



# **Submission to Consultation on free speech amendments to the Higher Education Support Act**

**University of Melbourne Graduate  
Student Association**

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# Introduction

Universities occupy a unique role in generating new knowledge, which must be subject to academic rigour. Upholding academic and intellectual freedom is essential to the core purpose of universities. While the Independent Review of Freedom of Speech in Australian Higher Education Providers did not find evidence of a systemic freedom of speech crisis in Australian universities<sup>1</sup>, changes to legislation and policy governing higher education would assist in safeguarding academic freedom.

The Graduate Student Association (GSA) is the independent representative organisation for all graduate coursework and research students at the University of Melbourne. We are led by an elected Council of 15 graduate students, and on behalf of over 36,000 constituents we represent graduate student interests to the University and wider community, provide facilities and services, deliver events and activities to promote graduate student community and academic excellence, and support over 130 affiliated graduate student groups.

GSA's vision is for a cohesive community that actively empowers graduate students' experience and excellence.

Our mission is to contribute to the emotional health and wellbeing of graduate students and support their striving for academic excellence and transition to work.

We welcome the opportunity to provide our perspective on the proposed free speech amendments to the Higher Education Support Act 2003 (HESA). We partially support the amendment, making the following recommendations to encourage academic freedom in Australian universities:

**Recommendation one: That the Government drastically increases public investment into higher education and research.**

**Recommendation two: That universities take steps to reduce the portion of their workforce on casual and sessional contracts, including through converting repeat contract workers to ongoing employment.**

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<sup>1</sup> French, RS 2019, Report of the Independent Review of Freedom of Speech in Australian Higher Education Providers March 2019, accessed from <https://docs.education.gov.au/node/52661>

**Recommendation three: That Section 19-10, Part 2 of the HESA be amended to insert a clause “(d) must include a count of total number of staff employed, categorised by ongoing and limited-term/casual employment”.**

**Recommendation four: That references to “freedom of speech” in the HESA amendment be replaced with “freedom of political speech”.**

Recommendation five: That Section 19-38 of the HESA be amended to mandate that universities must pay at least 50% of the collected student services and amenities fee to their independent student association/s.

## **The importance of academic freedom at universities**

Text It is important for universities to embody academic freedom. We appreciate that the French review found no evidence for a crisis of freedom of speech in Australian universities, and we would like to ensure that this continues to be the case in future. We communicate partial support for the proposed HESA amendments which would fortify against future impediments to freedom of speech, and we suggest further amendments to other sections of the HESA which would strengthen academic freedom in universities.

We endorse the inclusion of ‘academic freedom’ and its definition, including all elements outlined in the proposed amendment. We particularly welcome freedoms for students and staff to participate in their respective representative bodies, which must be without any negative ramifications.

## **A funding system that encourages freedom of speech**

There is tension between freedom of speech at universities, and universities’ need to satisfy external funders and seek revenue from international education<sup>2</sup>. Due to chronic under-funding of university teaching and research by the Federal Government, universities seek to make up this funding shortfall from elsewhere. At the University of Melbourne, just 31% of the University’s

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<sup>2</sup> Council of Australian Postgraduate Associations 2019, Comments on proposed amendments to the Higher Education Standards Framework (Threshold Standards) 2015, accessed from <http://www.capa.edu.au/higher-education-standards-framework-freedom-of-speech/>

income is from public funding; this represents a 13% decline over the preceding five years<sup>3</sup>. Much of the University's income comes from postgraduate and international student fees. In this context, the University has a responsibility and an interest in cultivating a positive student experience – which will occasionally interfere with the ideal of freedom of speech. While universities' reliance on revenue from full-fee paying courses cannot be wholly attributed to a deficit of public funding, restoring funding to sustainable levels would give universities more scope to nurture freedom of speech on their campuses.

This divergence between freedom of speech and universities' public relations is evident in the case studies highlighted below, in which the airing of staff concerns about university teaching and employment conditions resulted in punitive consequences. There must be mechanisms by which concerned parties can advocate on matters of public interest, while abiding by any reasonable codes of conduct set by the university.

Case study one: In 2019 at Murdoch University, mathematics lecturer Professor Gerd Schröder-Turk publicly criticised English language admission requirements and support. Subsequently, Murdoch University sought to remove him from the university senate (a matter that is still unresolved) and began the process of suing him for millions of dollars in lost revenue due to reputational damage from his comments<sup>1</sup>.

Case study two: A sessional tutor at a Victorian university used his Twitter account (a personal account linked to his student email address) to tweet about university working conditions, including underpayment of wages. He was subsequently contacted by his employers' Human Resources department about breaching their social media policy – but not to investigate his claims about working conditions. This example was drawn from our forthcoming submission to the inquiry into unlawful underpayment of employees' remuneration, written together with the National Tertiary Education Union.

