



National Tertiary Education Union

Po Box 1323, South Melbourne

Victoria, Australia 3205

Tel 03 9254 1910

Fax 03 9254 1915

NTEU Submission

to the

**Senate Education, Employment and Workplace
Relations Committee**

Inquiry into Academic Freedom

Organisation: National Tertiary Education Industry Union

Contacts: Dr Carolyn Allport, President, NTEU
(callport@nteu.org.au)

Ms Emma Cull, Policy and Research Officer
(ecull@nteu.org.au)

Details: 120 Clarendon St
South Melbourne Victoria 3205
03 92541910

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Recommendations

The NTEU recommends that:

- 1. Institutional autonomy and academic freedom for Australian universities and their staff should be protected in legislation as is currently the case in a number of countries including Ireland, New Zealand and South Africa.**
- 2. The rights of students should be protected through enhanced grievance procedures and access to independent and well resourced advocacy and advice services.**
- 3. Australian anti-terror and sedition laws must include 'good faith' protections for bona fide academic and scholarly research in the course of teaching, education and research or artistic or literary endeavours.**

The National Tertiary Education Union (NTEU) represents the professional and industrial interests of over 25,000 staff employed at Australian universities. Our membership is composed of academic, research, administrative, technical and other general staff employed at Australian universities.

NTEU's submission to this Inquiry will focus on academic freedom as it pertains to universities. Academic freedom is central to the mission of all Australian universities and is internationally acknowledged as an essential and defining characteristic of university education. The particularities of a university education, as opposed to secondary education, lie in the creation and dissemination of new knowledge, the link between teaching and research and in promoting independent thought and critical inquiry. Academic freedom is central to providing this type of education.

The terms of reference of this Inquiry do little to protect or foster academic freedom and instead seek to undermine the principle of free inquiry within universities and for individual university staff.

Defining Academic Freedom

To understand the important role that academic freedom plays in our universities, it needs to be located within a broader social context. Intellectual freedom is an intellectual and social good which is broadly connected to the principle of freedom of speech. It is desirable as the foundation for a democratic and inclusive society. In this sense, intellectual freedom can be exercised by a variety of civic institutions, including public broadcasters such as television, radio and the internet, non-government organisations, independent think tanks, government research agencies such as the CSIRO, news agencies, and the public more broadly. In the context of universities, intellectual freedom is a right and responsibility of all those, staff and students, who are part of university communities.

Universities have an important role in ensuring that freedom of inquiry and freedom of speech are central to the mission of each institution. Freedom of inquiry is a requirement for the establishment of a new university, and is a key principle for all existing universities. It underpins the creation and dissemination of new knowledge in open and transparent ways and assures that such activities are in the public interest.

Academic freedom is usually defined in terms of the rights of academics to undertake certain activities, connected to their roles as teaching and research staff, without undue hindrance or fear of reprisal. The Global Colloquium of University Presidents defined academic freedom as *"the freedom to conduct research, teach, speak, and publish, subject to the norms and standards of scholarly inquiry, without interference or penalty, wherever the search for truth and understanding may lead."*¹

International instruments have also defined academic freedom rights as central to the work of higher education teaching personnel.

"Higher-education teaching personnel are entitled to the maintaining of academic freedom, that is to say, the right without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in

¹ Global Colloquium of University Presidents, *Statement on Academic Freedom*, May 26 2005.

which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies. All higher-education teaching personnel should have the right to fulfill their functions without discrimination of any kind and without fear of repression by the state or any other source.”²

Institutional autonomy is also a key requirement of academic freedom. Universities, as self accrediting institutions, have a responsibility to determine their course content and curricula as well as their research activities. While universities are accountable to governments in terms of legal, performance and accounting requirements, as well as broader social justice objectives such as equity of access for all Australians, it is highly detrimental for any government to impose conditions on university funding or refuse to fund individual research projects or courses simply on the basis of arbitrary ideological or political justifications.

Under the previous Government there was an increasing number of incidents or threats to academic freedom and the institutional autonomy of universities, namely “the commercialisation of universities, changes to the Australian Research Council (ARC) and new anti-terrorism laws and policies”³. These breaches and threats to academic freedom, along with the terms of reference of this Inquiry, suggest that there is a need for legislative protection of academic freedom. These issues are discussed further later in this submission.

