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## CODE OF PRACTICE ON FREE SPEECH AND ACADEMIC FREEDOM

### INTRODUCTION

1. BARBRI Global Limited (“**BARBRI**”) is committed to upholding academic freedom in its teaching and research and to ensuring that free and open discussion can take place and that a diversity of views can be expressed and tolerated including views which may be regarded as unpopular, controversial and/or provocative. The key aim of BARBRI is to foster an environment where academic freedom and freedom of speech and expression is secured within a framework of respect for the rights of others. These are in codes of practice, policies and procedures that staff and students agree to comply with under their terms of employment or on registration respectively.

2. Section 43 of The Education Act (No 2) 1986 (the “**Act**”) places a legal duty on higher education providers to promote and protect freedom of speech on campus, and states that the only constraints on the duty to secure freedom of speech are those imposed by the law. It is therefore for the law, not for higher education providers, to set limitations.

3. This duty under the Act includes a responsibility to ensure that the use of BARBRI’s facilities (which will include premises and any online facilities used by BARBRI) is not denied to any individual or group on the grounds of the belief or views of that individual or any member of that group or on the grounds of the policy or objectives of the group.

4. This does not mean, however, that the right to freedom of expression is unfettered. It is limited, for example, by laws for the protection of the reputation or rights of others, to protect national security and public safety, for the prevention of disorder or crime, and to prevent the disclosure of information received in confidence.

5. Higher education providers are often affected by wider conflicts and disputes relating to external issues, for example involving ethnicity or religious faith and may sometimes find expression amongst the student body or other constituencies. The challenge for BARBRI is to identify when the pursuit of freedom of ideas and expression crosses a threshold and becomes unlawful or poses unacceptable risks to the health, safety or welfare of employees, students or visitors.

### PURPOSE

6. The following Code of Practice (the “**Code**”) ensures that as far as reasonably practicable, academic freedom and freedom of speech within the law is secured for members, students and employees of BARBRI as well as for visiting speakers.

## **AUTHORITY**

7. BARBRI's Board of Directors authorises the Managing Director to act on its behalf to ensure as far as is reasonably practicable that all members of BARBRI (staff and students), and all visiting speakers, comply with the provisions of this Code of Practice.

## **SCOPE**

8. The provisions of the Code apply to all staff, students and visiting speakers to BARBRI and to any other person in attendance at any meeting or event, which has been duly authorised to take place by BARBRI or using its facilities.

9. This Code applies to all meetings and events (including lectures, seminars, committee meetings, conferences whether live streamed or recorded) and any other activities (referred to as "events") proposed, planned or due to take place at BARBRI or using BARBRI's facilities.

10. The general principles set out in this Code apply to all events and meetings by BARBRI or endorsed by it or using its facilities whether including an external speaker or not, together with all events which are BARBRI organised, funded or branded, including events organised by individuals, groups or societies using BARBRI's name or resources.

## **GENERAL PRINCIPLES**

12. BARBRI is bound by a statutory duty to secure freedom of speech. In addition, freedom of thought, freedom of expression and freedom of assembly and association are enshrined within the law. BARBRI operates with a presumption in favour of freedom of speech.

13. BARBRI, as an institution, does not take a formal position on political or international disputes. Instead, it endeavours to provide a platform to facilitate discourse on contemporary issues by encouraging critical debate, within the law, where the views of all parties are treated with respect.

14. Academic staff are protected in their teaching, research, and speech by the provision on academic freedom expressed within BARBRI's regulations. In summary, staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges.

15. Freedom of speech and academic freedom also has to be set in the context of BARBRI's values, and the values of a civilised, democratic, inclusive society. BARBRI expects speakers and those taking part in BARBRI activities to respect those values, to be sensitive to the diversity of its inclusive community, and to show respect to all sections of that community. These precepts apply even in relation to the way which views are expressed and any form of protest activity.

16. The right to freedom of expression and freedom of assembly are safeguarded in Articles 9, 10 and 11 of the European Convention on Human Rights and given further effect by Schedule 1 of the Human Rights Act 1998. The Articles also outline the duties and responsibilities required to exercise these freedoms as follows: 'The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority

and impartiality of the judiciary.’ As such, freedom of expression, speech and assembly are protected by the law but are not unqualified.

17. In considering whether or not to allow a particular event to take place (whether in person or online) under its authority BARBRI has to consider:

17.1 Whether the views or ideas to be put forward (or the manner of their expression) infringe the legal rights of others, or breach legal provisions on non-discrimination;

17.2 Whether the activity in question:

17.2.1 constitutes a criminal offence;

17.2.2 constitutes a threat to public order or to the health and safety of individuals; or

17.2.3 incites others to commit criminal acts.

18. A key test is whether a proposed event (whether held in person or online) is likely to give rise to an environment in which people will experience – or could reasonably fear – harassment, intimidation, verbal abuse or violence, with particular reference to the protected characteristics under the Equality Act 2010.

