

SUBMISSION TO THE INDEPENDENT REVIEW OF FREEDOM OF SPEECH IN HIGHER EDUCATION PROVIDERS

Dear Sir/Madam,

Sheridan College welcomes this opportunity to provide a submission to the *Independent Review of Freedom of Speech in Higher Education Providers* ('The Review').

We are a not-for-profit provider of higher education, an initiative of the *Australian Baptist Education Inc* (ABE). In 2014, Sheridan College was registered as a higher education provider with the Tertiary Education Quality and Standards Agency ('TEQSA'), and was officially opened in January 2015 and its main campus is in the Perth CBD.

At Sheridan we are the proud heirs to a long Baptist tradition of free speech and academic freedom. Baptist experiments in democratic governance and free association were influential models in the formation of modern democracy and open academic institutions. When England's medieval universities denied entry to students who did not belong to the Church of England, Baptists formed their own associations and started their own academic institutions.

Statement of Facts

On 14 November 2018, the Minister for Education, the Hon Dan Tehan MP, announced that an independent review would be undertaken by the Hon Mr Robert French AC, former Chief Justice of the High Court of Australia.¹

The present review comes after a series of controversies on university campuses across Australia, where students and academic staff have been accused of stifling public debates.²

Sheridan College is aware that the primary focus of the review is on the effectiveness of university policies and practices to address the requirements of the Higher Education Standards

¹ 'Review into University Freedom of Speech', *Department of Education and Training*, November 2018, <https://www.education.gov.au/review-university-freedom-speech>

² G. Hutchens, 'University Warn Against Meddling as Inquiry into Freedom of Speech Announced', *The Guardian*, November 14, 2018.

Framework to promote and protect freedom of expression and intellectual inquiry on Australian campuses.³

The former Chief Justice of Australia, The Hon Robert S. French AC, who is also the current Chancellor of the University of Western Australia, will be reviewing existing material regarding free speech, including codes of conduct, enterprise agreements, policy statements and strategic plans.⁴

The Review follows an extensive research by the Institute of Public Affairs ('IPA'). In 2017, the IPA recommended that Australian universities adopt the Chicago Statement or a similar declaration.

In November 2014 the University of Chicago formed its 'Committee on Freedom of Expression' after a series of incidents where students at various schools sought to prevent controversial speakers that year.⁵ The 'Report of the Committee on Freedom of Expression'⁶, now widely known the 'Chicago Statement' (or 'Chicago Principles'), has become 'a gold standard among institutions that wish to their show their commitment to this core principle of American higher education'.⁷

The Chicago Statement provides a set of guiding principles intended to demonstrate a strong commitment to freedom of speech and freedom of expression on college campuses. As January 9, 2019, the Foundation for Individual Rights in Education reports that 57 American colleges and universities across the country have committed themselves to the principles of the Statement or

³ Above n.1.

⁴ The Hon Dan Tehan MP, 'Review into University Freedom of Speech', Department of Education and Training, Media Centre, 14 November 2018, at: <https://ministers.education.gov.au/tehan/review-university-freedom-speech>

⁵ This committee was appointed by University of Chicago's President Robert J. Zimmer and Provost Eric D. Isaacs. It was comprised of the following academics: Geoffrey R. Stone – Chair (Edward H. Levi Distinguished Service Professor of Law), Marianne Bertrand (Chris P. Dyalynas Distinguished Service Professor of Economics); Mark Siegler (Lindy Bergman Distinguished Service Professor of Medicine and Surgery), David A. Strauss (Gerard Ratner Distinguished Service Professor of Law), Kenneth W. Warren, Fairfax M. Cone Distinguished Service Professor, Department of English), Amanda Woodward (William S. Gray Professor, Department of Psychology)

⁶ 'Report of the Committee on Freedom of Expression', *Committee on Freedom of Expression at the University of Chicago*, 2014, at <https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf>

⁷ M. Poliakoff, 'In Defense of the Chicago Principles', *Inside Higher Ed*, December 21, 2018, at <https://www.insidehighered.com/views/2018/12/21/chicago-principles-are-gold-standard-freedom-expression-campus-opinion>

modelled their own based on similar goals, including Princeton University, John Hopkins University, State University of New York, George Mason University, and Brandeis University.⁸

Sheridan College supports the idea that Australia's higher education providers should adopt the Chicago Statement or a similar declaration. The Statement recognises free speech on campus as an issue that carries the core mission of every university as a place of learning. It defends free and open inquiry in all matters, and guarantees the broadest possible latitude to speak, write, listen, challenge and learn.