Understanding Diversity

The terms of reference to this inquiry attempt to assess the *level* of academic freedom and intellectual diversity in universities. This is not easily measured. While breaches of academic freedom and intellectual diversity can be recorded or counted, such breaches need to be founded on agreed definitions of academic freedom. Such definitions are explicated in the international conventions referred to above, but are also evident in some universities’ Collective Agreements and Codes of Conduct. For example, the *University of Queensland Enterprise Agreement (Academic Staff) 2006* outlines the following provisions relating to its commitment to protecting and promoting Academic Freedom;

- 33.1 The University is committed to act in a manner consistent with the protection and promotion of academic freedom within the University and in accordance with the University’s Code of Conduct (HUPP Policy 1.50.1). The principle of academic freedom should be scrupulously observed at the University of Queensland.
- 33.2 Academic freedom includes the rights of all employees to:
 - express opinions about the operations of the University and higher education policy more generally;
 - pursue critical and open inquiry and to discuss freely, teach, assess, develop curricula, publish and research;
 - participate in public debates and express opinions about issues and ideas related to their discipline area;
 - participate in professional and representative bodies including industrial associations and to engage in community service without fear of harassment, intimidation or unfair treatment;
 - express unpopular or controversial views, although this does not mean the right to harass, vilify or intimidate.

² UNESCO, *Recommendation Concerning the Status of Higher-Education Teaching Personnel*, adopted by the General Conference at its 29th session, Paris, 21 October-12 November 1997, pp 10-11.

³ MacDonald, E. and Williams, G *Threats to Academic Freedom*, Gilbert and Tobin Centre of Public Law, UNSW, September 2006.

- 33.3 In the exercise of Academic Freedom, employees will act in a professional and ethical manner and will not harass, vilify, intimidate or defame the institution or its employees.

The University of Queensland's *Code of Conduct* outlines its commitment to protecting and fostering academic freedom, as expressed in the Collective Agreement, through listing the conduct expected of the university and its staff:

- 2.3 The University community is complex, with a large and diverse population of staff and students. As an organisation, it plays an important role in society generally (by the provision of teaching, research and community service) and it receives a significant proportion of its funding from public moneys. The primary role of the University in advancing knowledge requires that it safeguards its institutional autonomy and protects academic freedom. In advancing knowledge, research ethos encourages independence and innovation in ideas and methods. The University values a collegiate environment as the best means of fostering the advancement of knowledge.
- 2.7 Traditionally, universities are places where academic and research staff have been encouraged to observe and to comment upon or criticise society and its activities. Universities also encourage the development of new concepts through research and open discussion. The exploration of unconventional views is not merely tolerated but encouraged. The Code of Conduct is not intended to derogate from this traditional and independent right to comment on matters of public concern or to pursue research on matters of public controversy. Administrative and support staff, in facilitating academic and research endeavours, should also seek to protect the appropriate exercise of academic freedom within the scope of their duties.
- 3.2.1 The obligation (to observe the laws of the State and Commonwealth and to comply with the statutes and rules of the university) is not intended to detract from the concept and practice of academic freedom, which is regarded by the University as fundamental to the proper conduct of teaching, research and scholarship. Academic and research staff should be guided by a commitment to freedom of inquiry. This commitment is expressed in their teaching and research and in their role in advancing the intellectual heritage of their society. Academic and research staff should exercise their traditional rights to examine social values and to criticise and challenge the belief structures of society in the spirit of a responsible and honest search for knowledge and its dissemination. For example, academic freedom entitles an academic or research staff member to challenge and criticise ideas and methods but not to defame others.

While these are not universal provisions for Australian universities, they provide a good example of how academic freedom can be practically protected. Any attempt to measure the level of academic freedom or breaches of such, could then refer back to the criteria set out above. The definitions and requirements listed above do not try to mandate the level of diversity in course or curricula content. Rather, they expressly protect the right of academics to *teach, assess and develop* curricula without interference and to *express unpopular or controversial views* within the scholarly context. Any attempt to regulate the 'level' of diversity in curricula and course content would in itself constitute a breach of academic freedom in the right of academic staff to set their own curricula and assessments, without interference or fear of reprisal.

