



Council of Australian Postgraduate Associations (CAPA)

Submission to the Review of Freedom of Speech in Higher Education

January 2019



Council of Australian Postgraduate Associations Incorporated

Compiled with the assistance of the staff and office bearers
of the Council of Australian Postgraduate Associations (CAPA)
and its affiliated member organisations.

Prepared by Natasha Abrahams (President), Owen Myles (Policy and Research Advisor),
and Lara McKenzie (Research Officer)
Level 1, 120 Clarendon Street, Southbank, VIC, 3006
0430 076 993
www.capa.edu.au

Foreword

The Council of Australian Postgraduate Associations (CAPA) is the peak body representing the interests of the over 400,000 postgraduate students in Australia. We represent coursework and research, as well as domestic and international, postgraduates. We are comprised of 28 university and campus based postgraduate associations, as well as the National Aboriginal and Torres Strait Islander Postgraduate Association (NATSIPA).

CAPA carries out its mission through policy, research, and activism, communicating the interests and issues of postgraduate students to higher education stakeholders as well as Federal and State Governments, Opposition parties, and minor parties. We believe that tertiary education should be a broad-based system that:

- Develops critical capacities and reasoning in an environment of vigorous academic freedom;
- Promotes the preservation, transmission and extension of knowledge for its own sake; and
- Actively fosters the development of abilities to challenge the status quo of one's society.

Quality, equity, and diversity are integral to such a system, particularly of higher education (CAPA 2015, p. 4).

We thank the Hon Robert French AC for inviting CAPA to contribute to the review. The review seeks to assess freedom of expression and freedom of intellectual inquiry in Australian higher education, and to make recommendations for changes. We question the Government's decision to conduct a review of freedom of speech on university campuses. This review, based on an unsubstantiated panic about the suppression of conservative viewpoints, further threatens universities' autonomy and independence from government, as well as being an unwise use of money at a time when there are sustained funding cuts to the higher education sector. We are concerned that the current review is politically motivated.

For the purposes of this submission, it is important to make a clear distinction between two separate, but similar, terms. Freedom of speech is considered to be "the power or right to express one's opinions without censorship, restraint, or legal penalty". In Australia, this freedom is restricted to a right a freedom of political speech, which removes the power of the government to pass laws that restrict political speech. Academic freedom, on the other hand, refers to the freedom of inquiry, communication and learning granted to members of the academy that protects members from prosecution or the loss of their jobs or, in the case of students, expulsion as a result of prosecuting controversial arguments based upon research and evidence of a suitable standard.

In this submission, we first provide our perspective on the context of the review, arguing that claims towards a crisis of freedom of speech are contrived and politically motivated. However, being that the review is underway, we provide our perspective on tensions relating to freedom of speech on campus. We argue that staff working conditions are threatened by the presence of hate speech, and that any sector-wide code of conduct relating to free speech must ensure that staff workplace rights are preserved. We comment on existing legislation relating to this, noting that the legislation itself is suitable, but that there are some genuine threats to intellectual freedom at universities owing to cuts to research and services due to severe federal funding

reductions. We furthermore caution that secret ministerial interference in research funding allocations, as was discovered in late 2018, also endangers intellectual freedom.

Based on the above, we provide the following recommendations:

- That universities retain the right to decide whether to host speakers who are not students or staff at their university, who lack academic legitimacy, and who promote viewpoints which threaten the safety of their staff and students.
- That a sector-wide code of conduct not be adopted, and that universities set their own freedom of speech policies which are compliant with legislation.
- That if a sector-wide code of conduct is implemented, it must be compliant with legislation including the Racial Discrimination Act 1975, and must not contravene on universities' obligations to provide a safe working environment.
- That the government must restore higher education and research funding which has been cut over the last several years.
- That universities must end insecure employment practices, providing the security for their researchers to investigate controversial or uncertain topics.
- That legislation should be enacted to prevent government interference, and mandate transparency, in federal research funding allocations.

The current state of free speech at Australian universities

We wholly reject the premise that there is a systematic silencing of conservative-leaning opinions at Australian universities. We believe this is a contrived crisis, with imported panic from free speech issues from the United States and United Kingdom, propped up by partisan audits on free speech policy conducted by the Institute of Public Affairs (IPA 2017; IPA 2018), and catalysed by recent events.