On the other hand, the Chicago Statement properly recognises that freedom of speech does not mean everyone can say what they want, wherever they want. It permits restrictions on speech that violates the law, is defamatory, threatens or harasses, invades privacy or confidentiality, or is incompatible with the functioning of a university.⁹ This is found in the following passage of the Statement:

The freedom to debate and discuss the merits of competing ideas does not, of course, mean that individuals may say whatever they wish, wherever they wish. The University may restrict expression that violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy and confidentiality interests, or that is otherwise incompatible with the functioning of the University.¹⁰

The Chicago Statement, however, also reminds us that 'these are narrow exceptions to the general principle of freedom of expression, and it is vitally important that these exceptions never be used in a matter that is inconsistent with the University's commitment to a completely free and open discussion of ideas'.¹¹ Above all, the Statement manifests a 'fundamental commitment to the principle that debate or deliberation should not be suppressed because the ideas put forth are thought by some or even by most members of the University community to be offensive, unwise, immoral, or wrong-headed.'¹²

The Chicago Statement goes perfectly in line with the comments made by Professor Hanna Holborn Gray when she served as President of the University of Chicago, from 1978 to 1993. When named to the post in that prestigious university, Gray became the first female academic in

⁸ 'Chicago Statement: University and Faculty Body', November 9, 2019, at <https://www.thefire.org/chicago-statement-university-and-faculty-body-support/>

⁹ K. Gelber, 'There is No Need for the 'Chicago Principles' to Protect Freedom of Speech', *The Conversation*, November 15, 2018.

¹⁰ Above n.6.

¹¹ *Ibid.*

¹¹ H. H. Gray, *Searching for Utopia: Universities and their Stories* (University of California Press, 2012), p 86.

¹² Above n.6.

the United States to hold the full presidency of a major university. While serving as President of the University of Chicago, she famously stated:

Education should not be intended to make people comfortable, it is meant to make them think. Universities should be expected to provide the conditions within which hard thought, and therefore strong disagreement, independent judgement, and the questioning of stubborn assumptions, can flourish in an environment of the greatest freedom ... The tendency to rule making, as in the case of speech codes designed to avoid unpleasantness and distress, elevates the model of the social community at the expense of the intellectual freedom central to a university's life.¹³

The Statement informs that the University of Chicago 'has dedicated itself to the preservation and celebration of the freedom of expression as an essential element of the University's culture'. It reminds us that one its most celebrated Presidents, Robert M. Hutchins, insisted that the best "cure" for ideas we may deeply disagree or even find personally "offensive", 'lies through open discussion rather than through inhibition'. As stated by the Statement,

the ideas of different members of the University community will often and quite naturally conflict. But it is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Although the University greatly values civility, and although all members of the University community share in the responsibility of maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive and disagreeable those ideas may be to some members of the community.¹⁴

Sheridan College notes with great concern that, in recent years, there have been numerous attempts to restrict free speech and academic freedom in Australian universities, most often in the name of encouraging 'tolerance' and 'responsible' public debate. As a result, students and academic staff have been found at the receiving end of persecution for simply holding ideas that are no longer accepted by the mainstream academic elite.

About the Author of the Review

The Hon Robert French AC is a former Australian High Court judge, and currently Chancellor of the University of Western Australia. In a speech delivered in Darwin's Parliamentary House, on 17 September 2018, Mr French warned universities face the risk of legislative intervention unless they provide a more robust defence of free speech on campus.¹⁵

¹³ Gray, above n.11, p 86.

¹⁴ Above n.6.

¹⁵ C. Merritt, 'Unis Urged: Freedom of Speech More Important Than People's Feelings', *The Australian*, September 18, 2018.

Mr French rejects the use of what he describes ‘an extended concept of safety’ to justify restrictions on what can be discussed in public. He also reminds that university administrators, academics and student bodies should be required to overcome ‘a very high threshold’ before seeking to prevent speech on campus by reference to its content. If the threshold is set too low in the interests of feelings of the university community and applies an extended concept of “safety” in support of restrictions, the reputation of universities in the wider community which it serves might be at risk’, he said.