The attempt to measure or mandate a particular *level* of diversity or balance within a course also misunderstands the nature of university education. Quite apart from the impossibility of trying to measure diversity, the nature of university education is such that students are taught to question, criticise and examine ideological, political or cultural viewpoints from an evidence based perspective. As William W Cutler points

out in his testimony before the Pennsylvania House of Representatives Select Committee on Academic Freedom in Higher Education,

In contrast to those who are mere advocates, academics do not trade in belief or opinion...Good scholarship is like good law – public and prospective. It is conducted in the open, builds on precedent, is subject to peer review and never stands in one place⁴.

As expressed in the University of Queensland's Collective Agreement, in a bid to generate and transfer new knowledge, academic staff are encouraged to *examine social values and to criticise and challenge the belief structures of society* as well as to use *independence and innovation in ideas and methods* in advancing knowledge. Intellectual diversity is not just about reflecting a plurality of views, but presenting evidence based arguments and critical analysis.

Student Rights

University students have the right to course materials, teaching methodology and assessment processes that are free from political and ideological bias. While it is possible for incidences of bias to occur, there is no systemic evidence of such occurring at Australian universities. It is a condition of accreditation that a university;

demonstrates commitment of teachers, researchers, course designers and assessors to free inquiry and the systematic advancement of knowledge, and

demonstrates governance, procedural rules, organisational structure, admission policies, financial arrangements and quality assurance processes which are underpinned by the values and goals of universities and which ensure the integrity of the institution's academic programs⁵.

Student and staff grievance procedures are part of universities' quality assurance processes to protect students who feel their rights are being impinged in any way. Such policies usually give students the right to *"invoke the complaints and grievances procedures without fear of discrimination or victimization"*.⁶ Some universities, such as Monash, also have an independent University Student Ombudsman to deal with any complaints that are unable to be adequately resolved internally. Universities are also audited by the Australian Universities Quality Agency (AUQA) to ensure that they are adhering to their quality assurance processes. As such, any systemic incidents of bias would be evident through AUQA audit reports.

Student organisations are also able to provide students with independent advocacy and advice and to represent them in academic and grievance appeal processes. Student organisations have historically employed staff with specialised knowledge of university discipline and appeals policies and mechanisms. The introduction of legislation in 2005⁷, which prohibited universities collecting a universal fee to support the work of student organisations, has however, significantly eroded the ability of many student organisations to provide this service. In removing the ability to charge a universal service fee, the previous Government substantially undermined the funding base of student organisations and thereby restricted their ability to provide such services.

⁴ William W. Cutler, President, Temple Association of University Professionals, *Testimony before the Pennsylvania House of Representatives Select Committee on Academic Freedom in Higher Education*, January 2006.

⁵ MCEETYA, *National Protocols for Higher Education Approval Process*, Protocol D3 and D4, pg10, 2007

⁶ Monash University *Academic and Administrative Complaints and Grievances Policy*, <http://policy.monash.edu.au/policy-bank/academic/education/management/complaints-grievance-policy.html>

⁷ *Higher Education Support Amendment (Abolition of Compulsory Up-front Union Fees) Act 2005*

The Union is aware that this inquiry has stemmed from conservative student groups campaigning against a perceived 'left wing' bias in universities. Their campaign attempts to create evidence of this bias through encouraging students to report incidents of bias on their website. These stories are then published and chronicled as evidence of a systemic problem of bias that is impinging on the academic freedom of students. Quite apart from the fact that many of the examples refer only to students feeling 'uncomfortable' about the views or content being expressed in their classes, which is in no way an indication of bias or a breach of academic freedom, the Union does not believe that the collation of examples resulting from filling in a web based pro-forma constitutes a reliable source of evidence. These incident reports have already been used to direct the terms of reference of this inquiry and as a result have misconstrued the definition of academic freedom as well as undermining its intent.

This campaign directly mirrors a campaign run in the United States over the last decade, led by conservative David Horowitz, which also claimed liberal or left wing bias in the classroom, set up a website with the purpose of encouraging students to report incidents of bias and named and profiled academics considered to be 'too left wing'.⁸ The US campaign also succeeded in establishing a House of Representatives Select Committee Inquiry on the issue and attempted to establish an academic bill of rights.

