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The Hon Justice Robert S French AC
Suite 2, Level 13
Allendale Square
77 St George's Terrace
PERTH WA 6000

Dear Justice French

The Group of Eight Universities (Go8) are Australia's leading research-intensive universities. They are also Australia's consistently top-ranked universities, with seven Go8 members in the world's top 100 universities.

From this proud position of significant responsibility for the development of the nation's economic future, and the intellectual growth and well-being of the Australian community, I am contacting you as Go8 Chief Executive on behalf of the Go8 member universities.

The Go8 requests that you please give the Go8's assertions due consideration within your independent review into policies that support freedom of expression in Australian higher education.

It is important for the Go8 to state that it has always taken the guarding of freedom of speech extremely seriously as a key tenet of our responsible position within Australia.

The Go8 wishes to assert the following:

- **there is no substantive evidence of the alleged 'crisis' of free speech on Australian university campuses**
- **the concepts of academic freedom and freedom of speech are distinct and the two must not be conflated (as they have been recently)**
- **the Higher Education Standards Framework is robust and serves a critical purpose; that does not include a role in regulating speech on campus, and**
- **Go8 universities already have comprehensive policy frameworks in place**
- **Australia does not have a constitutional protection of freedom of expression. Should there ever be a need to further guarantee freedom of speech, this may be best achieved through Constitutional reform, rather than university regulation**

As globally-recognised leading research-intensive universities, Go8 members are committed to their role and responsibility as global institutions and leading institutions within Australian society. Critical to this is the Go8's fostering of free intellectual inquiry and public debate on issues of national and global importance.

The Go8 stresses that upholding freedom of expression is, at all times essential to the core mission of universities. We uphold freedom of expression because we exist for the pursuit of truth, the advancement of learning, and the acquisition, dissemination and preservation of knowledge for the common good.

For the purposes of your investigation, the Go8 here reaffirms its members' commitment to freedom of expression for all who engage in the discussion of ideas on our campuses and digital platforms.

Go8 members uphold strongly that their campuses are proudly places where unorthodox ideas and alternative ways of thinking must be freely explored and debated.

Go8 universities are places for the discussion and debate that is so vital to developing critical thinking, reasoned argument, and independent judgement.

There is no evidence of a 'crisis'

Some critics of universities have attempted to argue that a crisis exists on Australia's university campuses. The Go8 asserts there is scant evidence for this suggestion.

In a recent speech - opening a Summit exploring issues related to freedom of speech - former University of Melbourne Vice Chancellor, and Distinguished Professor at the Australian National University, Professor Glyn Davis noted that:

‘claims of a free speech crisis at Australian public universities are special pleading’¹

That is, these claims amount to an argument offered where evidence is lacking, or perhaps even contrary to what is proposed.

The Go8 asserts that it is important to recognise that apparent overseas trends do not necessarily indicate the same is occurring on Australian university campuses. Suggestions of a ‘free speech crisis’ most often draw on events and trends in the United States to argue the same trends are occurring in Australia.

But the US and Australian contexts are quite different.

In 2017, Australia's 38 public universities were home to more than 1.37 million students and 50,000 academics. The ‘evidence’ of a free speech ‘crisis’ here comprises some half a dozen incidents over four years; incidents that have been provided a profile disproportionate to their impact.

In no way can this small number of incidents amount to a systemic issue that might be termed ‘a crisis’.

However, for some in the Australian community, there has developed a concern about freedom of speech on campus. The Go8 respects these perceptions. Equally the Go8 respects Federal Minister of Education Hon Dan Tehan MP's request that you investigate.

¹ ANU Distinguished Professor Glyn Davis AC; *Special pleading: free speech and Australian universities*; Keynote address at the Summit to explore issues of academic freedom and autonomy, ANU 4-5 December 2018.

Within this independent investigation **the Go8 is very strongly of the view that concepts of free speech and academic freedom must not be conflated with one another.** I am aware that you are also conscious of this distinction.