In this sense, Mr French has warned that the actions of university executives are probably subject to the implied (constitutional) freedom of political communication. According to him, ‘to the extent that universities, operating under the authority of acts of parliament which create them, make legal rules affecting freedom of speech, those rules would have to comply with the implied freedom’. Thus Mr French concludes:

There is a question whether administration policies would be subject to the same constraints. Given that universities executives act under the authority of the law setting up the university and defining its powers, the answer is probably yes.¹⁶

This argument accords with that made by the legal academics Joshua Forrester, Lorraine Finlay, and Augusto Zimmermann, in an article published in the *UWA Law Review* (Finding the Streams’ True Sources: The Implied Freedom of Political Communication and Executive Power, Volume 43, Issue 2, March 2018, pp. 188-254). In this article it is also argued that the ‘implied freedom [of political communication] is to be treated as a relevant consideration when exercising executive power’. The authors also explain a test the High Court has developed and how this test leads to the conclusion that, under the Constitution, Australians must be able to fully discuss controversial political and government matters, including those involving race, colour, ethnicity or nationality.

The Legal Framework

Australian universities are legally obliged to protect both freedom of speech and freedom of expression. They are legislatively bound to meet a range of criteria in exchange for federal funding, and are responsible to the federal university regulation.

¹⁶ The Hon Robert French AC, ‘Free Speech and the Law on Campus – Do We Need a Charter of Rights for Universities?’, 8th Austin Asche Oration in Law and Governance, hosted by Charles Darwin University and the Australian Academy of Law, Darwin/NT, September 17, 2018, at [http://www.academyoflaw.org.au/resources/Documents/Austin%20Asche%20Oration,%20Free%20Speech%20and%20the%20Law%20on%20Campus%2017.9.2018%20\(3\).pdf](http://www.academyoflaw.org.au/resources/Documents/Austin%20Asche%20Oration,%20Free%20Speech%20and%20the%20Law%20on%20Campus%2017.9.2018%20(3).pdf)

Under the *Higher Education Support Act 2003 (Cth)*, universities are required to have ‘a policy that upholds free intellectual inquiry in relation to learning, teaching and research’. Furthermore, the *Higher Education Standards Framework 2015 (Cth)* requires a commitment to free intellectual inquiry as it states: ‘The higher education provider has a clearly articulated higher education purpose that includes a commitment to and support for free intellectual inquiry in its academic endeavours’.

In addition, Australia’s primary higher education regulatory agency, Tertiary Education Quality and Standards Agency (TEQSA), in its 2017 Diversity and Equity guidance note, declares: ‘Measures taken to accommodate diversity should not contravene the pursuit of intellectual inquiry, and more generally, freedom of expression’.

Unfortunately, however, one can provide numerous examples of suppression of freedom of speech and academic freedom in Australia’s universities. Anyone who reads newspapers and magazines is surely aware of the politically correct environment that has overtaken our institutions of higher learning.

What the press reports is usually anecdotal. The Institute of Public Affairs, by contrast, has conducted a systematic study of what is happening on our campuses. According to the *Free Speech on Campus Audit 2018*, 34 out of our 42 universities adopt policies that substantially limit freedom of speech. Such policies substantially limit freedom of speech or make them act more ‘censoriously’.¹⁷

According to *Free Speech on Campus Audit 2018*, 81 per cent of Australia’s universities effectively stifle academic inquiry and intellectual debate by restricting free speech, with just one university, the University of New England, fully supporting free speech on campus. The report highlights a number of instances where university policies violate free speech and academic inquiry, including:

- Federation University’s Bullying Prevention statement includes ‘hurting another person’s feelings’ as a definition of bullying.

¹⁷ R. Baxendale, *Eight in 10 Universities Restrict Free Speech*, The Australian, May 18, 2016, at <https://www.theaustralian.com.au/higher-education/eight-in-10-universities-restrict-free-speech/news-story/48ae4f9b4782edf947d596ee6a62f059>

- The University of Queensland's Discrimination and Harassment Policy, Western Sydney University's Bullying Prevention Guidelines, and Charles Sturt University's Anti-Racism Policy forbid 'sarcasm'.
- The Australian National University's Discipline Rule 2017, Bond University's Handbook, and Charles Sturt University's Harassment and Bullying Prevention Policy prevents behaviour that is 'unwelcome'.
- Monash University's social media policy forbids students from making comments that 'might be construed' to be 'offensive'.¹⁸
- James Cook University's Discrimination, Bullying and Harassment Policy prevents behaviour that 'makes a person feel offended'.
- La Trobe's University's Bullying and Harassment Policy defines bullying to include 'unintentional offence'.
- Bond University's Student Handbook forbids behaviour that might be considered to be 'unwelcome'.
- Central Queensland University's Student Behavioural Misconduct provision prevents behaviour that 'could offend' or 'embarrass'.

