



**FREE SPEECH UNION**

**ACADEMIC** MEMBERSHIP

## **Inter-University Council on Academic Freedom Submission to Education and Training Amendment Bill (No 2) 2025**

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On behalf of: Inter-University Council on Academic Freedom chaired by Prof. Paul Moon (AUT) and Prof. Elizabeth Rata (University of Auckland)

The Inter-University Council on Academic Freedom (IUCAF) is a sub-committee of the Free Speech Union (FSU). We represent academics from across all eight universities in New Zealand and support the coordination of the work the FSU does to promote and defend academic freedom, as a derivative right of free speech for academics and students in higher education.

IUCAF writes to submit on the Education and Training Amendment Bill (No 2) 2025.

We would welcome the opportunity to appear before the Committee to speak to this submission.



## **Statement of support**

The Inter-University Council on Academic Freedom supports the Education and Training Amendment Bill (No 2) 2025, subject to the qualifications set out below.

## **The purpose of universities: Position statement**

The Inter-University Council on Academic Freedom (IUCAF) considers the primary purpose of a university to be the pursuit and dissemination of knowledge. The pursuit of knowledge is a truth-seeking endeavour that requires relentless inquiry, critique, and refinement. All knowledge is provisional and open to critique and revision.

To fulfil their purpose, universities must actively promote the contest of ideas required for truth-seeking. It is therefore essential for their purpose that universities establish a culture in which academics are encouraged and expected to engage in good-faith discussion and debate.

New knowledge cannot be created if ideas cannot be dismantled, rearranged, and sometimes abandoned. That is true both for individuals and for the advancement of knowledge in academic disciplines. To make advances in research, it is essential that truth claims can be rigorously challenged. In this spirit, the university cannot tolerate 'sacred' ideas held to be immune to challenge or questioning.

Universities are embedded within society and have responsibilities to society. The most important social functions of universities are to:

- Generate research that contributes to improving the lives of individuals in their communities, for example through advancements in understanding about health, education, human history, and the natural world.
- Disseminate the research it produces to students, colleagues, and society.
- Educate and train students, including in the principles of good-faith discussion and debate.

A compromised environment for academic freedom is contrary to these functions. Fulfilment of these functions requires a healthy climate of academic freedom. Universities receive substantial public funding to carry out their roles, and if universities are not fulfilling this duty,



legislative intervention is not only appropriate but necessary to ensure that they adhere to their functions.

Universities are traditionally autonomous to allow them to carry out free and open enquiry. But this autonomy does not entail an ability to undermine or contravene such free and open enquiry, or to avoid legislative obligations.

Indeed, a poll conducted by the Free Speech Union in May 2024 found that 53% of respondents agreed that government funding should be partially contingent on how well a university does in upholding academic freedom.<sup>1</sup>

## BACKGROUND

### *The case for legislative change*

1. Despite being enshrined in legislation (s 267, Education and Training Act 2020 (ETA)), mounting evidence demonstrates that academic freedom is in jeopardy in New Zealand universities. This has been most comprehensively demonstrated in a report authored by Dr James Kierstead for the New Zealand Initiative last year, entitled: *Unpopular Opinions: Academic Freedom in New Zealand*.<sup>2</sup> Kierstead's report canvassed three types of evidence to assess the state of academic freedom in New Zealand universities, including 71 testimonies from academics, 21 accounts of academic freedom incidents (including deplatformings), and six surveys of students and academics, including two surveys conducted by the Free Speech Union in 2022 and 2023.
2. Although the FSU's 2023 survey was criticized for a likely sample bias due to its low response rate, findings from all six surveys were broadly consistent: Substantial proportions of respondents expressed unwillingness to voice their views on various topics, for fear of censure and possible social and employment costs. For example:

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<sup>1</sup> Free Speech Union. (2024). *Polling shows majority of Kiwis support university funding being contingent on academic freedom*. Free Speech Union: Blog. <https://www.fsu.nz/blog/polling-shows-majority-of-kiwis-support-university-funding-being-contingent-on-defending-academic-freedom>.

<sup>2</sup> J. Kierstead. (2024). *Unpopular Opinions: Academic Freedom in New Zealand*. Wellington: The New Zealand Initiative.