We understand that the current review in free speech at universities is a reaction to isolated yet high-profile incidents occurring last year: the cancellation of a talk by Quentin Van Meter at the University of Western Australia in August 2018, and student opposition to Bettina Arndt's speeches delivered at La Trobe University and the University of Sydney, organised by the universities' student Liberal Clubs, in September 2018. Additionally, the controversy around the difficulty in finding a host university for the Ramsay Centre for Western Civilisation has also been framed as a matter of free speech restrictions.

Both Arndt and Van Meter were external speakers on controversial speaking tours, external to the universities where they sought to speak. Both Arndt and Van Meter's contentions further marginalised already vulnerable groups - sexual assault victims and transgender individuals respectively - thus provoking opposition from student groups, who exercised their freedom of expression by organising against the speakers (e.g., La Trobe Student Union 2018). Arndt was able to deliver her speech at both universities, while Van Meter's talk did not proceed due to the university cancelling the venue booking. The university claimed that this was for administrative, rather than ideological, reasons (Ross 2018).

Some media coverage cast these incidents as censorship of conservative viewpoints (Burrell 2018). While we do have some concerns around academic freedom as it pertains to researchers, as outlined later in this submission, we do not believe that the aforementioned incidents constitute attacks on freedom of speech, nor that they justify a sector-wide review. Universities

are under no obligation to host controversial external speakers, particularly where this would legitimise claims that are not supported by research. Such speakers are welcome to book venues outside of universities and therefore no-platforming at universities, as in the Van Meter case, does not indicate a wholesale silencing of the speaker. While it is reasonable to argue that universities should be centres of debate, and should not shy away from controversial topics due to public opinion, it is also true that universities should actively foster an environment of research integrity and quality. The halo effect of a university bestows events held on campus an added level of legitimacy, which can lead to the perception of a university endorsing views that are not substantiated by high quality research. We believe it is reasonable for universities to decide not to host speakers who lack academic legitimacy or who promote viewpoints which risk the safety of their staff and students (as discussed in the next section on workplace rights).

Recommendation one: That universities retain autonomy in deciding whether to host speakers who are not students or staff at their university, who lack academic legitimacy, and who promote viewpoints which threaten the safety of their staff and students.

The breadth of student clubs and societies at Australian universities shows that institutions permit and financially support the right of groups to self-organise and express their beliefs. Clubs and societies are usually administered by universities' student unions. For example, the University of Western Australia Student Guild hosts over 160 student clubs, including political, religious, academic, cultural, and general interest clubs (UWA Student Guild 2017). Each are provided up to two hours per week during semester of free venue hire within the university, enabling them to run more than 1000 events in 2017. Student-run Liberal Clubs are a fixture at most universities that facilitate clubs and societies, indicating that students are able to express conservative-leaning ideas and associate with like-minded others, contrary to some media commentary suggesting that universities banish such viewpoints.

An expected outcome of the current review is a sector-wide non-binding code of conduct, in the vein of the Chicago Statement. We believe this would be unnecessary and ultimately unhelpful in managing issues surrounding free speech at Australian universities. A model code that replicates the Chicago Statement would provide inadequate protections for university communities. In particular, the Chicago Statement is quite general and lacks any detail regarding the method by which an event may be judged to be inappropriate, and, as such, lacks protections for both speakers and those who might be targeted or harassed by a speaker or attendees of the event. If a code of conduct is determined to be an outcome of the current review, we caution that this must comply with current legislation, and must not protect speech which constitutes bullying or harassment of staff minority groups. We are furthermore concerned that, given the context of the current review, a model code of conduct will not be a legitimate attempt at protecting freedom of speech. Rather, it appears to be another attempt by the government to interfere in universities' autonomy, and to distract from the genuine issues faced by the higher education sector as a result of devastating funding cuts under the current government.

Recommendation two: That a sector-wide code of conduct is unnecessary and that universities set their own freedom of speech policies which are compliant with legislation.