These are only a few examples of policies that, while created with benign intentions, seriously threaten freedom of speech on campus. According to the report, such policies 'have a chilling effect on free speech' because they 'encourage students and academics to err on the side of caution rather than express a potentially controversial idea, and could be used to punish students for expressing their opinion'.¹⁹

As noted by IPA research fellow Matthew Lech, 'self-censorship is an insidious danger to our universities, and it is spurred along by real censorship and the threat of penalties under insidious free speech policies'.²⁰ He perceives a 'disturbing' number of university students 'feeling too uncomfortable to express their viewpoints, aggressive activists policing language and interrupting events, and academics dictating what opinions can and cannot be expressed'.²¹ Such a failure to protect free speech, writes Lech, 'is seriously imperilling the discovery of truth, the core purpose of Australia's universities; student development, which requires debate and challenge; and the future of Australian society, which depends on a tolerance and openness to debate'.²²

Definitions

¹⁸ M. Lesh, *Free Speech on Campus Audit 2017* (Melbourne/Vic: Institute of Public Affairs, 2017), p 3.

¹⁹ *Ibid.*, p 15.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*, p 2.

Under the Draft Recommendation attached to the letter dated 8 February 2019 to Sheridan College, it is stated that:

*'the duty to foster the wellbeing of staff and students supports ... measures to prevent any person from using lawful speech which is intended to insult, **humiliate** or intimidate other persons and which a reasonable person would regard, in the circumstances, as likely to have one or more of those effects'.* [emphasis ours]

Although we agree that nobody should intend to insult or intimidate another person in the course of an academic conversation, the idea of protecting people from feeling 'humiliated' is a broad prohibition that can generate a considerable limitation of freedom of speech.

The word used in this draft provision – namely 'humiliate' – is notoriously imprecise and largely subjective in nature. In order to assure that such provision is not ultimately used for the purposes of suppression free speech on campuses, it would be necessary to provide a further explanation of what actually constitutes instances of 'humiliation'. Surely this should not encompass to simply being 'humiliated' by miserably losing an academic debate, so that the exercise of free speech can be fully guaranteed and protected.

Principles of the Code

Under the heading 'Principles of the Code', Section 5 of the Draft Recommendation communicates:

The university has the right and responsibility to determine the terms and conditions upon which it shall permit external visitors and invited visitors to speak on university land and use university facilities and in so doing may:

- (a) Require the person or persons organising the event to comply with the university's booking procedures and to provide information relevant to the conduct of any event, and any public safety and safety issues; ...*
- (b) ...*
- (c) Refuse permission to any invited visitor or external visitor to speak on university land or at university facilities where the content of the speech is unlikely to...*

- (i) ...
- (ii) *Prejudice the fulfilment by the university of its duty to foster the wellbeing of staff and students;*
- (iii) *Involve the advancement of theories and propositions which do not meet scholarly standards to such an extent as to be detrimental to the university's character as an institution of higher learning.*

These are very broad terms. They leave university administrators with a vast array of options to suppress speech and academic debate on grounds of 'public safety' or 'scholarly standards'.

Without clear and defined terms, university administrators may continue to exercise an excessive level of discretion, thus passing (subjective) judgements on the value, morality or ethics of academic debate.

In addition, the statement above confers a 'right' to university administrators to approach the conduct in question not by community standards, but the specific standards of the mainstream academic elite.²³

The idea that academic speech can be detrimental to the 'university's character' is undoubtedly detrimental to free speech. The result can be a further concentration of discretionary power on the university administrators who might use such a provision to discriminate against the dissemination of certain values and perspectives on campus.

Accordingly, students and staff could be punished for merely voicing comments arbitrarily perceived as too '*un-academic*' or '*controversial*' by the academic establishment, with such provisions tending to generate a much less academically diverse environment by fostering an environment of intimidation on those who simply desire to express diverging or cutting-edged academic ideas and opinions.

Professor Glyn Davis of the Australian National University warns the government that he and other members of the academic elite 'do not welcome the importation of legislative responses and codes of conduct written in the United States against the constitution and laws of that

²³ A. Chapman, 'Australian Racial Hatred Law: Some Comments on Reasonableness and Adjudicative Method in Complaints Brought by Indigenous People', (2004) 20 *Monash University Law Review*, 31-32.

nation'.²⁴ 'Those who claim a free speech crisis on campus must establish their case – to them falls the burden of proof', Davis says.