As Professor Davis noted: ‘academic freedom is the right of academic staff to speak out as members of the university community. It is jealously guarded by academic boards and professional associations – perceived reaches become matters of public controversy, with the risk of significant reputational damage. Academic freedom is also protected in Federal law, research rules and registration standards.’

All Go8 universities have policies that enforce these broader frameworks.

Academic freedom

The clear distinction between the notion of academic freedom and that of freedom of speech can be demonstrated by the discovery of the causative link between the *helicobacter pylori* bacteria and stomach ulcers in the early 1980s at the University of Western Australia.

The hypothesis of Professors Barry Marshall and Robin Warren went very much against current thought; namely that bacteria could not live in the stomach due to high stomach acid content. Their research was highly controversial. Yet despite the vocal disagreement and skepticism of peers and numerous rejected papers the Professors persisted. They also persisted in the face of global drug companies marketing multi-millions of dollars of expensive stomach ulcer ‘treatments’.

Importantly they had the academic freedom to persist – and to be proved correct eventually, completely changing medical thinking on cause and treatment of stomach ulcers. An environment that strongly supported academic freedom was crucial to supporting them – enabling a discovery for which they were awarded a Nobel Prize.

The Go8 strongly asserts that university autonomy is critical in protecting academic freedom and intrusions into university autonomy are likely the greatest danger to academic freedom.

There have been suggestions that public university funding outcomes could be linked to policies that protect academic freedom. While this is an excellent example of intruding on the very university autonomy upon which academic freedom relies, it is also an excellent example of proposed unnecessary over-regulation that would most likely deliver the opposite to the desired effect.

Freedom of speech

Academic freedom is a very distinct principle from that of free speech. Freedom of speech is regulated in the general legal framework, rather than specifically for universities as with academic freedom.

Indeed, free speech at a university campus is the same as the right to free speech across society external to universities. Universities offer no special environment where free speech is, or should be, especially enabled or restricted.

As it relates to freedom of speech across Australian society, it is an important point that Australia, unlike the United States and several other modern democracies, does not have a constitutional protection of freedom of expression, although there is an implied constitutional protection of freedom of *political* expression.

The Go8 does recognise that there is the potential for conflict on Go8 campuses when people seek to freely express points of view that conflict with the views held by others.

For that reason, the Go8 at all times encourages students, staff, the university community, and Go8 guests, to engage in the *free, respectful and civil* engagement and expression of ideas.

That same principle must surely apply to other public organisations where employees, guests and stakeholders engage in such exchanges?

The Go8 asserts that any attempt to introduce regulations or codes related to freedom of speech should be of general applicability and not just directed at universities.

In another vital point, Go8 members, as stated, are adamant that on Go8 campuses *free, respectful and civil* engagement and expression of ideas are essential. This must be understood to mean that people of opposing views have the right and the opportunity to put those views, and to have them debated.

The Go8 contends that merely because a number of people object to the views of one person, perhaps loudly object, and that person goes on to have the freedom to speak, does not amount to any suppression of free speech. It is not censorious. How can it possibly be? In fact, it must be argued that this is a *triumph* for free speech.

Proposals that have been floated to regulate either – or both – academic freedom and/or free speech on university campuses will logically have the effect of limiting both.

That is, in this instance, regulation will harm that which it would seek to protect, and I have alluded to this with respect to academic freedom above.

On the other hand, attempts to regulate or in some way curtail free speech necessarily result in continued freedoms for some in the community – not enhanced freedoms – at the substantial expense of others.

This should not be enabled in a liberal democracy, and most particularly should not be enforced upon public universities by regulatory authority. If there is a need in Australia to ever guarantee freedom of speech, this may be best protected through Constitutional reform, rather than regulation.

Higher Education Standards Framework 2015

The Terms of Reference for this Review ask that you assess the relevance of the Higher Education Standards Framework 2015 (the Standards Framework) in promoting freedom of expression and freedom of intellectual inquiry in higher education.