The proposed HESA amendment defines academic freedom to include:

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<sup>3</sup> University of Melbourne 2019, 2018 annual report, accessed from <[https://about.unimelb.edu.au/\\_\\_data/assets/pdf\\_file/0030/89544/2018-Annual-Report.pdf](https://about.unimelb.edu.au/__data/assets/pdf_file/0030/89544/2018-Annual-Report.pdf)>

“The freedom of academic staff and students to express their opinions in relation to the higher education provider in which they work or are enrolled”.

We welcome the inclusion of this element. We are supportive of the right of staff and students to campaign for improvements to the higher education system. There must be freedom to advocate for students without fear of adverse consequences. This cannot be overcome by simply amending the HESA with reference to academic freedom and freedom of speech. The HESA amendment must be done in tandem with an increase in public investment in universities.

**Recommendation one: That the Government drastically increases public investment into higher education and research.**

At the same time as increasing public funding, we must remove material barriers to staff and students’ abilities to advocate for improved teaching and support in universities. In a hiring environment in which two-thirds of university employees are employed on a sessional, casual or fixed-term basis<sup>4</sup>, staff who express their concerns about the university may find that they are simply not re-hired the next semester.

**Recommendation two: That universities take steps to reduce the portion of their workforce on casual and sessional contracts, including through converting repeat sessional contract workers to ongoing employment.**

As a starting point, there is a need for freedom of information to the community on workforce composition. In the state of Victoria, universities are required to provide annual reporting on the total number of employees<sup>5</sup>. This is divided into ongoing and contract/casual employment. This is an indicator of the job security of the university workforce. It would be good practice to extend this public reporting to all universities. This could be achieved through an amendment to the HESA.

**Recommendation three: That Section 19-10, Part 2 of the HESA be amended to insert a clause “(d) must include a count of total number of staff employed, categorised by ongoing and limited-term/casual employment”.**

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<sup>4</sup> National Tertiary Education Union 2018, The flood of insecure employment at Australian universities, accessed from <https://www.nteu.org.au/library/download/id/8988>

<sup>5</sup> Kneist, P 2019, Insecure employment the reality for 2 out of 3 Victorian university employees, Connect Magazine, vol. 12, no. 2, accessed from <https://www.nteu.org.au/article/Insecure-employment-the-reality-for-2-out-of-3-Victorian-university-employees-%28Connect-12-02%29-21504>

## Working within the Australian legislative framework

In Australia, there is no explicit right to freedom of speech, with the closest national equivalent being freedom of political speech. In the proposed HESA amendment, freedom of speech must be balanced with the workplace rights of staff and students' rights to have a safe learning environment. Following the recommendation of the Council of Australian Postgraduate Associations on the proposed amendment to the Higher Education Standards Framework (Threshold Standards) 2015<sup>6</sup>, we suggest the HESA amendment be adjusted to “freedom of political speech” (rather than simply “freedom of speech”) in Section 2-1 (a) (iv) and Section 19-115.

**Recommendation four: That references to “freedom of speech” in the HESA amendment be replaced with “freedom of political speech”.**

Such an adjustment is more in line with the core purpose of universities. This avoids creating a situation in which freedom of speech is legally conferred but not defined. This also minimises possible conflicts of the proposed amendment with aspects of employment and discrimination laws.

If there is political will to create an explicit right to freedom of speech under Australian law, we agree with the Group of Eight that this would be more appropriately addressed through constitutional reform<sup>7</sup>.

## Enabling students' freedom to participate in associations

In the proposed amendment, the definition of academic freedom includes:

“The freedom of students to participate in student societies and associations.”

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<sup>6</sup> Council of Australian Postgraduate Associations 2019, Comments on proposed amendments to the Higher Education Standards Framework (Threshold Standards) 2015, accessed from <http://www.capa.edu.au/higher-education-standards-framework-freedom-of-speech/>

<sup>7</sup> Group of Eight 2019, 'Go8 submission: Review of freedom of speech, accessed from <https://go8.edu.au/go8-submission-review-of-freedom-of-speech>

We support the inclusion of this element. A further amendment to the HESA is required to empower students to exercise this freedom.

Currently, universities collect the Student Services and Amenities Fee (SSAF) which is earmarked to support non-academic services and amenities. The predecessor to this fee was used to resource student representative bodies. A limitation of the current legislation is that there is no requirement for universities to disburse any collected SSAF to independent student associations. Placing student associations at the discretion of their university for their funding, which at many universities is a tiny fraction of the total SSAF collected, places a constraint on their ability to criticise the university when advocating for students. We are fortunate at GSA to receive SSAF funding from the university to support student representation and participation in societies. At some other universities, this is not the case. At universities which entirely lack independent student representation, students' right to participate cannot be exercised.

By mandating that at least a portion of the SSAF is paid to independent student associations, including postgraduate associations, these groups would be empowered to exercise their freedom of expression.

**Recommendation five: That Section 19-38 of the HESA be amended to mandate that universities must pay at least 50% of the collected student services and amenities fee to their independent student association/s.**