What follows is only a brief, not entirely comprehensive, account of the free speech crisis on campus.

Sydney University's Excessive Fee for "Controversial" Talk

Bettina Arndt is a prominent Australian sex therapist, journalist and clinical psychologist. She is presently on that national tour on the talk "Is there a rape crisis on campus?", which seeks to debunk claims that Australia's universities are a hotbed of sexual assault against female students. Having accepted \$1 million from 'Universities Australia', the Australian Human Rights Commission conducted a survey that could provide data which conformed to the 'university rape culture' narrative of the feminists. And yet, the survey found that only 1.6 per cent of students reported had been sexually assaulted in a university setting in 2015-16. Arndt also informs that our universities were given these results ahead of time, 'yet vice-chancellors ... indulged in virtue-signalling exercises proving their willing to respond to the [alleged] rape crises'.²⁵

Although Arndt was supposed to be speaking at Sydney University on September 11, 2018, her attempts to speak on campuses have been subject to what has been described as a campaign of 'mounting harassment ... official delay, and obstruction'.²⁶ The Sydney University administrators stalled for 12 days the organiser's application for a venue, claiming the application was processed. Then the University decided to allow for the talk to go ahead but announced that the event organisers, the Liberal Club Students, would be heavily charged for security. The Vice-Chancellor, Michael Spence, presented them a bill of nearly \$500, plus the room hire.

The Sydney University Liberal Club claims that the Vice Chancellor had "put a price block" on free speech. The Club President wrote to Dr Spence on August 24, 2018, asking for Sydney University to waive the security costs as a sign of support for controversial discussions on campus. He accused Spence of hypocrisy for outwardly welcoming free speech but hindering debate with the costs of security to deal with protestors. 'It is just hypocritical for Dr Spence to talk about the importance of free speech yet be so willing to put a price block on conservative

²⁴ G. Davis, 'Special Pleading: Free Speech and Australian Universities', *The Conversation*, December 4, 2018.

²⁵ Ibid.

²⁶ B. Arndt, 'The Vidkun Quisling of Parramatta Road', *Quadrant*, September 6th, 2018, at <https://quadrant.org.au/opinion/qed/2018/09/vidkun-quisling-parramatta-road/>

students having events’, he said. ‘He’s being held hostage by the politically correct, and it’s as if he’s happy to financially shut us down’.²⁷ The Liberal Club students challenged the University administration, and the event went ahead without the students paying for security, with Spence ‘being informed that it is his responsibility to ensure unruly students do not disturb the event’.²⁸

Unfortunately, however, the event at the University of Sydney turned ugly when protesters led by the student’s *Wom*n’s Collective* prevented Dr Arndt and others from entering the venue. She was due to speak to about 90 people, but only a few of them managed to get past the crowd. Others were stuck outside trying to get through when up to 40 student protesters blocked the corridor leading to the talk. The riot squad was called and a video records students intimidating people and blocking the corridor. Arndt has now lodged a formal complaint with Dr Spence, accusing five named students of breaching the university’s code of conduct. She has challenged him ‘to initiate complaint proceedings under clause 4 of the university’s code of conduct, which says students must not unreasonably impede access to lecture theatres and must not become involved in harassment or bullying’.

UWA’s Cancellation of Academic Talk

On 17 August 2018 a lecture by U.S. academic paediatrician, Dr Quentin Van Meter, was cancelled by the University of Western Australia (UWA) after students from the UWA Student Guild launched a petition calling on the event’s cancellation.²⁹ Dr Van Meter is clinical associate professor of Paediatrics at both the Emory University and Morehouse Schools of Medicine.³⁰ He is also president of the American College of Paediatricians (ACP), which is known for rejecting

²⁷ Ibid.

²⁸ B. Arndt, ‘Sydney University Charges Liberal Club Students \$500 Security For My Talk’, Facebook, September 7, 2018, at

https://www.facebook.com/permalink.php?story_fbid=343214802908831&id=146481039248876&_tn_=-K-R

²⁹ J. Carmody, ‘UWA Cancels Talk by Transgender Sceptic Quentin Van Meter After Protests’, *ABC News*, August 17, 2018, at <http://www.abc.net.au/news/2018-08-17/uwa-cancels-talk-by-controversial-academic-transgender-views/10132400>

