities against free expression could have a 'chilling effect' on the exercise of freedom of speech.

More importantly, French said overbroad rules and policies were 'rife' on university campuses and made the sector an 'easy target' for criticism. 'The terms "lack of respect", "prejudicial" and "reprehensible" are wide,' he said, quoting a discipline rule. 'It does not require much imagination to apply them to a considerable range of expressive conduct ... The potential for overreach tending to erosion of important freedoms equates to a non-trivial risk of that erosion'.

French pointed to the culture of an institution as the key factor in determining the degree to which free speech and academic freedom is exercised. 'A culture powerfully predisposed to the exercise of freedom of speech and academic freedom is ultimately a more effective protection than the most tightly drawn rule,' he said. 'A culture not so predisposed will undermine the most emphatic statement of principles.'

Concern over lack of viewpoint diversity in the university sector

The highly publicised incidents that French agrees could have a 'chilling' effect on free speech point to a concerning monoculture in higher education organisations. These issues have led 36 Australian academics to join the Heterodox Academy, an international network of more than 5000 professors, students and staff concerned about the lack of diverse viewpoints on campus. For debate on campus to flourish there must be a broad commitment to exploring all viewpoints. Even if no one is formally sanctioned or censored, there is still a serious problem if fears of an official reprisal suppress freedom of speech.

Academics and students are increasingly reporting that they are walking on eggshells for fear of causing offence or being ostracised for challenging the groupthink.

- Professor Peter Ridd's high profile legal battle with James Cook University finished after the High Court rejected JCU's narrow interpretation of intellectual freedom but did find Ridd guilty of misconduct. IPA Director of Research Morgan Begg said, 'The High Court's decision is founded on a misinterpretation of the employment contract, severe failures of logic in its reasoning, and a disinterest in the underlying issues that collectively endorse campus culture'.¹⁵

¹⁵ Morgan Begg, 'Academic Freedom in System Beyond Repair' in Morgan Begg (ed), *Peter Ridd and the Case for Academic Freedom* (Institute of Public Affairs, 2023) 32.

- In 2020, adjunct law lecturer Elaine Pearson from the University of NSW featured in an article published on UNSW's website defending Hong Kong's freedom and independence from China. The article containing her comments was taken down after pro-Beijing students complained.¹⁶
- Another incident involved a post that linked Nelson Mandela to terrorism by health sciences lecturer Paul Costantino from Curtin University. His post was taken down from an online staff forum sparking outrage from those who viewed the action as an assault on free speech. However, many academics at the university supported the decision.¹⁷
- In 2021, the University of Melbourne's Vice-Chancellor Duncan Maskell warned staff their right to academic freedom did not give them license to write or say things that harmed transgender people. The university considered forbidding public speeches or events deemed an attack on gender diversity but settled for a broad clause retracting support for speech which 'undermines the capacity of individuals to participate fully in the University'.¹⁸

The 'social justice' university

There is a widespread and growing tendency for Australian universities to adopt ideological positions in formal policy documents. This is an emerging issue on campus which contributes to a culture of censorship. The ideological positions are generally:

1. Indigenous issues
2. Gender inequality
3. Sustainability

The rise of the social justice university presents a significant threat to freedom of expression and viewpoint diversity. It signals a new focus on activism over education in the tertiary sector and demonstrates just how successful the long march of the left through the institutions has been. According to Jonathan Haidt, professor of psychology at New York University, a social justice institution cannot also protect free speech. By promoting one side of an issue universities attach a value judgement to it and suggest it is the superior position to hold. This closes debate and crushes viewpoint diversity. Institutions which adopt an ideological mantra as an institutional goal are in clear conflict with the principles of free inquiry. A university cannot be dedicated to an ideology and simultaneously open to challenging perspectives.

¹⁶ Anne Davies, 'Lecturer says foreign students need clarity on "academic freedom" after row over UNSW Hong Kong article', *The Guardian* (4 August 2020) <<https://www.theguardian.com/australia-news/2020/aug/04/lecturer-says-foreign-students-need-clarity-on-academic-freedom-after-row-over-unsw-hong-kong-article>>.

¹⁷ Bethany Hiatt, 'Uni free speech row over blog', *The West Australian* (26 December 2013) <<https://thewest.com.au/news/wa/uni-free-speech-row-over-blog-ng-ya-363234>>.