19. In a similar way, protests against an event must be conducted in a peaceful way without infringing the rights of others, including the right to Freedom of Speech. No protest should, automatically prevent an event from going ahead as scheduled.

20. Where there are concerns about an event or an associated protest BARBRI must consider how risks can be managed or mitigated.

21. BARBRI will ensure that the appropriate procedures are in place in order to allow all its stakeholders to report any instance of alleged hate crime, harassment, threat or intimidation and for their concerns to be investigated promptly and thoroughly, with the appropriate measures taken in response, including, where necessary, reference to the Police and other external bodies. BARBRI’s Harassment and Bullying Guidelines underpin this approach.

22. Under the Counter Terrorism and Security Act 2015, BARBRI has a legal obligation to consider whether the views to be expressed, or that are likely to be expressed, by a student, member of staff or a speaker constitute extremist views that risk drawing people into terrorism or are shared by terrorist groups. Where events are concerned, BARBRI will not proceed except where BARBRI is entirely convinced that such risk can be fully mitigated without cancellation of the event. However, the Counter Terrorism and Security Act do not in any way change the presumption in favour of free speech within the law.

23. Support for or promotion of terrorism is already illegal under previous legislation and BARBRI will take steps to prevent it taking place within BARBRI.

24. The expression of views which are unpopular, controversial or provocative or which cause offence do not, if lawful, constitute grounds for the refusal or cancellation of an event.

25. BARBRI reserves the right to impose such conditions upon the use of its facilities as are reasonably necessary for the discharge of its obligations relating to the safety, health and welfare of its registered students, employees and other persons lawfully attending a virtual event or who are lawfully on BARBRI’s

premises or for the efficient conduct and administration of its functions. Conditions for events may include, for example, restrictions on access by those outside BARBRI.

26. BARBRI reserves the right to decide that practical considerations such as the cost, short notice period or difficulty of providing the necessary mitigations may require an event to be modified, curtailed, postponed or – in exceptional circumstances – cancelled.

27. Concerns about compliance with this Code or general procedures concerning freedom of speech will be addressed using the appropriate procedure. General conduct at BARBRI is regulated by the Student Code of Conduct or the Staff Disciplinary Procedure.

28. Where it is appropriate and legal to do so, BARBRI may share data with third party organisations, but solely for the purpose of upholding this Code.

## **ROLES AND RESPONSIBILITIES**

29. The ultimate accountable authority for the interpretation of the day-to-day operations of this Code is the Corporate Secretary, under delegated authority from the Board of Directors. The day-to-day implementation of the operations of the Code shall be the responsibility of the Managing Director. The Corporate Secretary, and the Managing Director, shall appoint another appropriate member of staff to act on their behalf in their absence.

30. Roles and responsibilities relating to the consideration of events that include external speakers are outlined in the procedure set out below in this Code.

## **PROCEDURES**

31. This procedure for the management of events that include external speakers should be used by all staff (including as a sponsor for a student event) when booking an event that includes an external speaker.

32. Advance booking of at least five working days is required for BARBRI events and the organisers of any event are required to appoint an individual, who must be a registered student or staff member to act as principal organiser of the event for the purposes of this Code. The principal organiser shall be responsible, as far as is reasonably practicable, for ensuring that the organisation of the event and the conduct of those attending it is lawful and compliant with this Code, to all relevant BARBRI guidance and to any condition relating to the event imposed under this Code.

33. The BARBRI events and marketing team will seek advice, if necessary, on matters related to free speech, in the first instance from the Managing Director or their nominee. He or she will seek further advice, if necessary, from the Corporate Secretary, especially in cases in which issues of principle in respect of free speech arise, or if it is proposed that access to an event be significantly modified or curtailed or that it be postponed or cancelled. Any stipulation requiring one or more speakers not to participate in an event which otherwise goes ahead requires the explicit approval of the Corporate Secretary or their nominee. The decision of the Corporate Secretary or their nominee will be a final decision in respect of the operation of this Code.

34. Everyone who organises, speaks at or attends an event at BARBRI is required to observe good order. Good order includes, but is not limited to, refraining from the following: preventing participants from accessing events; preventing speakers from being heard clearly; chanting or using foul or abusive language, including racial abuse; refusing reasonable requests from an event chair, or other BARBRI staff

involved in managing an event; displaying flags, banners, placards or similar items in an event; acting in any other way which is threatening or abusive, or which denies to others their right to legal free speech.

35. Nobody who has exercised their right to legal free speech should suffer censure as a result.

36. It is the responsibility of the event chair to ensure that anyone who wishes to challenge or criticise the views of the speaker(s) in an orderly fashion is allowed to do so.

37. The primary duty of the event chair is to uphold freedom of speech within the law. This means that the event chair must adhere at all times to this Code, maintain good order at events, and must act impartially in their facilitation of discussion and debate. Chairs may pose questions to the speaker(s) but should not be a speaker at the event themselves or be expressing their own views on the subject matter of the event. Chairs must be willing to undertake the relevant training and preparation, in the run up to the event.

