

Chapter 4

A charter of academic freedom

4.1 Terms of reference (c) direct the committee to identify ways in which intellectual diversity and contestability of ideas may be promoted and protected, including the concept of a charter of academic freedoms. A number of submissions addressed the broad aspects of this question without regard for the specific, and rarely discussed, issue of student rights. In this chapter the committee considers the question of whether there is any need to protect diversity and the free exchange of ideas in universities and whether this is the responsibility of governments and lawmakers.

Threats to academic freedom

4.2 Many submissions, from across the spectrum of political viewpoints, agreed that there were current threats to academic freedom.

4.3 Some described the threats they perceived to freedom of teaching and research, with reference to the intrusions of the state as well as the intrusions of commercial interests into the affairs of universities. Commercial and national security pressures are making academic life more difficult. Liberal Students groups made no reference to this, arguing that the threat to academic freedom was from within the university: the consequence of a leftist dominance of teaching and research which restricted the scope of ideas.

4.4 In a recent publication, Edwina MacDonald and Professor George Williams identify three sources of threat to academic freedom.¹ The first is the increasing commercialisation of research, the second being the difficulty in obtaining research funding, and the third being the effects of counter-terrorism legislation on the freedom to research in areas related to this problem.

4.5 While MacDonald and Williams acknowledge the obvious benefits of private investment in university research they point out that the pressure on academics to generate funding can encourage them to channel their research into safe areas which are likely to attract funding, and away more controversial areas of research. They also point out that the free expression of ideas and the commercial need to protect profits do not always sit well together. Publication of research results may be discouraged because of the need to safeguard their own, and their sponsors' property rights. In a survey of researchers in the social sciences undertaken in 2001, 17 per cent indicated

¹ Edwina MacDonald and George Williams, 'Banned books and seditious speech: anti-terrorism laws and other threats to academic freedom', *Australia and New Zealand Journal of Law and Education*, vol.12, no.1. pp 29–46.

that they had been prevented from publishing contentious results as a result of commercialisation.²

4.6 As to the issue of research funding, MacDonald and Williams have much to say about its administration before the change of government toward the end of 2007. The much-criticised amendments made in 2005 to the Australian Research Council Act, which granted ministerial veto rights over grants already approved by the ARC appear to be no longer 'operable'. The submission from the Australian Academy of Science welcomed current Minister Kim Carr's initiation of dialogue with the scientific community to discuss rights and responsibilities for scientists in public research agencies.³ Nonetheless, until there is a significant increase in research grant funds through the ARC concerns about over-reliance on private funding will continue.

4.7 MacDonald and Williams point out that the large number of new laws made over recent years for the purpose of resisting or deterring terrorist attacks have had a profound effect on a range of human rights. In 2005 Parliament enacted new sedition laws. In theory, these could be applied in cases where academics, or anyone else, urge actions which might threaten 'the peace and good government of the Commonwealth'. In addition, anti-terrorism laws have also resulted in the censorship or banning of publications relating to terrorism.⁴

4.8 The submission from the National Tertiary Education Union also identified anti-terror laws as a matter of concern for universities. It submitted:

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. 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.⁵

In support of a charter of rights

4.9 There is a substantial amount of published research and commentary on the need for statutory protection of academic freedom, all of it relating to those issues of

² *ibid.*, p. 35.

³ Australian Academy of Science, *Submission 54*

⁴ *ibid.*, p. 39.

⁵ NTEU, *Submission 36*, p. 8.

academic freedom familiar to most scholars and commentators. There has been some support expressed for the idea of statutory defence of academic freedom from mainstream academics and interest groups concerned about some of the trends described in the previous section.

4.10 The terms of reference for this inquiry, however, do not strictly address these mainstream issues. They assume that the university is threatened by unbalanced and unscholarly teaching, and the prevalence of a university culture which is oriented toward intellectually vapid or destructive minority causes. Those concerned about these trends also favour a charter of academic freedom, although it arises from radically different beliefs and is intended to serve quite different ends, despite the language in which it is couched. The committee deals with this first.

