



10 January 2019

**The Hon Robert S French AC**

Suite 2, Level 13  
Allendale Square  
77 St George's Terrace  
PERTH WA 6000

Email: [freedomofspeechreview@education.gov.au](mailto:freedomofspeechreview@education.gov.au)

Dear Mr French,

**Re: Independent review of policies supporting freedom of expression and intellectual inquiry in Australian higher education**

I write in response to your request received on 29 November 2018 for information to assist you as you conduct your review of policies supporting freedom of expression and intellectual inquiry in the Australian higher education sector. I also note that you have separately written to our Chancellor David Gonski. David has asked me to inform you that he agrees with my letter and as a result he will not be sending a separate letter to you in reply to yours.

This submission is made in three parts. Part 1 sets out our key points. Part 2 sets out the information requested at numbered points 1 to 4 of your letter. Part 3 sets out further relevant information and observations on the subjects of your review (relevant to numbered point 5 in your letter).

**Part 1: Observations**

It is crucial that 'freedom of speech' and 'academic freedom' are not conflated. Adapting the **Heifei Statement**, one can describe academic freedom or freedom of inquiry as the freedom of academic staff to "produce and disseminate knowledge through research, teaching and service without undue constraint within a research culture based on open inquiry and the continued testing of current understanding", and one might describe freedom of speech or expression as the freedom to present views or ideas (including contentious or unpopular ideas and the freedom to protest) without constraint by state authorities. The latter is always limited by competing concerns such as security, vilification and public order.

The University of New South Wales, Sydney (UNSW), is committed to academic freedom, (and, more broadly, to intellectual freedom and the spirit of open inquiry) as essential to the proper conduct of teaching, research and scholarship within the University. UNSW is confident that its existing safeguards and processes provide for a robust, transparent and effective defence of academic freedom.

UNSW believes that 'Freedom of Speech' on university campuses should be no different to anywhere else in Australia. We do not believe that there are any particular aspects of university life which would justify altering protections or constraints on freedom of expression when, for example, an individual walks from Kensington High Street onto our campus. Universities along with other organisations should be regulated in the general legal framework rather than by a hybrid set of protections or constraints unique to universities. UNSW agrees with the Group of Eight (Go8) proposition that "universities offer no special environment where free speech is or should be especially enabled or restricted." Australia lacks any equivalent of the US Constitutional protection of freedom

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of expression, on which US responses to concerns about freedom of speech on campus are based. Any attempt to guarantee 'freedom of speech' more widely in Australia should therefore be dealt with at a constitutional level or via general statutory protection rather than by piecemeal attempts made through regulation and aimed at specific sectors.

We note that various Australian jurisdictions have legal frameworks for addressing the inevitable tensions between protection of freedom of expression and protection against discrimination or violence. In NSW, section 93Z of the Crimes Act 1900 declares as criminal the intentional or reckless threatening or incitement of violence on certain grounds, including race, religion and sexual orientation. As an instrument of the criminal law, this section represents a series of lines in the sand drawn by the Parliament and applies to all speech in NSW, whether on or off campus.

UNSW recognises that protecting and encouraging academic freedom and open expression is an ongoing challenge that requires a sector wide vigilance and regular discussion and review of applicable challenges and issues as they arise.

## **Part 2: University documents, policies, statements and processes relating to freedom of expression and intellectual inquiry**

As noted above UNSW is committed to protecting academic and intellectual freedom as essential to the proper conduct of teaching, research and scholarship within the University. Consistent with the requirements of the *Higher Education Standards Framework, 2015* (Part A, Section 6, Governance and Accountability), this commitment is articulated both in the culture and commitments of associations of which UNSW is a member and is explicitly noted in the university's legal structure, staff agreements, codes of conduct and other internal policies including:

### **1. University of New South Wales Act 1989 No 125**

A strong commitment to academic freedom is enshrined in the establishing act of the University at (**Part 2 Section 6 - Object and functions of University**)