- a. A 2018 TEU survey showed that only 36% of the 1,936 academic staff respondents were satisfied that their institution provided the conditions for academic freedom.<sup>3</sup>
  - b. A 2021 Heterodox New Zealand survey of undergraduates found that between 25-40% of students feel 'somewhat' or 'very reluctant' to share their views on controversial issues in the classroom.<sup>4</sup>
  - c. 2022 and 2023 surveys of academic staff, conducted by Curia Market Research for the Free Speech Union, showed that many staff felt more unfree than free to "raise differing perspectives and argue against the consensus" (47%, 2022)<sup>5</sup> or "raise differing perspectives and argue against the consensus among my colleagues" (49%, 2023).<sup>6</sup> Similarly, many felt more unfree than free to "question and test received wisdom" (45%, 2022), or to "question and test received wisdom, to put forward new ideas, and to state controversial or unpopular opinions" (53%, 2023).
  - d. A leaked 2023 internal survey from the Law School at the University of Auckland revealed that only 15% of academics agreed with the statement: "I feel able to respectfully voice my views without fear of any negative impact."<sup>7</sup> A parallel survey in the Faculty of Science, also leaked, showed that only between 25% and 57% of academic staff agreed with the same statement (across the ten departments within the Faculty; the mean percentage being 38%).<sup>8</sup>
3. These are troubling results. It is noteworthy that the same pattern emerges across internal and external surveys, which further corroborates the picture that academic freedom is indeed under threat in New Zealand.

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<sup>3</sup> C. Sedgwick & S. Proctor-Thomson. (2019). *The state of the public tertiary education sector survey, 2018*. Wellington: Tertiary Education Union.

<sup>4</sup> J. Kierstead, *op. cit.*

<sup>5</sup> Free Speech Union. (2022). *Academic Freedom Poll: March 2022*. <https://www.fsu.nz/blog/academic-freedom-poll-results>.

<sup>6</sup> Free Speech Union. (2023). *Academic Freedom Report 2023*. <https://www.fsu.nz/blog/academic-freedom-report-2023>.

<sup>7</sup> Free Speech Union. (2023). *Leaked University of Auckland Survey confirms again, Academic Freedom is under fire*. <https://www.fsu.nz/blog/leaked-university-of-auckland-survey-confirms-again-academic-freedom-is-under-fire>.

<sup>8</sup> University of Auckland. (2023). *Employee Experience Survey Results*. University of Auckland.



4. As the New Zealand Universities Academic Audit Unit (AAU; Now the Academic Quality Agency, AQA) articulated:

*Academic freedom is inseparable from a university's role as critic and conscience of society. This is because academic freedom can only exist within an environment that encourages creativity, radical ideas and criticism of the status quo; and conversely, freedom is needed to express criticism. Since a university's performance in its role as critic and conscience of society is one aspect of its overall performance as an academic institution, the Academic Audit Unit (AAU) has an interest in monitoring it. A further reason for the AAU's interest is the link to academic freedom: if academic freedom is as important as generally assumed, a university's poor performance in supporting and encouraging it, will have detrimental consequences for teaching, research, and that institution's contribution to the community.<sup>9</sup>*

5. These comments appropriately place academic freedom at the centre of universities' social role and contribution. As articulated in our position statement, the primary purpose of the university is truth-seeking. By denying members of the institution their ability to pursue this with an open and genuine spirit of inquiry, universities in fact subvert their entire *raison d'être* and their social duties.
6. Another important implication for wider society is through the professions that are crucially influenced by the university, since so many professions now rely on universities for qualification and entry. Deleterious environments for academic freedom in universities pose a threat to the culture of ideas within such professions. Examples include, but are not limited to, healthcare providers such as doctors and nurses, media and communications professionals, engineers, lawyers, social workers, architects, and so on.
7. The fact that threats to academic freedom continue to pervade university campuses, despite extant legislation that should protect it, suggests that:
  - a. The current legislation provides insufficient protections of academic freedom, or
  - b. Implementation procedures and enforcement measures of the legislation are insufficient, or

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<sup>9</sup> Jones, G., Galvin, K., & Woodhouse, D. (2000). *Universities as critic and conscience of society: The role of academic freedom*. Wellington: New Zealand Universities Academic Audit Unit.