³⁰ ‘Dr. Van Meter graduated from the College of William and Mary in 1969. He attended the Medical College of Virginia where he received his medical degree in 1973. Dr. Van Meter did his pediatric internship in 1973 and 1974, and his pediatric residency from 1974 to 1976, at the Naval Regional Medical Center in Oakland, through the University of California, San Francisco. He completed his pediatric endocrinology fellowship from 1978 to 1980 at John Hopkins University School of Medicine. Dr. Van Meter worked as a staff pediatric endocrinologist at the Naval Hospital in San Diego from 1980 to 1986 and was Chairman and Director of the residency training program at the Naval Hospital Oakland from 1986 to 1991. In 1991, he retired from a 20-year career in the Navy Medical Corps and moved to the Atlanta area where he joined the Fayette Medical Clinic as a Pediatrician and Pediatric Endocrinologist. To better serve the ever-expanding population of pediatric patients with endocrine disorders, he developed his own full-time endocrine practice, which today bears his name. He is a clinical associate professor of Pediatrics at both the Emory University and Morehouse Schools of Medicine’. – Providers, Van Meter Pediatric Endocrinology, Atlanta/GA, August 24, 2018, at <http://www.pediatricendo.com/our-staff.html>

the “science” around transgender people and for its opposition to gender reassignment of children. Dr Van Meter believes the transgender movement is based on ideology rather than real science, and has regularly explained the problems with ‘proven science’ surrounding transgender people.

Unfortunately the UWA Student Guild president, Megan Lee, welcomed the cancellation of this event organised by the Australian Family Association. ‘We want to make clear to the university that students in the Student Guild do not believe there is a place for hate speech on campus ... a university is not an appropriate place for those discussions’, she said.³¹ However, the Australian Medical Association of Western Australia (AMA WA) said it did not agree with the decision to suppress academic learning and freedom of discussion. ‘We do not want to shut down discourse on these topics, and universities are the best placed institutions to discuss conflicting ideas’, AMA president, Oma Khorshid, said.³²

The basis of the denial of venue by this Australian university was that organisers were not able to guarantee a risk-free environment for attendees. A statement from UWA alleged the event had to be cancelled due to ‘non-compliance with UWA’s venue hire policy’. In fact, the University Campus Management team started (a last minute) demand for a ‘robust event management plan’ on the grounds the risk surrounding the event had been ‘elevated to a higher level’. Such a justification is contested by Dr Kevin Woods, who has Chief Executive Officer level in the Public, Local Government, and Private sectors. Pro Vice Chancellor at Murdoch University from 1999 to 2001, Woods contends that such a last-minute demand is just an excuse by the university administrators to cancel an academic talk that presents an academic view not entirely approved by the Student Guild. According to him,

As former senior executive of a major university it is my experience that it is well within the resources of UWA to ensure the safety of attendees. Rather than allow this event to proceed, the university has again succumbed to the wishes of the Left-leaning student guild. It apparently garnered more than 6000 thousand signatures to a petition opposing Dr Van Metter being allowed a venue on the basis of his speech being classified as “hate speech”. It is becoming more prevalent in our society that anyone who expresses an opinion opposed to the “progressive” Left is to be demonised as a person espousing hate speech, rather than being treated as a person expressing their right to free speech.³³

The capitulation of the UWA in cancelling this lecture by a renowned paediatric endocrinologist, all because the Student Guild did not entirely approve it, reveals that such universities are not

³¹ Carmody, above n.29.

³² Ibid.

³³ K. Woods, ‘UWA and Hate Speech Furphy’, *The West Australian*, September 21, 2018, at <https://www.pressreader.com/australia/the-west-australian/20180821/281883004189480>

fully committed to the principles of academic debate and freedom of speech. Rather, the university is unwilling to provide an academic venue where people can respectfully listen to all sides of an argument before coming to a reasoned conclusion. It certainly reflects the undesirable state of higher education in this country.

Opposition of the Academic Elite

The Education Minister has argued that the Review of Freedom of Speech in Higher Education Providers has been established to ‘ensure our universities are places that protect all free speech, even when what is being said may be unpopular and challenging.’