¹⁸ University of Melbourne Student Union, 'University Drafting New "Gender Affirmation Policy" Condemning Transphobia' (9 August 2021) <<https://umsu.unimelb.edu.au/news/article/7797/2021-08-09-university-drafting-new-gender-affirmation-policy-condemning-transphobia/>>.

This is exemplified in Newcastle University's Code for the Protection of Freedom and Academic Freedom. The document includes a provision which prioritises institutional values and strategic commitments over free expression stating that 'The principles outlined in this Code do not have overriding legal status nor overriding status to the University's institutional values or strategic commitments.'¹⁹ This is problematic in light of the University's Strategic Plan 2020-2025 which outlines 'equity' and 'sustainability' as two of four key values and 'indigenous engagement' as an institutional commitment. According to Newcastle University's Code, these strategic goals are more important than free speech and academic freedom. A social justice university has a specific ideological purpose to 'improve' society towards a predefined outcome. Students are encouraged to try and change the world as activists rather than understand it.

The social justice perspective is informed by the work of French social theorist Michel Foucault who believed knowledge was power and there was no objective truth²⁰. Consequently, knowledge deemed 'unsafe' by the orthodoxy should be restricted. Ideas that challenge the reigning perspective, obstruct the activist mission of the institution. So, the true mission of a university – to impart knowledge and hone the mind through debate and intellectual challenge – is subverted when institutions adopt and prioritise ideological goals.

It is necessary for universities to be neutral on politicised issues if viewpoint diversity is to be encouraged. Across Australia's 42 universities there are now 77 policies or strategic commitments pledging allegiance to one or more of the three ideologies listed above. While four universities don't have a policy devoted to any of the social justice ideologies, all of them address these causes in other strategic documents. References to one or more of the three social justice ideologies are regularly found in key policies like Student Charters, Student Handbooks and Codes of Conduct. This is a sector-wide issue which is turning universities into activism hubs rather than institutions of learning.

¹⁹ University of Newcastle, *Code for the Protection of Freedom of Speech and Academic Freedom* <[https://policies.newcastle.edu.au/document/view-current.php?id=322#:~:text=\(1\)%20The%20University%20of%20Newcastle,open%20behaviours%20across%20our%20University%20](https://policies.newcastle.edu.au/document/view-current.php?id=322#:~:text=(1)%20The%20University%20of%20Newcastle,open%20behaviours%20across%20our%20University%20)>.

²⁰ "Michel Foucault," Stanford Encyclopedia of Philosophy, 2022, <https://plato.stanford.edu/entries/foucault/>

Social justice policies

Sustainability

- Charles Sturt University sees the entire fossil fuel industry as 'being in conflict with its values' while electric cars and carbon capture are 'consistent with its values'.
- Deakin University commits to 'integrate sustainability principles into all of Deakin's operations and activities'.
- Monash University pledges to include 'environmental sustainability principles, awareness and understanding into teaching, research, consultancy and community engagement'.

Indigenous issues

- The Australian Catholic University pledges 'at all times' to address 'the effects of education disadvantage or past discriminatory practices within the general community'.
- Queensland University of Technology commits to 'embedding Indigenous Australians' knowledges and perspectives in curriculum'.
- Swinburne University is 'committed to reconciliation' and encourages staff to engage with Indigenous events such as 'National Reconciliation Week and NAIDOC Week'.

Gender equality

- The Australian National University requires that 'all communications from the University use gender inclusive language'.
- The University of Western Australia is committed 'to leadership, vision and action in the areas of diverse sexualities and genders' through specific networks (for example, GLBTI Network, ALLY, Guild Queer Department) and other initiatives (for example, flying the Rainbow flag).
- Western Sydney University claims that 'achieving gender equality may require different treatment of men, women, intersex, transgender and gender diverse people in some circumstances to achieve similar outcomes'.

What are commentators saying about the rise of affirmative action on campus?

Speaking on the Jordan Peterson Podcast in 2022, Senior Fellow at the Manhattan Institute Christopher Rufo claimed we are seeing a 'soft superstructural revolution' taking place in the university sector:

When ideology gets attached to administrative power in a permanent and meaningful way, you have a revolution ... These ideas are wholly subsidised by public dollars, whether that is universities which are directly financed by the public or private universities that are subsidised by student loan guarantees.