The Horowitz inspiration

4.11 Information in a number of submissions indicates that the idea of a charter of rights intended specifically to ensure 'balance' in the content and teaching of humanities and social sciences courses emanates from the United States, and is the brainchild of a well-known (and one-time left) academic David Horowitz. In 2001 Horowitz founded Students for Academic Freedom, and soon after proposed an academic bill of rights.

4.12 The American connection should be noted. Far more Americans than Australian are willing to be affiliated with or identified with a political party. It has been estimated that over 70 per cent of American academics identify themselves as Democrats or Democrat supporters. Republicans believe that universities are controlled by Democrat coterie, and that the course content, and the stance of academic staff serves to further the influence of what they deride as liberalism. That is, views other than liberal views are squeezed out of the curriculum, and knowledge is processed through the prism of liberalism. Horowitz and his Students for Democratic Freedom aim to reverse this through the implementation of an academic bill of rights. The American proposal has been put into the form of legislation which has been introduced in the House of Representatives and to several state legislatures.

4.13 That is the inspiration for the Liberal Students' proposal. As the committee was told:

The Australian Liberal Students Federation would like to see universities across the nation adopt a charter of academic rights which would protect diversity of thought and students' entitlement to freedom of inquiry. Such a charter would provide for new standards of curricula that would include alternative and disseminative sources in course materials and quality control mechanisms to ensure an adequate spectrum views on subject matter taught. There would be guarantees that academics are hired on the basis of merit, with no consideration of their political affiliation, and research funding would be allocated on the condition that they foster pluralist perspectives on issues of importance. Most importantly, such a charter would ensure blind and double marking for student assessments and make sure that the students' work is judged by the fairest possible standard.

We believe that such a charter would be the best means to hold academics to account and to make the quality of our universities' content, teaching and assessment content as good as it can and must be.⁶

4.14 The debate over the proposed American legislation and how it would operate has not been researched by the committee. On the face of it the intention of the legislation appears benign and expressed in such liberal terms as to provoke surprise that it would be needed in a country with the democratic traditions of the United States. It appears at one level to provide for what already exists. Even if Horowitz's bleak view of a takeover of American campuses by subversive left-wing elements could be shown to be valid, it is difficult to see how a charter of academic freedom would serve to reverse this trend. Its application to Australia cannot be imagined.

4.15 In this regard the committee notes a submission which proposes what its author admits are draconian rules to eliminate academic bias from university teaching, and from university culture generally. The submission proposes (with commentary attached):

The drafting and enforcement of an *Academic and Students' Bill of Rights* which would defend academic and campus pluralism by preventing instances of unjustified discrimination. This would be achieved by (i) preventing 'trendy' mono-cultural paradigms from dominating academic discourse, and (ii) secure true diversity of thought among the student population.

This scheme would necessarily require a procedure whereby rights are guaranteed by penalising breaches thereof. Where as it is always tempting to codify rights and liabilities in times of uncertainty, this approach could nevertheless pose further procedural difficulties and rigidify the process through which student and academic liberties are guarded and enforced. Moreover, it might be counterproductive where it is argued that the said rights are limited to those enumerated in the code.

The prohibition of any and all political expression by academic staff on campus, included but not limited to, the display of posters, badges, stickers and other like paraphernalia, the prohibition of politically motivated or politically coloured remarks during periods committed to the holding of lectures, tutorials, seminars, student-teacher conferences and the like; subject to the following exceptions (i) where the remarks and paraphernalia is occasioned in private company, and (ii) where the occasion of political commentary and display of said paraphernalia is relevant to the substance of a lecture, tutorial, seminar, student-teacher conference or the like.⁷

4.16 Whether or not this viewpoint is presented as a parody of a vision by Horowitz disciples, it does show that the cure which is proposed by some neo-

⁶ Mr Gideon Rozner, *Committee Hansard*, 8 October 2008, p. 95.

⁷ Mr Edwin Dyga, *Submission 19*.

conservatives fearful of a 'leftist stranglehold' on universities is likely to be far worse than the disease.