Workplace rights of university staff

Universities are both places of learning and of employment, in addition to being used as public spaces. Approximately one third of postgraduate research students are also staff at universities,

usually in teaching or research roles (Edwards, Bexley & Richardson 2011). Furthermore, according to figures from 2011, 37 percent of casual academic staff are studying for a PhD, although this figure varies across institutions and by discipline (May, Peetz, & Strachan 2013, p. 267; May, Strachan, & Peetz 2013). Even for research students who are not simultaneously employed by a university, the nature of research degrees is such that the student occupies a role which contains some staff-like responsibilities and expectations.

As employers, universities have a legal obligation to provide a safe working environment. Employers have the responsibility to ensure that their staff are not subject to illegal harassment and bullying (Australian Human Rights Commission 2014). According to the Australian Human Rights Commission's factsheet, harassment and bullying behaviours include actions such as displaying racist materials, excluding or isolating employees, and verbal abuse. Freedom of expression at universities cannot be absolute as the workplace rights of their sizeable staff population must be considered. We believe that the rights of university staff and students to work in a safe environment supersede the rights of those external to the university community to use campus venues as a platform for their views.

The presence of hate speech - here defined as expression which attacks or encourages violence towards individuals or groups on the basis of minority group membership - threatens the safety of staff and students, and can create a hostile working environment. Hate speech on the basis of race is illegal in Australia under the Racial Discrimination Act 1975. Despite this, illegal hate speech is occasionally incited in university communities, for example in anti-semitic Holocaust denial posters appearing in some Australian universities in 2017 (CAPA 2017). Any free speech model code or policy must ensure that it is compliant with universities' legal requirements to maintain a safe working environment, in addition to aligning with universities' policies relating to workplace conduct.

Hate speech that would not be tolerated in any other workplace should not be tolerated in universities in the name of supposedly promoting freedom of speech. The presence of hate speech on campus can render the university hostile for targeted groups, particularly LGBTQIA+ and ethnic minorities. Where there is a grey area in terms of hate speech as opposed to unpopular speech, this is often regarding statements about minority groups. Any sector-wide model code of conduct must be able to distinguish between hate speech (legal or otherwise), and unpopular or controversial statements. This leads to a much larger question of who will decide on the definition of hate speech, and which groups are protected by a model code which distinguishes between hate speech and unpopular statements.

Recommendation three: That if a sector-wide code of conduct is implemented, it must be compliant with legislation including the Racial Discrimination Act 1975, and must not contravene on universities' obligations to provide a safe working environment.

Suitability of current legislation and policy

The Higher Education Standards Framework legislates that the governing body of a Higher Education Provider (HEP) should:

“develop and maintain an institutional environment in which freedom of intellectual inquiry is upheld and protected, students and staff are treated equitably, the wellbeing of students and staff is fostered, informed decision making by students is supported and students have

opportunities to participate in the deliberative and decision making processes of the higher education provider” (Federal Register of Legislation 2015b, p. 12).

In the Legislation’s Explanatory Statement, it is further noted that: “Taken together, these requirements promote a work and study environment that welcomes inquiry, is respectful of difference and promotes equal opportunity for advancement in learning and work” (Federal Register of Legislation 2015a, p. 11).

It is CAPA’s belief that the intention of this legislation is to adequately balance freedom of expression and freedom of intellectual inquiry with the safety of staff and students. However, in practice, universities are limited in the extent to which an environment of intellectual inquiry is maintained, due to deep and sustained education and research funding cuts.

At a university level, we believe that current policy and practice is mostly suitable to ensuring a balance between freedom of speech and protecting the rights of the university community to be free from harassment and intimidation. We are, however, concerned by a policy suggested to universities by the Education Minister Dan Tehan, who has proposed that on-campus protesters should be expected to pay universities for security at protests held on university campuses (Koziol 2018). Payment by protestors for security is not required in most other public venues; for example, police regularly provide security for large protests in public locations. We believe that the cost of providing security should be factored into venue hire rates when universities are making their facilities available to external speakers. There are some cases where the cost is to be borne by the university itself if the speaker is an employee of the university, or by the organising student club, as in the case of the Bettina Arndt event at the University of Sydney (at which the university Liberal Club was billed). Security fees should be regarded as regular costs of the university’s events. If universities and student services were adequately funded (as discussed in the next section), the relatively meagre costs of security fees would not be so contentious.

