

Stakeholder consultation on proposed free speech amendments to the Higher Education Support Act 2003 (HESA)

This is the Innovative Research Universities (IRU) group's response to the stakeholder [consultation on proposed freedom of speech amendments to the Higher Education Support Act 2003 \(HESA\)](#) and parallel changes to the Higher Education Standards Framework.

1. Replacing the words 'free intellectual inquiry in learning, teaching and research' with 'freedom of speech and academic freedom'

The IRU supports the proposed changes at Section 2-1(a)(iv) and 19-115, which would have the effect of replacing the words 'free intellectual inquiry in learning, teaching and research' with 'freedom of speech and academic freedom'.

2. Inserting a legislated definition of 'academic freedom'

The IRU does not support introducing a definition of 'academic freedom' as follows:

"Academic freedom", for the purposes of this Act and the Tertiary Education Quality and Standards Agency Act 2011 (TEQSA Act) and any standards made under that Act, comprises the following elements:

- *The freedom of academic staff to teach, discuss, and research and to disseminate and publish the results of their research;*
- *The freedom of academic staff and students to engage in intellectual inquiry, to express their opinions and beliefs, and to contribute to public debate, in relation to their subjects of study and research;*
- *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;*
- *The freedom of academic staff, without constraint imposed by reason of their employment by the university, to make lawful public comment on any issue in their personal capacities;*
- *The freedom of academic staff to participate in professional or representative academic bodies;*
- *The freedom of students to participate in student societies and associations; and*
- *The autonomy of the higher education provider in relation to the choice of academic courses and offerings, the ways in which they are taught and the choices of research activities and the ways in which they are conducted.*

There is no need to define academic freedom in legislation. It is a well-known concept with a variety of specific definitions in university policies and enterprise agreements. The IRU believes a legislated definition would place heavy weight on a specific set of words, not the evolving application of the core concept.

Each university should retain the freedom to develop their own policies, procedures and wording around academic freedom, as best suits their own institution. University staff should be the primary arbiters of whether those policies and procedures are appropriate for the institution in question.

The university definition and policy would be subject to the requirements of the Act, such that any approach that undermined the core concept could lead to repercussions from the Minister under HESA or TEQSA in assessing adherence to the Standards, and ultimately be tested in a court of law.

It is also problematic that the Government proposal follows, not precedes, many university updating policies and related documents based on the university level definition.

3. Freedom of academic staff to make lawful public comment on any issue in their personal capacities

The IRU is particularly concerned about the fourth dot point in the definition (the freedom of academic staff to make lawful public comment on any issue in their personal capacities).

The key problem is that it conflates and confuses the separation of the two key concepts under discussion: academic freedom and freedom of speech. As such, it has the potential to create some highly undesirable employment disputes, should a member of staff wish to test the meaning of the wording to its limits.

As the wording stands, for example, it would seem that a university academic would be within her or his rights to publicly declare they hold a racial, sexuality or gender prejudice against one or more of the students they are teaching. If challenged about holding such a view, they would seem to be able to defend themselves by claiming to have spoken in a personal capacity, not an academic one.

Equally, dot point four would seem to provide rogue academics with undue protection from the usual standards of academic scrutiny and rigor. When challenged about inaccurate statements or research, the proposed wording would seem to allow any academic to defend themselves by claiming to have been acting in a personal capacity rather than a professional one.

For the above reasons, if HESA is to be amended to include a definition of academic freedom, the IRU recommends that the wording at dot point four is removed in its entirety.

Summary of IRU recommendations

1. Support replacing the words 'free intellectual inquiry in learning, teaching and research' with 'freedom of speech and academic freedom'
2. Oppose including a definition of academic freedom into HESA and the Higher Education Standards Framework.
3. That if a definition of academic freedom is inserted into HESA, dot point four be removed in its entirety.

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