- c. Both.
8. Critics of the Bill have suggested that, at best, it is unnecessary, or at worst, it will have deleterious effects on universities. We address these concerns here:
- a. **Government-initiated measures to strengthen academic freedom violate the autonomy of universities, or the academic freedom of universities:** Universities are afforded, through legislation, the ability to self-manage, however this does not entail an ability to undermine or contravene their legislative obligations. Universities are publicly funded institutions that are reasonably expected to operate in accordance with their lawful responsibilities. Further, academic freedom does not reside in the university or with its leadership – academic freedom is a derivative right of freedom of expression, guaranteed to the *individual* academics, staff, and students, who together comprise the university community. The university itself does not have rights to academic freedom: the individuals within it do.
  - b. **The Bill will require universities to provide a platform for anyone who seeks one, including, for example, far-left or far-right speakers:** The Bill does not require universities to host all speakers who wish to speak on campus, nor does it suggest that universities should abdicate legitimate concerns about the safety of their staff and students. As is already defined in the ETA (s 268 2(d) ii(A)):
    - i. *a university is characterised by a wide diversity of teaching and research, especially at a higher level, that maintains, advances, disseminates, and assists the application of knowledge, develops intellectual independence, and promotes community learning.*

The intent of the Bill is clearly to prevent universities from refusing to host speakers with controversial or unpopular viewpoints *because of those viewpoints*, as has occurred in several deplatforming incidents in recent years.<sup>10</sup>

- c. **The Bill might impose overly burdensome compliance requirements on the university’s administration and governance:** University leaders must be held accountable for their legislative duties and responsibilities to staff and students. To suggest that university leadership should not have to demonstrate

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<sup>10</sup> J. Kierstead. *op. cit.*



compliance with the law because it might generate additional workload is disingenuous, especially given the reporting requirements to which universities are already subject.

### SUMMARY OF STRENGTHS AND RECOMMENDATIONS

9. Key strengths of the legislation include:
  - a. Inclusion of a specific duty for university Councils to protect and promote academic freedom and freedom of expression (Section 281 1(g)).
  - b. Preventing universities from denying speakers on the basis of their controversial or unpopular ideas (Section 281A 2(g)).
  - c. The introduction of annual reporting requirements for university councils (Section 651B (1)).
10. Subject to the recommendations made in this submission, the following are also strengths of the legislation:
  - a. Requiring universities to develop policies on academic freedom (s 281A).
  - b. Requiring universities to refrain from taking positions on social and political issues (281A 2(d)).
11. Our key recommendations are summarised as follows:
  - a. Avoid specifying elements of free speech statements that could be used to suppress the expression of ideas and opinions.
  - b. Tighten the clause relating to institutional neutrality and provide specific clarification about its meaning.
  - c. Require public publishing of annual report findings.

### SUBMISSION

12. The Inter-University Council on Academic Freedom supports the Education and Training Act Amendment Bill (No 2) 2025 (*“the Bill”*), subject to the implementation of the recommendations made in this submission. The recommendations will strengthen the legislation to ensure its success in achieving its aim of securing academic freedom for university staff and students.



## Strengths

### Section 281 1(g)

*Inclusion of a specific duty for university Councils to protect and promote academic freedom and freedom of expression*

13. **Section 281 1(g) (Duties of Councils):** *if the institution is a university, to protect and promote –*

*(i) academic freedom, in accordance with section 267; and*

*(ii) freedom of expression, in accordance with the university’s statement adopted under section 281A.*

14. **Comment:** This introduces a specific duty for university Councils to protect and promote academic freedom, and thereby makes universities responsible for improving the climate of academic freedom on campuses. Making university governance accountable to improving the state of academic freedom in their universities increases the likelihood that positive actions will be taken to achieve that outcome.

### Section 281A 2(g)

*Preventing universities from denying speakers on the basis of their controversial or unpopular ideas*

15. **Section 281A 2(g):** *universities should not deny the use of university premises by an invited speaker because of that speaker’s ideas or opinions.*

16. **Comment:** This explicitly addresses one of the key threats to academic freedom in recent years mentioned earlier: the deplatforming of controversial speakers. This provision ensures that speakers cannot be shut down simply because the ideas that they seek to express are contentious. This provision also secures the academic freedom of staff and students who seek to listen to ideas which are controversial or unpopular. Freedom of expression, as it is defined in the New Zealand Bill of Rights Act 1990, specifies that: “Everyone has the right to freedom of expression, including **the right to seek, receive, and impart** information and opinions of any kind in any form (emphasis ours). This provision brings the Education and Training Act into closer alignment with the NZBORA.