Unsurprisingly, the peak body representing the university sector, ‘Universities Australia’ questioned why the review is necessary, stating that ‘campuses should be free of political interference’.³⁴ According to the chair of Universities Australia, Professor Margaret Gardner, ‘some assertions in media reporting had mischaracterised academic freedom and downplayed the robust state of debate on campuses’.³⁵

Adding to the barrage of powerful university administrators questioning whether the inquiry was needed is Australian National University’s vice-chancellor, Brian Schmidt. ‘I expect the status quo to be retained – ANU, at least, is a place which welcomes discussions on issues made in good faith by our staff, students and invited experts’, he told Fairfax Media.³⁶

Vice chancellor Schmidt should be reminded about the recent decision of his university to pull out of negotiations with a wealthy private donor, the Ramsay Centre for Western Civilisation, over funding for a scholarship and teaching program in studies of Western Civilisation. Schmidt announced the ANU is withdrawing from negotiations on the grounds of academic freedom, despite no attempts whatsoever to have such freedom limited by the Ramsay Centre.

On April 30, 2018, the website of the ANU College of Arts and Social Sciences was indicating the university would be in control in any deal with the Ramsay Centre. Apparently this was not

³⁴ G. Hutchens, ‘University Warn Against Meddling as Inquiry into Freedom of Speech Announced’, *The Guardian*, November 14, 2018.

³⁵ *Ibid.*

³⁶ M. Koziol, ‘Former High Court Chief Robert French to Lead Inquiry into Free Speech on Campus’, *The Sydney Morning Herald*, 15 November 2018.

good enough because, as noted by law professor James Allan, Australian academics, especially in the Arts and Social Sciences, have developed a sort of anti-intellectual hatred for anything about Western culture and values. As Allan explains,

The complaining academics to which [the ANU's Vice Chancellor] succumbed were afraid they would not have autonomy when it came to appointments. But if the Ramsay Centre gave them full autonomy they would pick near on wall-to-wall lefties, and that would result in teaching students quite a different account of Western civilisation than the donor intended. Mr Ramsay, like me, saw Western civilisation (warts and all) as having created the best place for humans to live ever. That goes doubly for women and minorities. You don't have to sacrifice academic scholarship in the slightest to prefer a degree program that overall was supportive of Western civilisation's many virtues and on balance scored comparatively best in the field grades.³⁷

It is deeply regrettable that the ANU has tarnished the reputation of Australian universities by refusing to host a course on Western Civilisation. In so doing, writes Greg Sheridan, the ANU has shown beyond any possible doubt how illiberal, intolerant and anti-Western such universities in Australia have become.³⁸ Instead of imposing privileged viewpoints, academics at such institutions should be more relaxed about diverse arguments and invite the voices they have silenced back into robust discussion, thus reversing the remarkable intellectual decline Australian universities have faced.³⁹

The problem is not restricted to the ANU alone. The media reports that when the University of Sydney commissioned a senior academic to prepare a draft of a potential course in Western Civilisation to be offered in partnership with the Ramsay Centre, such a proposal sparked a 'backlash' and Sydney academics are reported to have 'reacted furiously to the news', with more than 100 signing an open letter to Sydney vice chancellor Michael Spence that they are opposed to the university entering into any academic arrangement with the Ramsay Centre.⁴⁰

UWA's Rejection of the Australian Consensus Centre

As should be apparent now, this is not a call for a return to the past but a call for free speech, for real academic freedom, and authentic tolerance for a variety of intellectual expressions. For instance, some of the alternative views regarding the so-called scientific consensus about the impact of climate change have been considerably discredited in the country's academic circles. This might be so because global warming alarmism has become big business to such academics

³⁷ J. Allan, 'West Goes South', *The Spectator Australia*, June 9, 2018, at <https://www.spectator.com.au/2018/06/west-goes-south/>

³⁸ G. Sheridan, 'Our Universities Are No Longer Seeking the Truth', *The Australian*, June 7, 2018, p 12.

³⁹ C. J. Sommerville, *The Decline of the Secular University* (Oxford University Press, 2006), p 144.

⁴⁰ Ibid.

who can solicit hundreds of millions from private donors and from government, who in turn award lucrative grants to further their alarmist agenda.

In April 2015 the University of Western Australia (UWA) announced it had secured \$4 million in Federal Government funding to establish an Australian Consensus Centre to undertake ‘detailed economic cost benefit analysis into many of Australia’s, and the world’s biggest challenges’. The university initially embraced the opportunity, with Vice-Chancellor Professor Paul Johnson stating:

The Centre is unique in that it’s to deliver a robust, evidence-based knowledge and advice to the Australian Government on potential policy reforms and other interventions that will deliver the smartest, most cost-effective solutions in areas ranging from poverty, social justice and food sustainability. Many of these issues will form the basis of the United Nation’s post 2015 Development Goals.⁴¹

Because the creation of such a centre attracted ‘a mixed reaction from staff and students’, the university eventually decided to cancel the contract for the policy centre. The reason for the cancellation was that the Danish environmentalist, Bjørn Lomborg, was invited to be head of the Centre. Although Lomborg endorses the science of human-induced climate change, he is deemed controversial for also arguing that the risks of climate change have been overstated, and it is more important to tackle problems such as malaria, extreme poverty and pollution.