Professor of Ethical Leadership at New York University Stern School of Business Jonathan Haidt spoke about the social justice movement in universities in an article published in September 2022. He claimed universities were attempting to 'elevate the value of social justice to become a second telos' which was ultimately damaging their ability to find truth. This was because the huge restructuring required ultimately undermined key norms and values that have stood the test of time. 'The conflict between truth and social justice is likely to become unmanageable,' he said. 'Universities that try to honour both will face increasing incoherence and internal conflict.'²¹ As universities attempt to serve two masters, knowledge production and activist causes, they will increasingly end up censoring speech.

²⁰ Jonathan Haidt, 'When truth and social justice collide, choose truth', *The Chronicle of Higher Education* (23 September 2022).

How can universities secure freedom of speech?

The extent to which there is free speech on campus is directly related to the attitudes adopted by students, lecturers, and administrators towards viewpoint diversity. Policies are developed and applied by the people in positions of authority. While it is important that policies protect and promote free speech, it is even more important that free speech is of paramount importance to lecturers, administrators, and students. Universities that take a clear stand today will be much better placed to respond to calls for censorship. The only appropriate restrictions on speech are those that apply generally to all people and institutions; namely laws preventing defamation, the incitement of violence and racial vilification. When the feelings of others can put a stop to the dissemination of facts or genuinely held opinions, there is no meaningful right to free speech.

The failure to protect freedom of expression at universities threatens the core purpose of education, which is to impart knowledge and hone the mind through debate and intellectual challenge. Worse still, it threatens the future of democratic institutions which rely on the free flow of ideas in the public sphere. The contest of ideas is not only the very essence of a healthy university life, but the very essence of political life in a flourishing liberal democracy. The battle for the future of the West has become an ideological war being fought on university campuses.

Recommendation 1: Remove policies which undermine free speech

The IPA's Free Speech on Campus Audits of 2016, 2017, 2018 and 2023 have identified a number of policies that limit free speech at Australia's universities. These policies, by seeking to prevent 'unwelcome' comments and 'offensive' conduct, can be used to silence those who are quite rightfully exploring alternate ideas. In practice, they have a chilling effect on freedom of speech, discouraging the informed discussion of disputed topics. It is incumbent upon Australia's universities to immediately reform their policies to align with the principles of free intellectual inquiry. Those sections of policies that limit free expression should be abolished.

Recommendation 2: Broaden policies which protect free speech

Australian universities should extend protections for free speech and academic freedom. Policies should ensure free speech codes are not subject to other university policies such as codes of conduct or enterprise bargaining agreements. Staff and students must be allowed to criticise the university, and 'speech which humiliates' must not be forbidden. The subjective understanding of the word 'humiliation' allows it to be interpreted too broadly. Limitations on free speech should not go beyond the legal requirements instituted by government for the general community.

Recommendation 3: Abolish policies which take a stand on ideological issues

The danger of encouraging universities to be echo chambers for fashionable opinion is that the 'town square' will end up being the same. By taking a stance on environmental, Indigenous and gender issues, universities shut down debate. They send the message that the matter has been decided and dismiss alternative viewpoints without actual consideration of their merits or possible legitimacy. Policies which take a set position on ideological issues should be abolished, and government should end funding that goes towards ideological causes such as equity and sustainability.

How can governments secure freedom of speech?

In 2019, the federal government responded to public concerns about the censorship of free speech on Australian campuses. Universities were asked to introduce policies modelled on the French Model Code in order to protect free speech and academic freedom. The result has been mixed. While the codes offer some protection, they also formalise concessions which limit the free expression of ideas. In these cases, the drawbacks outweigh the benefits. There is a two-part solution to this dilemma:

1. The government should legislate US-style protections for free speech which go further than the French Model Code.
2. The government should require universities to withdraw overly broad policies which undermine free speech and academic freedom.

The first option is more fraught than the second. This is because the codification of protections for a particular 'right' can often end up limiting the very thing it seeks to protect. Requiring universities to remove policies or the parts of policies which restrict free speech would likely meet with more success.