Fiscal policy impediments to free speech

From CAPA’s perspective, the biggest risk to the continuation of opportunities for free speech on Australian university campuses is policy of the Federal Government which has led to repeated reductions in university funding from the federal budget.

The federal government’s freeze to higher education funding for 2018 and 2019 enrolments has cut over \$2 billion in previously expected funding. The Vice Chancellor of Central Queensland University, Professor Scott Bowman, indicated that the funding freeze would lead to diminishing services on campus (Conifer & McKinnon, 2018). Additionally, then Education Minister, Senator Simon Birmingham, suggested that universities should find efficiencies out of the “non-core areas of activities that don’t necessarily impact on students” (Conifer & McKinnon, 2018). It is natural, therefore, for these funding cuts to impact the services of universities that are not at the core of their obligations to their students and research partners. We would argue that the provision of venues, including the services required for this (such as cleaning and security), for non-university associated entities to exercise free speech would be considered by most universities to be a “non-core area of activity”. We therefore argue that the repeated and continued cuts to higher education funding have reduced the ability of university campuses to host speakers, including controversial speakers who may require a higher level of security.

Additionally, cuts to research funding and political interference in academic grants make it more difficult to conduct the necessary research to underlie academic freedom. The \$329 million cut to research funding, outlined in the 2018/19 Mid-Year Economic and Fiscal Outlook (MYEFO), hampers the ability of academics, and the research students those grants help to support, to conduct the necessary high-quality research needed to advance controversial ideas. Cutting research funding also narrows the diversity of ideas which are researched in our universities. Academic employment is overwhelmingly insecure: two-thirds of university employees are either casual or on limited contracts (Kniest 2018). Furthermore, the proportion of insecurely employed university workers has been steadily increasing over the past fifteen years (Kniest 2018). Insecurely employed academics who lack job security may be dissuaded from undertaking cutting-edge research, research with a risk of failure, and research that challenges established academics' works.

Furthermore, recently reported (but previously obscured) ministerial interference in the selection of Australian Research Council funded projects represents a serious undermining of academic freedom. Grants being selected on the basis of their appeal to the governing party's values is the antithesis of academic freedom and fundamentally weakens our academic system. In order for research to be conducted on controversial ideas, selection of research grants must be based upon merit and not upon the political whims of those with poor knowledge of the research domain.

We recommend that the most important federal policies to improve access to free speech opportunities are:

Recommendation four: That the government must restore higher education and research funding which has been cut over the last several years.

Recommendation five: That universities must end insecure employment practices, providing the security for their researchers to investigate controversial or uncertain topics.

Recommendation six: That legislation should be enacted to prevent government interference, and mandate transparency, in federal research funding allocations.

Summary and recommendations

University staff and students, not members of the public attempting to rent out lecture theatres, are the core to the functioning of Australian universities. It is crucial that universities meet their obligations towards maintaining a safe working environment for staff and students. We do not believe that there is a genuine crisis of freedom of speech at Australian universities. However, we believe that academic freedom at universities has been curtailed by funding cuts under the current government.

On this basis, CAPA recommends:

- That universities retain the right to decide whether to host speakers who are not students or staff at their university, who lack academic legitimacy, and who promote viewpoints which threaten the safety of their staff and students.
- That a sector-wide code of conduct not be adopted, and that universities set their own freedom of speech policies which are compliant with legislation.

- That if a sector-wide code of conduct is implemented, it must be compliant with legislation including the Racial Discrimination Act 1975, and must not contravene on universities' obligations to provide a safe working environment.
- That the government must restore higher education and research funding which has been cut over the last several years.
- That universities must end insecure employment practices, providing the security for their researchers to investigate controversial or uncertain topics.
- That legislation should be enacted to prevent government interference, and mandate transparency, in federal research funding allocations.

References

Australian Human Rights Commission 2014. *Workplace discrimination, harassment and bullying*.

https://www.humanrights.gov.au/sites/default/files/GPGB_workplace_discrimination_harassment_bullying_0.pdf.