The Standards Framework is a critically important part of the overall context that assures the quality of Australia's higher education sector broadly and specifically the universities that operate within it.

Australia's higher education sector enjoys a very well-earned reputation for excellence in the quality of the teaching and learning outcomes we deliver and the research we undertake. The Standards Framework provides the basis for quality assurance and the risk-based regulation of the sector which has been essential to Australia earning this reputation.

The Standards do not include an explicit statement on freedom of speech, while establishing that universities should take steps to:

...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.²

The Standards serve a particular purpose; that is, to set the quality standard for providers of higher education in Australia and ensure that standard is sufficiently high, enabling the sector regulator to ensure that quality and the reputation of the sector is protected.

The Standards also provide a framework for providers to develop internal mechanisms, monitoring and quality assurance activities for ongoing improvement in the delivery of teaching and learning as well as research outcomes. One effect of the Standards Framework is to put in effect a barrier to entry to higher education that is reliant on and reflective of quality.

The Go8 asserts that the Standards Framework as it currently operates is sufficient, and that any steps to enhance it with respect to these issues must **explicitly avoid prescriptive regulatory approaches**.

It has been canvassed that an additional statement or principle could be inserted into the existing Standards Framework should this Review reach the conclusion that the current Framework is in some way deficient in this respect.

The Go8 contends that there would be significant issues with the implementation of this.

The higher education regulator - the Tertiary Education Quality and Standards Agency (TEQSA), has demonstrated an eagerness to issue Guidance Notes on any area of the Standards Framework that might require clarification, or where additional regulatory information is sought.

These Guidance Notes can also act to catalogue the requirements that TEQSA may seek from higher education providers so that TEQSA may be assured with respect to specific Standards. This could be used to include all the steps, processes and policies that are taken with respect to safeguarding free expression.

² Higher Education Standards Framework (Threshold Standards) 2015; 6.1.4.



The Go8 does not accept that this level of prescription is necessary. It would most likely be counter-productive. **The Go8 therefore would not support any attempt to expand the remit of TEQSA or any other body in this area.**

Existing university policies that protect freedom of expression

As I have outlined, academic freedom is closely guarded, enshrined, at all Australian universities. Broader issues of intellectual freedom and freedom of expression are the subject of policies, statements, codes and by-laws across all Go8 universities.

I supplied a comprehensive written brief for Minister Tehan on this issue on 3 October this year and outlined the full extent of these documents.

I have included here (**Attachment A refers**) for your information the same high-level information I provided to the Minister, on the understanding that more comprehensive and detailed information is likely to be forthcoming from Go8 member universities.

The Go8 supports the review you are undertaking and welcomes the opportunity afforded to be involved.

I am pleased you have indicated that you will address the distinction between, as you put it, 'freedom of expressive conduct and academic freedom' as this is a critical point.

I would welcome the opportunity to discuss the Review directly with you.

Yours sincerely

A handwritten signature in blue ink, appearing to read "V. Thomson", with a long, sweeping horizontal line extending to the right.

VICKI THOMSON
CHIEF EXECUTIVE

Go8 Universities' Laws, Policies, and Statements Relating to Freedom of Expression

ENTERPRISE AGREEMENTS

University of Queensland – Statement in Enterprise Agreement. Includes: protecting academic freedom; pursue critical and open inquiry express unpopular or controversial views, without harassing, vilifying or intimidating others.

Australian National University – Statement in Enterprise Agreement. Includes: creating a supportive, nurturing, challenging, and motivating for staff and students; supporting of respect, safe and engaging work environment.

Monash University – Statement in Enterprise Agreement. Includes: giving staff the right express unpopular or controversial views, but does not mean the right to harass, vilify or defame or intimidate, along with the rights to pursue critical and open inquiry.

University of Melbourne – Statement in Enterprise Agreement. Includes: The freedom of academic staff to engage in critical inquiry, intellectual discourse and public controversy without fear or favour, but does not include the right to harass, intimidate or vilify.