### Section 651B (1)



*Annual reporting requirements related to academic freedom*

17. **Section 651B (1):** *The Governor-General may, by Order in Council, make regulations prescribing information relating to academic freedom and freedom of expression that must be included in the annual report of the council of a university, for the purpose of measuring performance and establishing benchmarks.*
18. **Comment:** Annual reporting requirements introduce an accountability mechanism to ensure that universities are fulfilling their legislative duties in relation to academic freedom. The advantage of this should be apparent: universities are more likely to fulfil their legislative duties if they are held to account for fulfilling those duties. This will also generate useful data relating to academic freedom, enabling the issue to be accurately diagnosed, and allow for the identification of universities that effectively protect and promote academic freedom.

**Recommendations**

**Section 281A 2(b)**

*Avoid specifying elements of free speech statements that could be used to suppress the expression of ideas and opinions.*

19. **Section 281A 2(b):** *universities should actively foster an environment where ideas can be challenged, controversial issues can be discussed, and diverse opinions can be expressed, in a respectful manner consistent with any statute made by the university.*
20. **Recommendation:** Amend Section 281A 2(b), to remove the underlined clause.
21. **Justification:** The underlined clause would enable universities to invoke statutes to censor legitimate discussion.
22. There is cause for concern that universities might utilise clauses such as this to suppress contentious but legitimate discourse, since there is ample precedent for such scenarios across a range of universities.<sup>11</sup> One brief example was a panel discussion entitled “*The role of universities in supporting freedom of speech*” that was set to be held at Victoria University in May 2024. The event was postponed and the format adjusted, following a group of students “*freaking out*” about hearing what they

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<sup>11</sup> J. Kierstead, *op. cit.*



perceived to be “right wing voices” (referring to Jonathan Ayling and Michael Johnston),<sup>12</sup> as well as over fears that the event might become a platform for hate speech.<sup>13</sup>

23. Furthermore, the inclusion of such phrases has the potential to undermine other clauses in s 281A 2, for example:

*(f) Universities should seek to uphold their role as role as critic and conscience of society by providing a platform for invited speakers of diverse viewpoints.*

24. Or even to undermine the initial section of the clause in question:

*universities should actively foster an environment where ideas can be challenged, controversial issues can be discussed, and diverse opinions can be expressed in a respectful manner consistent with any statute made by the university.*

25. As it is currently phrased, universities may utilise this section of the Bill (in preference to, for example, s 281A (f) cited above) to deplatform speakers who some members of the university community believe will not “speak in a respectful manner.”

26. There is a risk, therefore, that some elements of this Bill might be used to undermine others, which would in turn undermine the Bill as a whole. We therefore recommend that the elements of the Bill that pose that risk be removed.

27. Whilst we agree that it is desirable that academic discourse be conducted cordially, the legislation should avoid including elements that have a high likelihood of being used to suppress the open expression of ideas and opinions, which is, by our understanding, the objective of the Bill.

28. Universities still have an obligation to protect free speech from the ‘heckler’s veto’ (or ‘thug’s veto’), that is, instances where speakers are silenced or an event is prevented

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<sup>12</sup> J. Kierstead. (2024). *VUW free speech event shows why government intervention is now necessary*. Plain Sight. <https://plainsight.nz/vuw-free-speech-event-shows-why-government-intervention-is-now-necessary/>.

<sup>13</sup> B. Hickman. (2024). *Free speech v. hate speech: Victoria University postpones debate after student backlash*. RNZ. <https://www.rnz.co.nz/news/national/515322/free-speech-vs-hate-speech-victoria-university-postpones-debate-after-student-backlash>.



from proceeding because of negative disruption such as shouting, playing music, and so on.

29. As noted above, freedom of expression, as it is defined in the New Zealand Bill of Rights Act 1990, specifies that: *“Everyone has the right to freedom of expression, including **the right to seek, receive, and impart** information and opinions of any kind in any form (emphasis ours).*
30. When hecklers prevent the free exchange of ideas, they deny both the speaker’s right to freely express their ideas, as well as the rights of those who in attendance who wish to listen to those ideas. Neither freedom of expression nor academic freedom entitles individuals to deny the rights of others to their freedom of expression or academic freedom.

### Section 281A 2(d)

*Tighten the clause relating to institutional neutrality and provide specific clarification about its meaning*

31. **Section 281A 2(d):** *universities should not take positions on matters that do not directly concern their role or functions.*
32. **Recommendation:** Amend Section 281A 2(d), to explicitly reference institutional neutrality and define the “roles and functions” of the university.
33. **Justification:** Institutional neutrality is an essential precondition for academic freedom. Section 281A 2(d) implies some form of institutional neutrality, but it does not explicitly mention it. For the sake of clarity, it needs to.
34. Universities must commit to the principle of institutional neutrality. This means they should be expected to refrain from making official statements, adopting compulsory courses, or mandating institutional practices that reasonably appear to endorse a particular political or ideological position on contested public or academic matters, except as lawfully necessary to carry out their functions as organisations for research and education.