Mainstream support for statutory academic freedom

4.17 MacDonald and Williams also favour statutory protection of academic freedom. They argue that:

Experience elsewhere shows that a Charter would give real protection to human rights like freedom of speech and could have a powerful impact in shaping public debate. While no such law provides the whole answer, and is not a substitute for ongoing political or industrial action, it would be a valuable tool in preventing the further erosion of academic freedom in Australia.⁸

4.18 The National Tertiary Education Union (NTEU) also advocates legislative protection for academic freedom. It cites threats to academic freedom arising from the enactment of anti-terrorism laws and new sedition provisions which restrict the rights of researchers and lay them open to criminal offences. It points out that the traditional protections afforded to academics through collective agreements and university codes of practice are no longer sufficient.⁹

4.19 Dr Ben Saul, from the Faculty of Law at Sydney University supports these views, recommending that legislation to protect academic freedom be based on the protection contained in the *Education Act 1989* (New Zealand).¹⁰ The New Zealand legislation has been mentioned in a number of submissions. Section 161 of the New Zealand *Education Act 1989* provides protection for academic freedom in regard to 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; freedom of academic staff and students to engage in research; freedom of the institution and its staff to regulate the subject-matter of courses taught at the institution, and the freedom of the institution and its staff to teach and assess students in the manner they consider best promotes learning. In addition, the Act acknowledges the freedom of the institution through its chief executive to appoint its own staff.

4.20 The committee notes that the intention of the Act is to protect both students and teaching staff. Beyond expressing the view that the provisions appear sensible and reasonable, the committee makes no comment on whether similar legislation would be necessary and appropriate in Australia, particularly in the light of the apparent effectiveness of non-legislative protections instituted by universities.

⁸ Edwina Macdonald and George Williams, 'Banned Books and Seditious Speech: Anti-Terrorism Laws and Other Threats to Academic Freedom', *Australia and New Zealand Journal of Law and Education*, vol.12, no.1, p. 46.

⁹ NTEU, *Submission 36*, pp 6–7.

¹⁰ Dr Ben Saul, *Submission 1*, p. 3.

Opposition to a statutory protection of academic freedom

4.21 The committee notes that opposition to the principle of statutory protection of academic freedom comes from a cross-section of academic opinion. Of particular note is the inclusion on this side of the argument of the Australian Liberal Students' Federation. It appeared to the committee that the prevailing view favours the status quo. Universities Australia and a number of individual academics expressed the view that universities were in no need of further regulation. Despite the vagaries of common law in regard to academic freedom, it was believed by some submitters that there was already sufficient protection for academic freedom contained in the various protocols instituted by universities.

4.22 In the view of the Australian Political Studies Association (APSA), universities already have systems to promote and protect academic freedom. These are contained in codes of conduct, strategic plans and in enterprise agreements. The committee cites an example in the University of Queensland's *Code of Conduct* which 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.¹¹

4.23 APSA describes arguments in favour of a separate charter of academic freedom, as 'well-meaning and seductive'. It is wary of any initiative that may play into the hands of proponents of an academic bill of rights similar to that proposed in the United States which is intended to facilitate university hiring policies that would promote a 'plurality of perspectives' in regard to the ideology of appointees. APSA warns against establishing any charter of academic freedom which would require universities to recruit staff on any basis other than merit.¹²

4.24 Professor Sinclair Davidson from RMIT, also representing the Institute of Public Affairs, told the committee that he doubted whether statutory underpinning of academic freedom would add any value to what now prevails.

4.25 Professor Brian Galligan, was asked his views on the desirability of legislation, and responded:

Usually for these sorts of things, as with a bill of rights and legislating in that way, there are usually arguments that you can run on both sides of the question. I tend to be in favour of strong professionalism and tradition, if that is adequate, but then there comes a point perhaps when there are so many other intruding and often unintended consequences of things that are happening that that may not be enough. My own view is that just legislating for something resolves nothing at all; it is really the nurturing of that sort of strong professional culture and an honouring of certain principles in the way institutions conduct their business and so on which can be easily eroded by a lot of things, even unintended things. In the first instance I would want to be shown that there was a real need for legislating; secondly, that it would make some material difference as opposed to the alternative of, in a sense, smartening up or trying to refurbish the traditions and practices we have in place. On the face of the thing, I would say no; let us see if we can repair or refurbish what we have.¹³

4.26 In relation to this viewpoint, the committee notes that universities have developed charters of academic freedom which have more substantial recognition as a result of the establishment of the Australian Universities Quality Agency. The committee assumes that if academic freedom is in need of further strengthening, the necessary repairs and refurbishing, to use Professor Galligan's words, can begin with AUQA.