Burrell, A 2018, August 17. *University of Western Australia cancels US professor Quentin Van Meter speech*. The Australian. <https://www.theaustralian.com.au/higher-education/university-of-western-australia-cancels-us-professor-quentin-van-meter-speech/news-story/05830d81c4b2fc68c76d15cf5d42e989>.

Conifer, D. & McKinnon, M. 2018, June 14. *University funding freeze hits regional campuses worst, with up to 15 per cent of expected money on ice*. ABC News. <https://www.abc.net.au/news/2018-06-14/university-funding-freeze-regional-campuses-worst-hit/9857532>

Council of Australian Postgraduate Associations [CAPA] 2015. *CAPA Policy*. Melbourne: The Council of Australian Postgraduate Associations. <http://www.capa.edu.au/wp-content/uploads/2016/11/CAPA-Policy-2015.pdf>.

Council of Australian Postgraduate Associations [CAPA] 2017. *Media Release: Anti-Semitism has no place in Australia or Australian Universities*. <http://www.capa.edu.au/media-release-anti-semitism-no-place-australia-australian-universities/>.

Edwards, D, Bexley, E, and Richardson, S 2011. *Regenerating the academic workforce: the careers, intentions and motivations of higher degree research students in Australia: findings of the National Research Student Survey (NRSS)*. Australian Government Department of Education, Employment and Workplace Relations. https://melbourne-cshe.unimelb.edu.au/_data/assets/pdf_file/0009/1490940/RAW_Combined.pdf.

Federal Register of Legislation 2015a. *Explanatory Statement: Tertiary Education Quality and Standards Agency Act 2011: Higher Education Standards Framework (Threshold Standards) 2015*. Canberra: Australian Government. <https://www.legislation.gov.au/Details/F2015L01639>.

Federal Register of Legislation 2015b. *Tertiary Education Quality and Standards Agency Act 2011: Higher Education Standards Framework (Threshold Standards) 2015*. Canberra: Australian Government. <https://www.legislation.gov.au/Details/F2015L01639>.

Institute of Public Affairs [IPA] 2017. *Free Speech On Campus Audit 2017*. <https://ipa.org.au/publications-ipa/research-papers/free-speech-campus-audit-2017>.

Institute of Public Affairs [IPA] 2018. *Free Speech on Campus Audit 2018*. <https://ipa.org.au/publications-ipa/research-papers/free-speech-on-campus-audit-2018>.

Koziol, M 2018 September 22. *You protest, you pay: Education Minister's bid to bolster free speech at universities*. Sydney Morning Herald. <https://www.smh.com.au/politics/federal/you-protest-you-pay-education-minister-s-bid-to-bolster-free-speech-at-universities-20180921-p5057h.html>

La Trobe Student Union 2018. *La Trobe University Student Union Condemns Bettina Arndt on Campus*. <https://www.latrobesu.org.au/bettinaarndtstatement>.

May, Robyn, Peetz, David, & Strachan, Glenda 2013. The Casual Academic Workforce and Labour Market Segmentation in Australia, *Labour & Industry: A Journal of the Social and Economic Relations of Work*, 23(3): pp. 258-275.

May, Robyn, Strachan, Glenda, and Peetz, David, 2013. Workforce Development and Renewal in Australian Universities and the Management of Casual Academic Staff, *Journal of University Teaching & Learning Practice*, 10(3). <https://ro.uow.edu.au/jutlp/vol10/iss3/3/>.

Kneist, P 2018. *The Flood of Insecure Employment at Australian Universities*. Melbourne: National Tertiary Education Union. <http://www.nteu.org.au/library/view/id/8988>.

Ross, J 2018, August 17. *Australian v-c calls for free speech principles after controversial event cancelled*. Times Higher Education. <https://www.timeshighereducation.com/news/australian-v-c-calls-free-speech-principles-after-controversial-event-cancelled>.

Tertiary Education Quality and Standards Agency [TEQSA] 2017. *Higher Education Standards Framework (Threshold Standards) 2015 – TEQSA Contextual Overview*. Canberra: Australian Government. <https://www.teqsa.gov.au/sites/g/files/net2046/f/hesf-2015-teqsa-contextual-overview-v1-1.pdf>.

UWA Student Guild 2017. *Annual Report 2017*. https://issuu.com/uwastudentguild/docs/guild_annual_report_2017_issu