UNSW Sydney – Statement in Enterprise Agreement. Includes: The right to pursue critical and open inquiry, participate in public debates and express personal views, consistent with the University's Code of Conduct, without fear of harassment, intimidation or unfair treatment

University of Sydney – Statement in Enterprise Agreement: Includes: the right for Academic staff to engage in the free and responsible pursuit of all aspects of knowledge and culture and express unpopular or controversial views, provided that in doing so staff not engage in harassment, vilification or intimidation.

University of Western Australia – Statement in Enterprise Agreement. Includes: the right to pursue critical and open inquiry and participate in public debates and express opinions about issues and ideas related to their discipline area and to express unpopular or controversial views.

University of Adelaide – Statement in Academic Employees Agreement: Includes: The University is committed to preservation and protection of Academic Freedom. Academic Freedom means the freedom of academic staff members to engage in critical enquiry, intellectual discourse and public controversy without fear or favour but does not include the right to harass, intimidate, vilify or to maliciously damage the reputation of the University, bodies or associations.

STAFF CODE OF CONDUCT

University of Queensland – Statement in Code of Conduct on intellectual freedom. Includes: Rational debate presupposes open communication and the freedom to voice alternative points of view. Staff are not to cut off rational debate by verbal abuse or physical violence or intimidation.



Australian National University – Statement in Code of Conduct on intellectual freedom. Includes: the concept and practice of academic freedom as central to the proper conduct of teaching, research and scholarship. Academic freedom does not extend to behaviour that is harassing, disruptive and intimidating or that interferes with the academic or work performance or freedom of others.

Monash University – Statement in Code of Conduct on intellectual freedom. Includes: Staff should not behave towards other persons in a manner which may reasonably be perceived as intimidating, overbearing or bullying. Staff must ensure that their behaviour is respectful and inclusive at all times.

University of Melbourne – Statement in Code of Conduct on intellectual freedom. Includes: The University's values are: advocating and upholding fundamental human rights; to preserve, defend and promote the traditional principles of academic freedom in the conduct of its affairs, as set out in the Academic Freedom of Expression Policy (MPF1224).

UNSW Sydney – Statement in Code of Conduct on Academic Freedom. Includes: The University recognises and protects the concept and practice of academic freedom as essential to the proper conduct of teaching, research and scholarship within the University.

University of Sydney – Statement in Code of Conduct on intellectual freedom. Includes: The freedom to pursue critical and open inquiry in a responsible manner; recognition of the importance of ideas and ideals; tolerance, honesty, respect, and ethical behaviour; and understanding the needs of those we serve.

University of Western Australia – Statement in Code of Conduct on Academic Freedom: Includes:

Academic freedom is recognised and protected by this University as essential to the proper conduct of teaching, research and scholarship. Freedom of intellectual thought and enquiry and the open exchange of ideas and evidence are a University core value.

University of Adelaide – Statement in Code of Conduct on intellectual freedom. Includes: The Code of Conduct enables the University to recognise and protect the concept and practice of academic freedom as essential to the proper conduct of teaching, research, scholarship and creative activity.

STUDENT CODE OF CONDUCT/STUDENT CHARTER

University of Queensland – Statement in Student Charter on respect and rational debate. Includes: Treat other members of the University community with respect and courtesy in all interactions including online communications; respect the opinions of others and deal with disagreement by rational debate; not engage in conduct which disrupts the teaching, learning or research activities of other students and staff.

Monash University – Statement in Student Charter on fairness and respect. Includes: As a Monash student, you are expected to act with consideration and courtesy to other students, staff and visitors; express your views respectfully and responsibly and accept the rights of others to do the same; act safely, and not endanger others.

University of Melbourne – Statement in Student Conduct Policy, also a Student Charter on Respect. Includes: Students must respect the rights of other members of the University community to express dissent or different political or religious views; respect the opinions of others and engage in rational debate in areas of

disagreement. Also, **Student Charter**. Includes: Demonstrating respect for the freedoms and rights of other members of the University community; demonstrating respect for University resources and the campus environment.