38. The Managing Director reserves the right to reject a proposed event chair and require event organisers to find an alternative, but only if the proposed event chair is not a suitable and experienced staff member or if there is evidence to provide reasonable grounds to believe that he or she has not acted impartially when chairing previous events or has not upheld freedom of speech at previous events. Imposing a change of chair requires the explicit approval of the Managing Director, and the reasons for it must be communicated in written form to the event organiser.

#### **WITHHOLDING OR WITHDRAWAL OF PERMISSION TO HOLD AN EVENT**

39. The primary purpose of this Code of Practice is to ensure that BARBRI is able to fulfil its legal obligations to promote freedom of speech, whilst at the same time fulfilling its other legal obligations and statutory duties, and to ensure the smooth running of BARBRI.

40. The withholding or withdrawal of permission will only occur in exceptional circumstances where measures cannot be put in place to secure freedom of speech within the law and wherever possible after consultation with the principal contact and appropriate internal and external parties as are deemed appropriate by the Managing Director. The Managing Director has the sole discretion to take this decision.

#### **APPEAL AGAINST THE DECISION**

41. Appeals against the rulings of the Managing Director may be made in writing to the Corporate Secretary or their nominee, whose decision shall be final but must be reported to the next meeting of the Board of Directors.

#### **PENALTIES AND SANCTIONS**

31. If any actions involve breaches of the law, BARBRI will assist the prosecuting authorities to implement the process of law, and may suspend any internal disciplinary proceedings pending the outcome of any such processes.

#### **REPORTING IN RESPECT OF A BREACH OF THE CODE INFRINGEMENTS**

42. The Managing Director shall report to the Board of Directors on the circumstances of any significant infringements of, and departures from, the provisions of this Code.

## **REVIEW, AMENDMENTS AND MONITORING OF THE CODE**

43. BARBRI has a duty under subsection 3 of section 43 of the Act to issue and keep up to date a Code of Practice on Freedom of Speech. The Board of Directors should therefore receive a report on the operation of the Code, together with any recommendations for the revision of it annually.. This report shall be consulted with the Academic Board prior to consideration by the Board.

## **LEGAL CONTEXT**

44. This Code is underpinned by both external legal context as well as an internal framework of Statutes, policies and procedures. The principal elements of the legal context are documented at Appendix 1.

## **SOCIAL AND ELECTRONIC MEDIA**

45. The principles of freedom of expression and academic freedom apply to the use of electronic and social media; however, BARBRI requires responsible and legal use of the technologies and facilities available to staff and students of BARBRI, including the use of the internet, email and social media. Please refer to BARBRI's Bullying and Harassment Policy and Social Media Policy for more information.

## APPENDIX 1

### LEGAL CONTEXT

1. The Education Act (No 2) 1986 (Section 43) imposes specific obligations on higher education providers to promote and protect freedom of speech and requires that they: *“shall take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers.”* The Act includes a duty on higher education provider governing bodies to issue and keep updated a code of practice setting out the procedures to be followed by members, students and employees in connection with meetings on the higher education provider’s premises.

2. The Higher Education and Research Act 2017 (“**HERA**”) makes it clear that all universities and colleges which register with the Office for Students (“**OfS**”) must uphold the existing laws around freedom of speech and follow the OfS’s regulatory framework. Under the framework the governing bodies of registered universities and colleges should take ‘such steps as are reasonably practicable to ensure that freedom of speech within the law is secured within the provider’. HERA also includes a general duty for the OfS to protect institutional autonomy including academic freedom.

3. The Education Reform Act 1988 (Section 202) (reinforced by HERA) makes clear that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions.

4. Freedom of thought, conscience and religion (Article 9); freedom of expression (Article 10) are safeguarded by the European Convention on Human Rights and incorporated into UK law by the Human Rights Act 1998.

5. The Equality Act 2010 places a duty on BARBRI to eliminate discrimination, harassment and victimisation and further to foster good relations between all members of the BARBRI’s community.

6. The Public Order Act 1986 contains a range of criminal offences relating to violent conduct, speech or actions that threaten violence or cause fear, harm or distress. The Act also makes it an offence to use threatening, abusive or insulting words or behaviour either with the intention of stirring up racial and religious hatred, or in circumstances where it is likely racial or religious hatred will be stirred up as well as stirring up hatred on grounds of sexual orientation.

7. The Terrorism Acts of 2000 and 2006 define certain criminal activities relating to terrorism in terms of inciting acts of terrorism, disseminating terrorist publications or belonging to or supporting proscribed organisations. Terrorism is defined as including the use or threat of serious violence against a person or serious damage to a property for the purpose of advancing a political, religious or ideological objective.

8. The Counter Terrorism and Security Act 2015 places an obligation on BARBRI to have due regard to its duty to prevent people from being drawn into terrorism.

10. The Protection from Harassment Act 1997 creates both civil and criminal offences for harassment and makes provision for protecting persons from harassment and similar conduct.