

Comments on the Proposed Legislative Amendments to the Higher Education Support Act (2003)

The Australasian Council of Deans of Arts, Social Sciences and Humanities (DASSH) is the authoritative agency on research, teaching and learning for the Humanities, Arts and Social Sciences (HASS) in Australian and New Zealand universities. We welcome the opportunity to comment on the proposed amendments to the Higher Education Support Act (2003).

Universities and their academics, particularly those specialising in HASS disciplines, have a well-established history of promoting and protecting free intellectual inquiry. Academic Freedom is a defining feature of universities and distinguishes them from other research institutions. The term is well understood by academics and university management and is given protection in the Enterprise Agreements of many Australian universities. It is therefore reasonable to amend the Higher Education Support Act (HESA) to highlight the obligation of universities to continue to promote and protect Academic Freedom.

While DASSH does not oppose the inclusion of Academic Freedom in the HESA, it does question the decision to include the proposed definition of the term in the legislation. Universities have different, at times overlapping, at times distinct, relationships with their academic staff, professional staff, contractors, research students and coursework students. The proposed definition of Academic Freedom to replace 'free intellectual inquiry' raises questions about the rights of those in each of these groups under a variety of circumstances.

For example, the proposed definition exposes universities to unreasonable claims by students to determine the content of their studies, and to speak as representatives of their university. It does not grant the same protections for freedom of comment or participation in representative groups to professional staff as it does academic staff, which could allow unethical administrations to justify disciplinary action against professional staff who are critical of their institution. The definition also fails to recognise that many university stakeholders fall into multiple categories. There are people who are employed by universities as academic and professional staff simultaneously. Many others are both employees and students at their universities.

Given the uncertainty that would be introduced to university administration should this definition of Academic Freedom be legislated, DASSH recommends removing the proposed definition from the amendment. In its place, DASSH favours the definition by the National Tertiary Education Union:

"The freedom [of academics] to conduct research, teach, speak, and publish, subject to the norms and standards of scholarly inquiry, without interference or penalty, wherever the search for truth and understanding may lead."¹

¹ National Tertiary Education Union (2005) *Intellectual (Academic) Freedom*

https://www.nteu.org.au/policy/workforce_issues/intellectual_freedom Accessed: 11 February 2020



Freedom of Speech is a more problematic term, and one which the 2019 Independent Review of Freedom of Speech in Australian Higher Education Providers was warned “must not be conflated”² with Academic Freedom. Furthermore, the Review heard that, “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.”³

On these bases, DASSH recommends that that reference to Freedom of Speech is removed from the proposed legislative amendments in the absence of constitutional reform.

² Department of Education (2019) *Report of the Independent Review of Freedom of Speech in Australian Higher Education Providers*

https://docs.education.gov.au/system/files/doc/other/report_of_the_independent_review_of_freedom_of_speech_in_australian_higher_education_providers_march_2019.pdf Accessed: 11 February 2020, pg. 36

³ Ibid