In the USA, the so called 'Academic Bill of Rights' was promoted as attempting to ensure balance and diversity in the classrooms. A number of prominent American academics have however pointed out the serious risks that such a bill poses for academic freedom at US universities. In particular, it threatens the role of universities to continue to serve as "an engine of prosperity and a bedrock of democracy".⁹ The American Federation of Teachers (AFT) has also warned that;

*Although couched in high-minded rhetoric, these Bills of Rights in reality seek to spell out how faculty will be hired or evaluated, how they can express themselves in their teaching and how they must evaluate their students. The measures presume that liberals hold nearly all of the primary academic positions in our colleges and universities and that these faculty members impose their ideological views on students.*¹⁰

The AFT also points out the potential problems in administering and measuring balance and the waste of time and resources this would entail both in terms of regulation and reporting and the inevitable challenges to rulings on the issue. It is important to note that accredited USA universities and colleges are also subject to both internal and external quality assurance regimes similar to those in Australia.

Lessons from the United States suggest that an instrument akin to the 'Academic Bill of Rights' could actually impinge on academic freedom. Institutional autonomy is one of the defining characteristic of our universities. Any instrument that seeks to *impose* external measures to regulate the content, method and materials in university courses fails to protect and may actually threaten academic freedom.

The National Protocols for Higher Education Approval Processes clearly require that all institutions operating in Australia maintain freedom of inquiry, whether they are public or private, domestic or foreign.

⁸ See www.studentsforacademicfreedom.org

⁹ William W. Cutler, op. cit

¹⁰ <http://www.aft.org/topics/academic-freedom/index.htm>

Real Threats to Academic Freedom

Currently there are significant threats to academic freedom at Australian universities. These threats stem from changes to the regulation and funding of universities over the last decade. The advent of increasingly contestable research funding puts pressure on academics to research in specific national priority areas, while commercialisation of research can restrict the timely dissemination of research findings to our communities. The dissemination of knowledge is an important responsibility of universities and is critical in maintaining the role of the university in the public interest. Changes to the Australian Research Council (ARC) Act introduced in 2005 granted the Minister rights to veto research projects that have already been approved by the ARC Board and its College of Experts. This means that decisions about what type of research receives funding could be politically and ideologically driven.

Perhaps the most significant threat to academic freedom that has occurred in the past few years has been the introduction of the 2005 Anti Terror laws. These laws increase the powers of police and security services at the expense of fundamental human rights. For university staff and students, the sedition provisions create the possibility that academics could be committing an offence, simply through the act of researching, writing and publishing, if they are deemed to have material which may either directly or indirectly “advocate a terrorist act”, (whether or not it has or will occur). “Advocate” is defined broadly to include indirectly counselling or urging the doing of a ‘terrorist act’ as well as directly praising such acts where there is a risk that such praise might lead another to engage in such acts”.¹¹

Despite recent recommendations by the Law Reform Commission that the legislation should safeguard activities undertaken in good faith related to a bona fide academic and scholarly research in the course of teaching, education and research or artistic or literary endeavours, such ‘good faith’ protections have still not been included in the Act.

We have already seen examples of the effect of these laws – a student at Monash University was interviewed by the Federal Police on the basis that he purchased and borrowed books on suicide bombing for his course of study on suicide bombings. Censorship of books and research projects by the Attorney-General on the basis of possible conflict with the 2005 Anti-Terrorism Act has also taken place.¹² The former occurred at the University of Melbourne with the university being advised to remove books from its library under fear of committing an offence. The latter being a cutting back of the research field of an individual researcher who had been granted an ARC peer reviewed grant on the basis that such research may contravene the 2005 Anti-Terror Bill. Finally the Export Control Bill may place further restrictions on research, conferences and publications undertaken in areas that relate to weapons of mass destruction. The problems are real and current, given that under the previous Government one of the national research priorities was the theme of “Safeguarding Australia”.

¹¹ Joo-Cheong Tham, ‘Australian terror laws and academic freedom’ in J. Turk, A. Manson (ed), *Free Speech in Fearful Times: After 9/11 in Canada, the U.S., Australia & Europe* (2007) 234-244.