Spotlight on US-style free speech legislation

In the United States, more than half the states have legislated bills to protect campus free speech in response to public concerns. Some:

- require a university to have a standalone policy that clearly protects free expression, invalidating policies that limit free expression.
- allow academics and students to express themselves freely in both the classroom and public debate.
- prevent universities from cancelling speakers invited by the campus community.
- mandate disciplinary sanctions for students who repeatedly interfere with the free speech rights of others.
- forbid a university from discriminating against student groups based on expression or membership requirements.
- oblige universities to remain neutral on issues of public debate, and therefore encourage a wide array of viewpoints.
- require an annual report to the public on the handling of free speech matters.
- allow exceptions for reasonable time, place, and manner restrictions (i.e., loud noises outside of an examination room).

The US-style approach requires an institutional framework that protects free expression as well as an annual report to bring attention to problematic cases.

However, even US-style protections for free speech do not go far enough, according to John Hasnas, a Professor of Business and Law at Georgetown University.²² He

21 John Hasnas, 'Why Colleges Don't Care About Free Speech', *Wall Street Journal* (6 February 2022). <<https://www.wsj.com/articles/college-dont-care-free-speech-ilya-shapiro-treanor-georgetown-cancel-pc-culture-censorship-campus-11644167414>>.

spoke to the problem of universities making commitments to freedom of speech and then failing to honour them. Writing for the *Wall Street Journal* in February 2022, Hasnas said it was not so much an issue of ideology as it was incentives. University administrators are rewarded for quelling on-campus outrage and bad press quickly but there is no punishment for failing to uphold the university's commitment to free speech. 'The solution is to create an incentive for schools to protect open inquiry—the fear of lawsuits,' he said.²³

1. Universities should add a 'safe harbor' provision to their free speech policies that is contractually binding.
2. Free-speech advocates should organise pro bono legal groups to sue schools that violate the safe-harbor provision – making it affordable for suppressed parties to take action. This would mean that the university's legal counsel, whose primary job is to protect the institution from being sued, would have an incentive to curb administrators' behaviour.

Spotlight on UK-style free speech legislation

In the United Kingdom, the Higher Education (Freedom of Speech) Bill is currently in the final stages of the parliamentary approval process. It is described as 'a Bill to make provision in relation to freedom of speech and academic freedom in higher education institutions and in students' unions; and for connected purposes.' It includes:

Duties of registered higher education providers

- To secure freedom of speech within the law for staff members, students and visiting speakers.
- To ensure the use of the premises of the provider are not denied to any individual or body on the basis of their ideas, beliefs or views.
- The governing body of a registered higher education provider are required to maintain a 'code of practice' setting out their values in relation to freedom of speech.
- Academic staff are able to 'question and test received wisdom' and 'put forward new ideas and controversial or unpopular opinions' without risking their job or a promotion.
- The governing body of a registered higher education provider must secure compliance with its code of practice including 'disciplinary measures' where appropriate.

Included in the document are duties for constituent institutions, duties for student unions and a section on civil claims. This last section allows individuals to bring civil proceedings against a higher education provider, constituent institution or student unions if they have breached their duties to protect freedom of speech. The UK bill provides a template which could be used by Australian lawmakers to draft a similar piece of legislation. However, care would have to be taken to ensure governing bodies were not given too much influence on setting limits on acceptable views. In relation to civil claims, care would have to be taken by lawmakers to ensure the legal stakes were raised for higher education providers without encumbering them with excessive bureaucracy.

²³ Ibid.

Conclusion

The IPA's Free Speech on Campus Audit has identified a range of concerns around the state of free expression at Australia's universities. Many university administrators, lecturers and students no longer support free speech, preferring instead to actively forbid certain ideas. All Australian universities have policies that limit free speech – by forbidding speech other students might find offensive or by taking settled positions on ideological issues. These have a chilling effect on viewpoint diversity. Universities exist to encourage the promotion of ideas and informed debate. But many university policies are antagonistic to free speech and seriously damage the core mission of Australia's higher education sector.

As the problem lies mainly with the people working and studying at tertiary institutions, the solution must come from the same place. Robert French's review highlighted the key role played by an institution's culture in determining the prevalence of viewpoint diversity and free speech. 'A culture powerfully predisposed to the exercise of freedom of speech and academic freedom is ultimately a more effective protection than the most tightly drawn rule,' he said. 'A culture not so predisposed will undermine the most emphatic statement of principles.' Even if the government were to legislate for broad free speech protections, this would not necessarily change the culture of the institutions.

The French Model Code was a Band-Aid solution which sought to override those existing policies undermining free speech. This helped to an extent but did not address the fundamental problem – the policies themselves and the mindset giving rise to them. In the meantime, the number of policies hostile to free speech has increased exponentially.