¹¹ Taken from *Submission 36*, NTEU, p. 5.

¹² APSA, *Submission 13*

¹³ Professor Brian Galligan, *Committee Hansard*, 8 October 2008, p. 75.

4.27 The prospect of charter of rights style legislation causes concern in parts of academe which would appear to be at a safe distance from conflict and controversy, and where academic staff and students have not been known for their expressions of turbulent dissent uncomfortable views. The committee received submissions from divinity schools affiliated with universities pointing out particular problems that would arise for them. As noted in Chapter 2, clashes of views over religious belief and its relationship to secular affairs and belief are not unknown in universities in the 21st century.

4.28 A theologian from the Australian Catholic University, Professor Neil Ormerod has raised the issue of how one person's faith commitment may be another person's 'ideological, political and cultural prejudice'. He points out that theological institutes often require a commitment to faith of the kind that some people would regard as erroneous or meaningless, and posed the question of how scientists would view the axiom of St Augustine: 'Unless you believe, you will not understand'. Professor Ormerod continued:

Again, similar concerns could be raised about the needs for courses “to reflect a plurality of views, be accurate, fair, balanced and in context”. Would, for example, a charter of academic freedoms require a Christian theological college to present Hindu, Buddhist, Islamic and Jews faith positions in the name of pluralism and balance? Certainly, many theological courses will have units on inter-religious matters and one would expect the presentation of other faith positions to be accurate and fair. But if every course was expected to present the full plurality of inter-religious views on every faith issue held by Christians, it would swamp the curriculum. Even within Christianity, would one require a Pentecostal college to include detailed material on Greek Orthodoxy, and vice versa? Academic freedom does not require such false attempts at “balance”.¹⁴

4.29 Finally, the view of the Australian Liberal Students' Federation is notable for its opposition to any statutory protection of academic freedom. The Federation is as vehement as other Liberal Student organisations in its opposition to what it sees as ideological prejudice evident across the higher education sector, but states that the remedy for this lies in the hands of universities to ensure that academic freedoms are strengthened.

...it is the Federation's view ... that the proposed legislative entrenchment of these freedoms is not the method in which such a charter should be implemented. Formal legislation to combat problems of prejudice in tertiary education may not be suited to the differing requirements of each university's location and circumstance. Furthermore, the Federation is averse to promoting ideals of freedom through methods of compulsion and respects the autonomous structures and operations of Australian universities. Hence, the ALSF purports that individual policies of academic freedom should be adopted at these institutions to promote academic

¹⁴ Professor Neil Ormerod, Australian Catholic University, *Submission 7*, p. 2.

efficacy with assistance from the government. In what is now a very competitive higher education market, the Federation contends that it will be in the best interests of universities to act on their own volition in adopting charters of academic rights in attracting potential students. Incorporating a charter of academic rights into university policies can only be a positive for tertiary institutions competing with their competitors for Australia's best and brightest school graduates.¹⁵

Conclusion

4.30 The committee has reached no considered view on whether there should be statutory protection of academic freedom. It has had limited opportunity it had to consider the evidence in detail. The issue would require its own inquiry, rather than as a subsidiary part of an inquiry about quite a different matter. The committee was without the benefit of specific advice from vice-chancellors, and could not even begin to consider which jurisdiction would be vested with legislative responsibility. The issue would need to be looked at as part of the governance framework for universities and would require the full attention of university councils and vice-chancellors, as well as academic specialists. In short, this is a matter for universities to consider in their own time and to make recommendations to government if they consider that course of action necessary.

¹⁵ Australian Liberal Students Federation, *Submission 61*, p. 11.