*(1) The object of the University is the promotion, within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence.*

*(2) The University has the following principal functions for the promotion of its object:*

*(a) the provision of facilities for education and research of university standard,*

*(b) the encouragement of the dissemination, advancement, development and application of knowledge informed by free inquiry,*

*(c) the provision of courses of study or instruction across a range of fields, and the carrying out of research, to meet the needs of the community,*

*(d) the participation in public discourse,*

*(e) the conferring of degrees, including those of Bachelor, Master and Doctor, and the awarding of diplomas, certificates and other awards,*

*(f) the provision of teaching and learning that engage with advanced knowledge and inquiry,*

*(g) the development of governance, procedural rules, admission policies, financial arrangements and quality assurance processes that are underpinned by the values and goals referred to in the functions set out in this subsection, and that are sufficient to ensure the integrity of the University's academic programs.*

### **2. UNSW Student Code of Conduct**

The UNSW statement of commitment to academic freedom and freedom of expression for students is contained in the **UNSW Student Code of Conduct (section 2)** which reads in part:

## 2. University Responsibilities

*This Code is underpinned by two primary objectives:*

- 1. To provide a learning, teaching and research environment that enables students to achieve their full potential*
- 2. To provide a University experience for students consistent with the University's values and guiding principles.*

### 2.1. Learning, teaching and research

*The University aims to provide students with the opportunity to:*

- Study in an academic environment which fosters student participation in debate and in which students can freely express alternative points of view*

## 3. The UNSW Code of Conduct

The UNSW statement of commitment to academic freedom for staff is contained in the **UNSW Code of Conduct (part B)** and reads:

*"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. While academic freedom is a right, it carries with it the duty of academics to use the freedom in a manner consistent with a responsible and honest search for and dissemination of knowledge and truth. Academic freedom is not a defence to poor behaviour or disrespectful treatment of others."*

## 4. UNSW Equity and Diversity Policy

The commitment to academic freedom expressed in the UNSW Code of Conduct is complemented by the university's **Equity and Diversity policy (cl. 2.3)** that states:

*"All staff and students must display respect as they seek to understand each other's perspectives, and endeavour to invite and explore the evidence supporting alternative points of view."*

## 5. UNSW Australia (Academic Staff) Enterprise Agreement 2015 (cl 23).

Intellectual freedom is specifically addressed in the **UNSW Australia (Academic Staff) Enterprise Agreement 2015 (cl 23)**.

*"The University recognises intellectual freedom which entails the right of an employee to:*

- (i) contribute to the decision-making processes and structures of the University; including the right to express opinions about the operations of the University and higher education policy more generally;*
- (ii) pursue critical and open inquiry, publish, research and, consistent with the University's academic processes, freely discuss, teach, assess and develop curricula;*
- (iii) participate in public debates and express opinions about issues and ideas and about the University or higher education issues more generally;*
- (iv) participate in professional and representative bodies, including unions, and engage in community service;*
- (v) express their personal views, consistent with the University's Code of Conduct, without fear of harassment, intimidation or unfair treatment."*

## 6. UNSW 2025 Strategy

UNSW's *2025 Strategy* is the guiding document that sets out the key strategic priorities and themes that will drive the university's activities until the middle of the next decade. Accordingly, the importance of academic freedom is explicitly noted:

*“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.” (UNSW 2025 Strategy, p. 5)*

## **7. The Hefei Statement on the Ten Characteristics of Contemporary Research Universities**

In addition to university specific documents and policies, UNSW as a member of the Go8, shares a commitment to the Hefei Statement on the core characteristics of a research university. In 2013, the Go8 joined with the Association of American Universities, the League of European Research Universities and the Chinese Universities to enter into the Hefei Statement on the ten core characteristics of research universities. This Statement declared:

*“6. The responsible exercise of academic freedom by faculty to produce and disseminate knowledge through research, teaching and service without undue constraint within a research culture based on open inquiry and the continued testing of current understanding, and which extends beyond the vocational or instrumental, sees beyond immediate needs and seeks to develop the understanding, skills and expertise necessary to fashion the future and help interpret our changing world.*

*7. A tolerance, recognition and welcoming of competing views, perspectives, frameworks and positions as being necessary to support progress, along with a commitment to civil debate and discussion to advance understanding and produce new knowledge and technologies.”*

In reviewing UNSW’s policies in relation to academic freedom it was agreed that the university create a single document listing excerpts of UNSW’s current position on matters relating to academic freedom to ensure that these positions are easily accessible. This document has now been placed on the UNSW website at: <https://www.unsw.edu.au/sites/default/files/documents/Academic-and-Intellectual-freedom-at-UNSW.pdf>. UNSW also has a succinct statement about academic freedom on our main ‘about us’ web page <https://www.unsw.edu.au/about-us>.

It is also important to note that UNSW’s commitment to freedom of speech and academic expression has practical expression. A range of options are available to students, staff and other members of the university community should they wish to raise a concern about a breach in academic freedom. These include utilising the university complaints handling process or the Student Conduct & Integrity Unit; contacting the Employee Relations Team; and, where appropriate, raising the matter directly with the relevant Head of School.

### **Part 3. Other relevant information and observations**

I note that you have already received a submission to the inquiry from the Go8. UNSW contributed to this submission and endorses its content.

UNSW would like to take this opportunity to reinforce some of the key conclusions of the Go8 submission:

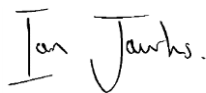
- While individual approaches to protecting academic freedom vary from university to university in terms of the policies, statements, codes, by-laws and other mechanisms employed, there remains a clear and ongoing commitment to academic freedom across the Australian higher education sector. The diversity of approaches in this regard is not a cause for concern. As you will note from your own experience as a chancellor at two universities, in any sector as large and diverse as higher education in Australia, commonly held values and sought outcomes must necessarily be achieved in the context of varied overarching approaches to governance and operations.

- Despite a very small number of recent high-profile incidents (mainly related to 'controversial' speakers appearing on a university campus) there is no evidence of a 'crisis' in academic freedom in Australia. By the very nature of the academic endeavours that take place on university campuses, the issue of protecting academic freedom will always be a topical one, and from time to time will be highly publicised. We must recognise this ongoing tension and avoid implementing 'knee jerk' or unnecessary responses when current arrangements are generally effective.
- While high-profile debate has surrounded the issue of speakers on university campuses, UNSW believes that the most significant recent threat to academic freedom has been the ministerial veto of Australian Research Council grant decisions.
- UNSW, like many other Australian universities, hosts a Confucius Institute on its Kensington campus. There has been some recent suggestion in the media that Confucius Institutes are incompatible with Australian notions of academic freedom. Such suggestions are ill informed. It is important to note that the Confucius Institute does not play an active role in the teaching and research life of the University. The UNSW Confucius Institute sits separately from the academic core of the university in the Division of External Relations. It does not teach into any degree programs or offer any formal qualifications. Its activities are mostly dedicated to raising cultural awareness of key Sino-Australian relations and assisting people looking to learn or improve Chinese language skills.
- Any decision to impose a 'blanket' or top down freedom of expression regime, for example by expanding the scope of *the Higher Education Standards Framework 2015*, would be counter-productive to the preservation of academic freedom. As per our comments above, academic freedom is best served by allowing individual universities to retain the autonomy and flexibility to implement policies that most suit the needs of their institution.

UNSW appreciates the chance to provide input into the deliberations of your review. In the meantime, if you require any further assistance please don't hesitate to contact my office on (02) 9385 2855.

With my best wishes,

Yours sincerely,



**Professor Ian Jacobs**  
President and Vice-Chancellor  
UNSW Sydney