35. The purpose and importance of institutional neutrality is articulated in the *Report on the University's role in political and social action*, developed by the Kalven Committee of the University of Chicago in 1967 (the 'Kalven Report'):

*Since the university is a community only for these limited and distinctive purposes, it is a community which cannot take collective action on the issues of the day without endangering the conditions for its existence and effectiveness. There is no mechanism by which it can reach a collective position without inhibiting that full freedom of dissent on which it thrives. It cannot insist that all of its members favour a given view of social policy; if it takes collective action, therefore, it does so at the price of censuring any minority who does not agree with the view adopted. In brief, it is a community which cannot resort to majority vote to reach positions on public issues.*

*The neutrality of the university as an institution arises then not from a lack of courage nor out of indifference and insensitivity. It arises out of respect for free inquiry and the obligation to cherish a diversity of viewpoints. And this neutrality as an institution has its complement in the fullest freedom for its faculty and students as individuals to participate in political action and social protest. It finds its complement, too, in the obligation of the university to provide a forum for the most searching and candid discussion of public issues.<sup>14</sup>*

36. Furthermore, s 281A 2(d) does not explicitly define the "roles or functions" of a university, and it is not clear how this section would cross-reference with extant legislation or policy.
37. This is problematic, because without explicit parameters, there is a risk that universities will simply establish new 'functions' and use these to take institutional positions on issues of the day.
38. This risk can be resolved by defining the "role and function" with reference to existing legislation, notably s 268 d(i) and s 268 d(ii) of the *Education and Training Act 2020*:

*(i) Universities have the following characteristics and other institutions have 1 or more of them:*

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<sup>14</sup> Kalven Committee. (1967). *Report on the University's Role in Political and Social Action*. Chicago: University of Chicago.



*(A) they are primarily concerned with more advanced learning, the principle aim being to develop intellectual independence:*

*(B) their research and teaching are closely interdependent and most of their teaching is done by people who are active in advancing knowledge:*

*(C) they meet international standards of research and teaching:*

*(D) they are a repository of knowledge and expertise:*

*(E) they accept a role as critic and conscience of society; and*

*(ii) that –*

- i. A university is characterized by a wide diversity of teaching and research, especially at a higher level, that maintains, advances, disseminates, and assists the application of knowledge, develops intellectual independence, and promotes community learning.*

### **Section 651B (1)**

*Require public publishing of annual report findings*

39. **Section 651B (1):** *The Governor-General may, by Order in Council, make regulations prescribing information relating to academic freedom and freedom of expression that must be included in the annual report of the council of a university, for the purpose of measuring performance and establishing benchmarks.*

40. **Recommendation:** Universities should be required to release the results of annual reporting of staff and students publicly.

41. **Justification:** As mentioned earlier, annual reporting requirements introduce an accountability mechanism to ensure that universities fulfil their legislative duties in relation to academic freedom. IUCAF supports this amendment. In order to give full effect to this mechanism, though, these results should be made transparent. Potential positive consequences of doing this include (but are not limited to):

- a. **Providing an incentive to champion free expression in university culture:** Since there is the potential for positive publicity and enhanced public perception through being seen to be positive actors in upholding academic freedom on their campus.



- b. **Providing members of universities with reliable insight as to how their experiences compare with others:** For example, if a student feels unable to share their views freely in class, and published results indicate that many other students at the same university feel the same, this might counteract feelings of social isolation. It may also encourage students to exercise their academic freedom with greater confidence, knowing that many other students share the same experience.
  
- c. **Enabling prospective staff and students to make informed decisions about the universities in which they work and study:** Individuals would be able to select the environments they chose to enter into with enhanced understanding. Those universities that demonstrated more open climates of academic freedom would likely attract more students and staff, and this would allow for the organic movement of individuals towards climates in which they felt more able to express themselves. It would also create further incentives for universities to improve their culture of academic freedom.
  
- d. **Enhanced transparency and accountability:** Since universities are publicly funded institutions, it appropriate that New Zealanders are able to see and determine which universities are upholding their legislative obligations, and to what extent.