The higher education sector has a responsibility to encourage free and informed debate and to teach students to consider all sides of an argument. This, however, is being undermined by policies which are clearly ideological. These have a negative flow-on effect upon course content. Students are encouraged to see the world through the lens of class, race and gender. Identity politics and critical race theory are running rampant, promoting a culture which undermines free speech. Activism in relation to social justice issues has become more important than understanding.

A free, democratic and prosperous society depends on a culture of free speech. Universities are a key point in the development of such a culture. Students and academics alike must work within an environment of free intellectual inquiry to learn and discover truth. It should be a cause of grave concern for all Australians that such an environment no longer exists in our universities. The rate at which it has disappeared is measurable, as demonstrated by regular IPA Free Speech on Campus Audits.

The problem has been identified and measured. Universities must take immediate action to rectify the problem by implementing policies that genuinely protect free intellectual inquiry and freedom of speech. If they fail to act accordingly, the government must require them to do so.

Methodology

Previously the IPA has examined university actions targeting freedom of speech. However, two years of campus closures (2020-2021) in response to pandemic health restrictions have meant very few actions have been taken. In light of this, the audit will cover university policies including free speech codes introduced since the IPA's last Free Speech on Campus Audit in 2018.

Hostility Score

The Audit's methodology is derived from previous ratings systems developed for the American Foundation for Individual Rights in Education's (FIRE) annual Spotlight on Speech Codes and Spiked!'s Free Speech University Rankings.²⁴ FIRE's Spotlight on Speech Codes has assessed university policies annually since 2006, applying a red, yellow and green traffic light system to each individual policy and institution. The 2022-2023 College Free Speech Rankings published by FIRE was used to design the methodology for the survey component of this audit. Spiked! assessed free speech on British campuses from 2015 to 2018, using a method that combines analysis of university and student union actions and policies that 'chill' free speech on campus.²⁵

Red

A 'red' institution is one that actively restricts free speech on campus through policies that either clearly and substantially restrict speech, or alternately has taken action that limits the diversity of ideas. A 'red' institution may also promote a clear stance on contested issues relating to the environment, gender and Indigenous issues, embed this stance into its governance system or shut down opposing points of view.

Policies criteria: a 'red' policy is one that unambiguously infringes upon, and is broadly applicable to, expression. In other words, the threat to free speech at a red institution is obvious on the face of the policy and does not depend on how the policy is applied. For example, a policy which restricts 'offensive' speech is a clear violation as it is both unambiguous and broadly applicable to speech, as well as being an arbitrary, subjective basis for preventing student behaviour. A policy which bans speech which could result in reputational damage will also receive a 'red' rating.

24 Tom Slater, 'Free Speech University Rankings', *Spiked Online* (24 February 2019); FIRE, 'Spotlight on Speech Codes 2016' (9 December 2015) <<https://www.thefire.org/research-learn/spotlight-speech-codes>>.

25 Tom Slater, 'Free Speech University Rankings', *Spiked Online* (24 February 2019).

Amber

An 'amber' institution is one that maintains policies that could be interpreted to restrict speech, though the exact impact on free speech depends on how the policy is implemented or interpreted by university administrators to limit the diversity of ideas on campus. An 'amber' institution may adopt a clear stance on issues relating to the environment, gender and Indigenous issues but does not explicitly shut down opposing points of view.

Policies criteria: a policy which has the potential to restrict freedom of speech, though the exact impact on campus expression depends on how it is implemented. For example, universities that restrict 'offensive' speech, though include a reasonableness and repeated activity test in the application of the policy. Despite the questionable policy of preventing 'offensive' speech a reasonableness and repeated activity test provides some manner of protection of freedom of speech. A policy which promotes reparations will also receive an 'amber' rating.

Green

A 'green' institution is one that has no policies that threaten campus expression and may or may not have policies which protect free speech.

Overall ratings

Overall traffic light ratings align with the highest traffic light rating an institution's policy has received and is not determined by producing an average based on the combined total of an institution's policy ratings. For example, a university with three amber policies and one red policy earns an overall red rating, just as a university with one amber policy and three red policies earns an overall red rating.

Policies analysed

A range of university policies were assessed to determine the state of free speech on campus. The types of policies that were examined include, but are not limited to:

- By-laws.
- Student codes.
- Conduct and misconduct policies.
- Bullying and harassment policies.
- Internet and social media policies.
- Student guides.
- Freedom of speech and academic freedom policies.