Due to this view of the climate science, UWA Academic Staff Association vice president Professor Stuart Bunt stated on the occasion that the project should not be tolerated because, in his own words, ‘[Lomborg] is not a scientist or an economist, he’s a political scientist’ and ‘Lomborg would be using the name of the university, to put what are largely political opinions, rather than evidence-based statements, using the university’s name’.⁴²

The Vice Chancellor directly contradicted such a statement. Professor Johnson reminded us that Dr Lomborg is actually a leading environmental scientist and perfectly qualified for the academic position: ‘I believe that a man who has worked with many Nobel Laureate economists, has been named one of *Time* magazine’s most influential people, and has published with Cambridge University Press, meets the criteria of being made an Adjunct Professor—an honorary position

⁴¹ P. Johnson, ‘Message from the Vice-Chancellor on the Australian Consensus Centre’, *The University of Western Australia*, Perth/WA, May 8, 2015, at <http://www.news.uwa.edu.au/201505087564/message-vice-chancellor-australian-consensus-centre>

⁴² Unknown Author, ‘UWA Cancels Contract for Consensus Centre Involving Academic Bjørn Lomborg’, *ABC News*, May 11, 2005, at <http://www.abc.net.au/news/2015-05-08/bjorn-lomborg-uwa-consensus-centre-contract-cancelled/6456708>

that carries no salary'. Despite this, he went ahead with the cancellation on grounds that the strong opposition by academic staff and students had 'placed the University in a difficult position'. Johnson stated:

It is with great regret and disappointment that I have formed the view that the events of the past weeks places the Centre in an untenable position as it lacks the support needed across the University and the broader academic community to meet its contractual obligations ... The work of the Australia Consensus Centre is important to Australia's future by engaging in important discuss and economic analysis about how we ensure future generations are better off than those that came before them. Unfortunately, that work cannot happen here.⁴³

Final Remarks

Sheridan College welcomes the opportunity to offer this submission to the Independent Review of Freedom of Speech in Higher Education Providers.

Sheridan believes that the present Review should lead to the development of an Australian version of the Chicago Statement. The Statement recognises free speech on campus as an issue that should go to the core mission of every university as a place of learning.

We defend free and open inquiry in all matters, and a guarantee to the broadest possible latitude to speak, write, listen, challenge and learn. We recognise, however, reasonable restrictions on speech that directly violates the law, is openly defamatory, threatens or harasses, or invades privacy or confidentiality.

However, there have been a substantial number of cases where traditionally-minded opinions, ideas, and statements which are legal in society at large, have been suppressed. There is growing evidence of unreasonable censorship where speakers' engagements are cancelled and violently protested merely because certain groups disagree with their ideas.

There have been venue cancellations, students instructed to not express their viewpoint, demands for course content censorship, censure of academics, students required to pay selective security fees, and increasing use of trigger warnings.

For example, at Charles Sturt University students are 'expected to value' explicitly ideological causes such as 'global citizenship' and 'economic, social and environmental sustainability'. At

⁴³ Above n. 43.

James Cook University, a respected academic (Dr Peter Ridd) was sacked in May last year after he made a statement challenging the quality of science that claimed the Great Barrier Reef was being damaged by climate change. According to him, ‘it is far too risky for an academic to engage in any controversial debate that might upset the university hierarchy that ... has all the power to crucify any transgression.’

If our universities and other higher education providers are to remain valuable in the 21st century, members of the academic community will need to preserve our campuses ‘as a sanctuary for serious debate of unorthodox ideas and avoid succumbing to the temptation to make them echo chambers of orthodox creeds’.⁴⁴

To conclude, Sheridan welcomes the opportunity given to make this submission to this Independent Review. In so doing, we have provided a small account of instances whereby free speech and academic freedom are not necessarily recognised and respected in Australia’s universities. Above all, we strongly recommend that Australian universities and higher education providers adopt the Chicago Statement or a similar declaration to the same effect of re-establishing free speech and academic freedom in Australia.

⁴⁴ K. E. Whittington, *Speak Freely: Why Universities Must Defend Free Speech* (Princeton University Press, 2018), p 43.