¹² See Edwina MacDonald and George Williams, *Banned Books and Seditious Speech: Anti-Terrorism Laws and other threats to Academic Freedom*, 2007, Australian and New Zealand Journal of Law and Education, pp29-46.

The dialogue about protecting academic freedom needs to move beyond old debates about political correctness to the real threats that incursions on academic freedom can have for our universities and for our society more broadly. The role that our universities play in the creation and dissemination of new knowledge, which is underpinned by the principle of free inquiry, is critical to fostering greater understanding and development of the world in which we all live.

These intrusions into the academic freedom and institutional autonomy of Australia's universities and their staff demonstrate that the protections afforded by collective agreements and university policies are not sufficient. As such NTEU is advocating that academic freedom and institutional autonomy should be legislatively protected as is the case in many other countries.

McDonald and Williams argue that Australia does not provide protection for academic freedom in its Constitution or by statute, nor does it have a national bill of rights from which it might be implied.¹³ While Jim Jackson¹⁴ argues that some protection exists in university industrial agreements and codes of conduct made by universities with their staff, MacDonald & Williams argue that codes of conduct may not be enforceable. Thus the protection of academic freedom in Australia remains fragile.

Appendix 1 provides three examples of legislative protection for academic freedom.

¹⁰ MacDonald & Williams, op.cit.

¹⁴ The full reference is Jim Jackson, 'Express Rights to Academic Freedom in Australian Public University Employment' (2005) 9 *Southern Cross University Law Review* 107; Jim Jackson, 'Implied Contractual Rights to Academic Freedom in Australian Universities' (2006) 10 *Southern Cross University Law Review* 139.

APPENDIX 1

NEW ZEALAND

Section 161 of the New Zealand *Education Act 1989* provides the following protection for academic freedom:

- (1) It is declared to be the intention of Parliament in enacting the provisions of this Act relating to institutions that academic freedom and the autonomy of institutions are to be preserved and enhanced.
- (2) For the purposes of this section, 'academic freedom', in relation to an institution, means—
 - (a) The freedom of academic staff and students, within the law, to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions:
 - (b) The freedom of academic staff and students to engage in research:
 - (c) The freedom of the institution and its staff to regulate the subject-matter of courses taught at the institution:
 - (d) The freedom of the institution and its staff to teach and assess students in the manner they consider best promotes learning:
 - (e) The freedom of the institution through its chief executive to appoint its own staff.
- (3) In exercising their academic freedom and autonomy, institutions shall act in a manner that is consistent with—
 - (a) The need for the maintenance by institutions of the highest ethical standards and the need to permit public scrutiny to ensure the maintenance of those standards; and
 - (b) The need for accountability by institutions and the proper use by institutions of resources allocated to them.
- (4) In the performance of their functions the Councils and chief executives of institutions, Ministers, and authorities and agencies of the Crown shall act in all respects so as to give effect to the intention of Parliament as expressed in this section.

REPUBLIC OF SOUTH AFRICA

The *Constitution of the Republic of South Africa 1996* provides protection for academic freedom in section 16 of its Bill of Rights:

- (1) Everyone has the right to freedom of expression, which includes
 - a. freedom of the press and other media;
 - b. freedom to receive or impart information or ideas;
 - c. freedom of artistic creativity; and
 - d. academic freedom and freedom of scientific research.
- (2) The right in subsection (1) does not extend to
 - a. propaganda for war;
 - b. incitement of imminent violence; or
 - c. advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

IRELAND

1) A university, in performing its functions shall—

(a) have the right and responsibility to preserve and promote the traditional principles of academic freedom in the conduct of its internal and external affairs, and

(b) be entitled to regulate its affairs in accordance with its independent ethos and traditions and the traditional principles of academic freedom, and in doing so it shall have regard to—

- (i) the promotion and preservation of equality of opportunity and access,
- (ii) the effective and efficient use of resources, and
- (iii) its obligations as to public accountability,

and if, in the interpretation of this Act, there is a doubt regarding the meaning of any provision, a construction that would promote that ethos and those traditions and principles shall be preferred to a construction that would not so promote.

(2) A member of the academic staff of a university shall have the freedom, within the law, in his or her teaching, research and any other activities either in or outside the university, to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions and shall not be disadvantaged, or subject to less favourable treatment by the university, for the exercise of that freedom