UNSW Sydney – Statement in Student Code of Conduct on equity, respect and safety. Includes: Not to impair the reasonable freedom of other persons to pursue their studies, work or research or to participate in the life of the University. Treat all University staff, other students, and visitors to the University with courtesy, tolerance and respect. Respect the rights of others to be treated equitably, free from all forms of unlawful discrimination, harassment and bullying

University of Sydney – Statement in Student Code of Conduct. Includes: Not to act in a manner that unnecessarily or unreasonably impedes the ability of employees, honorary appointees, consultants, contractors, volunteers, any other members of the public or other students to access or use the resources of the University.

University of Western Australia – Statement in University Charter of Student Rights and Responsibilities. Includes: Every student has the right to be able to communicate freely, to voice alternative points of view in rational debate, and to have their intellectual freedom protected and to recognise the fundamental principle of intellectual freedom and to seek to safeguard this principle and freedom.

+Online module. Includes: basics of ethical scholarship and correct academic conduct

POLICY STATEMENTS

University of Queensland – Intellectual Freedom Policy: sets out commitment to the protection and promotion of intellectual and academic freedom. It states: ‘these freedoms will be scrupulously observed.’ Includes the right to express unpopular or controversial views, although this does not mean the right to harass, vilify or intimidate other persons or to demean alternative points of view.

Australian National University – The Australian National University Statement on Academic Freedom: This statement outlines the fundamental importance of academic freedom to the ANU. ‘It is a founding value enabling scholars within the University to pursue knowledge, speak and write without unreasonable restriction. The University will defend the right of our staff and students to exercise their academic freedom, provided it is done with rigor and evidence. ANU will support the rights of academic freedom universally.’

University of Melbourne – Right to Academic Freedom of Expression: This statement sets out academic freedom as a core value of the University of Melbourne and the university will preserve, defend and promote the traditional principles of academic freedom. ‘The University supports the right of all scholars at the University to search for truth, and to hold and express diverse opinions. It recognises that scholarly debate should be robust and uninhibited. It recognises also that scholars are entitled to express their ideas and opinions even when doing so may cause offence. These principles apply to all activities in which scholars express their views both inside and outside the University.’

University of Sydney – Charter of Academic Freedom: This statement sets out the commitment of the University of Sydney to free enquiry as necessary to the conduct of a democratic society and to the quest for intellectual, moral and material advance in the human condition. The University further supports the responsible transmission of that knowledge openly within the academy and into the community at large, in conformity with the law and the policies and obligations of the University.

UNIVERSITY STRATEGIC PLANS

University of Queensland – Mentioned in Strategic plan 2018 – 2021: ‘We support intellectual freedom, courage and creativity’.

UNSW Sydney – Mentioned in 2016 – 20 Strategic Plan: ‘This is the vision of an institution in which there is freedom for individual researchers to pursue their own lines of enquiry... The value of ‘courage and creativity’ includes, but is broader than, the concept of academic freedom. This value constitutes a commitment to intellectual and ethical independence of mind, both of reason and imagination. It is a commitment to pursuing our best understanding of truth, and our highest conception of the good and the right, wherever it may lead.’

UNSW Sydney – Mentioned in 2025 Strategy: ‘At the core of our organisation is a determination to deliver excellence built on an ethos of academic freedom, facilitating open debate and the pursuit of ideas.

University of Western Australia – Mentioned in UWA 2020 Vision: ‘The core values underpinning our activities are commitments to a culture of high performance and continuous improvement, designed to achieve international excellence; academic freedom to encourage staff and students to engage in the open exchange of ideas and thought. The value of high performance and continuous improvement, academic freedom, respect, honesty and openness.

BY-LAWS

University of Western Australia - Statement prohibiting abusive or insulting language by campus visitors

University of Adelaide – University by-laws prohibit the use of indecent language or being a participant in disorderly conduct while on University grounds. In addition, any authorised person may remove from University grounds, any person guilty of indecent language or disorderly conduct under this by-law.