



UTAS Risk To Freedom Of Expression And Human Rights

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The University of Tasmania's draft behaviour policy is a serious threat to freedom of expression and basic legal rights.

The bedrock of university life is the ability to freely explore ideas.

It is only through the process of claim and counter-claim that it is possible to separate good ideas from bad and discover the truth.

Across the Anglosphere, from American liberal arts colleges to British universities and Australian campuses, a culture of censorship is forming.

Speakers are violently protested if not banned altogether, students are demanding protection from ideas they dislike, and academics are concerned that there is a lack of diversity of viewpoints.

In this context, university administrators should be doing all they can to protect free expression.



The University of Tasmania, however, appears to be heading in precisely the wrong direction.

The University's draft policy states that community members are expected to "behave and communicate in a manner that does not offend".

Avoiding causing offence may be an admirable goal.

Nevertheless, often when exploring ideas offence is taken rather than intended. The hearing of an idea with which one disagrees can be offensive.

The feeling of offence is often unavoidable but necessary in the process of understanding, learning and developing ideas.

Australian National University chancellor and former foreign minister Gareth Evans declared earlier this month that "Lines have to be drawn, and administrators' spines stiffened, against manifestly unconscionable demands for protection against ideas and arguments claimed to be offensive".

The proposed policy also lists 18 "protected attributes", ranging from gender, race, family and sexual matters to religion and political belief.

It then states that community members are forbidden from engaging in conduct which "offends, humiliates, intimidates, insults or ridicules" on the basis of these attributes in the eyes of a "reasonable person".

The inclusion of religion and political belief in the grounds that individuals cannot offend goes well beyond existing speech limitations in state and federal law.

The Anti-Discrimination Act 1998 (Tas.) includes an extended list of protected attributes.

However, it is notable that Section 17(1) only forbids offensive conduct associated with gender, relationship status and family responsibilities.

It does not prevent the causing of offence based on political belief or religion.

The inclusion of religion and political belief is an extraordinary overstep.

The causing of offence is not uncommon when discussing religion or politics. Criticism of an individual's religion and political beliefs can be offensive — such as stating that a political opinion is invalid, immoral or inhumane or making a joke about religious belief.

This speech, however, can also be genuine part of intellectual debate and social commentary.

The policy states that an example of discriminatory harassment is "Making derogatory comments or taunts about a person's religion".



It may be derogatory, for example, to criticise the lack of acceptance of homosexuality in Leviticus, a Christian text, or to raise concerns about Mohammed's multiple wives in the Koran, the Islamic text.

The prevention of negative remarks about religion, akin to the blasphemy laws of the past, is a historical anachronism in Western liberal democracies such as Australia which value free expression.

The Institute of Public Affairs' Free Speech on Campus Audit 2017 ranked the University of Tasmania one of the highest in Australia for freedom of expression.

The University is one of few with a commendable stand-alone policy that explicitly protects intellectual freedom.

If the university adopts the draft policy, however, the institution would be downgraded from an Amber ranking to a Red ranking in the Audit.

A further issue of concern with the policy is the removal of basic legal rights.

In Australia, an individual accused of sexual assault is innocent till proven guilty beyond reasonable doubt by a jury of their peers.

The draft policy, however, adopts a much lower threshold of the "balance of probabilities" for sexual assault misconduct allegations — meaning that the event is more likely than not to have taken place.

It is inappropriate for a university — which lacks the evidence gathering and judicial skills of the criminal justice system — to be making determinations of a student's guilt on sexual assault.

This raises the possibility that a member of the community is found not guilty by the courts in normal legal process and yet be punished secondarily by the university.

The University of Tasmania is a public institution, established by Tasmanian law and largely funded by the taxpayer and state-subsidised loans.

The University has a moral and legal responsibility to safeguard free expression and basic legal rights.