This audit has only considered policies that apply to students. Staff policies, such as workplace bullying procedures, are not considered unless they also apply to students.

Free Speech Code Score

The 'Free Speech Code Score' gives universities a number between zero and eight which represents the level of protection provided by their policies designed to protect free speech. It is based on the combined total of two separate scores: 'The French Code Adaption Score' and 'Extra Points'.

French Code Adaption Score: Measures the similarity of a university's free speech policy to the French Model Code based on six criteria.

1. **Code supersedes all other policies:**

(1) *"This Code prevails, to the extent of any inconsistency, over any non-statutory policy or rules of the university."* (French Model Code, Operation, Provision 4)

Or according to the Australian Government response the Walker Review of the Model Code Implementation *"The Model Code should be amended by inserting a note to the Operation section that provides: 'As an alternative to adopting some or all of paragraphs (2), (3), (4) and (5) of the Operation section of the Model Code, a university may confirm that it has brought all its existing policies and rules into alignment with the Principles of the Code.'"*²⁶

(2) Code status equal or greater than other non-statutory policies: *"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."*
(French Model Code, Operation, Provision 3)

2. **Academic Freedom Definition adopted in full:**

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

- a. *the freedom of academic staff to teach, discuss, and research and to disseminate and publish the results of their research;*
- b. *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;*
- c. *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;*
- d. *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;*
- e. *the freedom of academic staff to participate in professional or representative academic bodies;*
- f. *the freedom of students to participate in student societies and associations.*

²⁶ Department of Education, Skills and Employment (Commonwealth), *Australian Government response to Walker Review of Model Code Implementation* (June 3, 2021) <[https:// www.education.gov.au/higher-education-reviews-and-consultations/resources/auatralian-government-response-walker-review-model-code-implementation](https://www.education.gov.au/higher-education-reviews-and-consultations/resources/auatralian-government-response-walker-review-model-code-implementation)>.

- g. *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.'*
(French Model Code, Definitions)

3. Lawful speech won't attract penalties:

'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 connection with a university activity shall not constitute misconduct nor attract any penalty or other adverse action by reference only to its content.'
(French Model Code, Principles of the Code, Principle 2)

4. Lawful speech subject to few limitations:

'Every member of the academic staff and every student enjoys academic freedom subject only to prohibitions, restrictions or conditions:

- a. *imposed by law;*
- b. *imposed by the reasonable and proportionate regulation necessary to the discharge of the university's teaching and research activities;*
- c. *imposed by the reasonable and proportionate regulation necessary to discharge the university's duty to foster the wellbeing of students and staff;*
- d. *imposed by the reasonable and proportionate regulation to enable the university to give effect to its legal duties;*
- e. *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.'*
(French Model Code, Principles of the Code, Principle 3)

5. Visitors not banned solely due to content:

'Subject to the preceding Principles the university shall not refuse permission for the use of its land or facilities by an external visitor or invited visitor nor attach conditions to its permission, solely on the basis of the content of the proposed speech by the visitor.' (French Model Code, Principles of the Code, Principle 7).

6. Lawful speech may cause offence:

'Consistent 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.' (French Model Code, Principles of the Code, Principle 8)

'Does not extend to a duty to protect any person from feeling offended or shocked or insulted by the lawful speech of another.' (French Model Code, Definitions, The duty to foster the wellbeing of staff and students, point 4)

Extra Points Score: Extra points given if the free speech policy:

1. Does not include the third paragraph from 'the duty to foster the wellbeing of staff and students' in the French Model Code.

'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.'

2. Includes a protection for free speech in the founding legislation or statutes of the university.

FREE SPEECH ON CAMPUS AUDIT 2023

About the Institute of Public Affairs

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About the author

Brianna McKee is a Research Fellow and National Manager for Generation Liberty at the Institute of Public Affairs. Prior to joining the IPA in 2022, she worked for two years at Sky News Australia, first as a Digital Producer before being promoted to Digital Reporter. During her time in journalism, Brianna engaged with complex political events on a daily basis, writing news stories about matters of domestic and international significance. Sydney born and bred, Brianna studied at Campion College Australia from 2017-2019 and received a bachelor's degree in the Liberal Arts, graduating top of her class.

