

New laws whittle away academic freedom

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University academics and scientific researchers need a high degree of independence. Educating students and advancing knowledge requires an environment in which people can freely exchange ideas, challenge conventional wisdom and debate controversial and unpopular issues. The best new ideas and long-term thinking may otherwise be stifled. Despite its importance to Australia's long-term economic and social prosperity, academic freedom has been under threat for years. Changes by the Howard government to the Australian Research Council allowed for greater political interference in the funding of research, while the pressure on universities to become commercial enterprises remains a long-running cause for concern. The so-called war on terror has also taken its toll. One example is the federal sedition law passed in the wake of the July 7, 2005 London bombings.

The new offence applies where a person urges "another person to overthrow by force or violence" the Constitution, an Australian government or the authority of the Commonwealth government. The law provides a defence for a person who acts in "good faith", but only in limited cases such as for pointing out errors in legislation. The defence does not expressly include other forms of communication such as artistic speech or academic or scientific

discussion. Even where the sedition law does not apply, books have been banned on security grounds. In 2006 the Classification Review Board "refused classification" for two Islamic books, *Defence of the Muslim Lands* and *Join the Caravan*, that encourage suicide bombing and call for Muslims to engage in acts of violence. This led the University of Melbourne library to withdraw access to the books, which it had bought for a course studying terrorism. When university libraries are forced to take books off their shelves, things have gone too far. Even if academics do not break an anti-terror law, they can still be taken into custody and questioned by ASIO. It is not necessary that the academic is suspected of any wrongdoing, only that there are reasonable grounds for believing the questioning will "substantially assist the collection of intelligence in relation to a terrorism offence" and that "relying on other methods of collecting that

intelligence would be ineffective". An academic researching the causes of terrorism might interview the potential recruits of a terrorist organisation. ASIO may

be unable to obtain such candid interviews itself and could use a warrant to bring the academic in for questioning and to obtain copies of their research and interviews. This possibility is not remote. The Australian Federal Police used its separate powers to interview a student of terrorism studies. In 2005, a Monash University student was questioned by the police after buying and borrowing books on Palestinian suicide bombings, a subject he was researching for his course on terrorism. Following this, the academic teaching the course, Dr David Wright-Neville, said he would warn his students that they were probably being monitored. An academic can be detained for up to a week under ASIO's powers if the Attorney-General is satisfied that if they are not immediately taken into custody they may destroy something they could be asked to produce. If an academic is to be questioned about their research, they could be held if they might destroy their notes to protect an interviewee to whom confidentiality had been promised. Academic freedom has been whittled away by new laws and by new pressures on universities. This is because the freedom is not well protected. Although the concept of academic freedom is often defended, its meaning is rarely agreed upon and it can be hard to define. While a commitment to the freedom is often set out in university documents, it has no generally accepted definition.

Internationally, the 2005 Statement on Academic Freedom in the Report of the First Global Colloquium of University Presidents agreed on a definition. It found that, "At its simplest, academic freedom may be defined as the freedom 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." In some countries this is protected by law. Examples include the New Zealand Education Act 1989 and the Irish Universities Act 1997. The Constitution of the Republic of South Africa 1996 even provides protection for academic freedom in section 16 of its Bill of Rights. It states that "Everyone has the right to freedom of expression, which includes academic freedom and freedom of scientific research." By contrast, Australia does not protect academic freedom in the Constitution or by legislation. Australia even lacks legal protection for freedom of expression in anything like a national bill of rights. We are alone in the democratic world in this regard, leaving academic freedom in Australia uniquely vulnerable to the inevitable pressures of populism and political opportunism. Even though it lacks legal protection, academic freedom is recognised in other ways. It is often mentioned in university employment agreements and non-binding codes

of conduct. It is also part of the conventions and assumptions that shape relations between the people who work in universities. In these forms, academic freedom is fragile and easy to breach. Its maintenance depends on the vigilance of those who depend on it and on the goodwill of those who have the power to undermine it. This is a far from satisfactory state of affairs. The lack of protection for academic freedom is not only a problem for academics. It is also a problem for society at large. We all rely upon the high quality of research and teaching to better understand and solve the problems facing the nation in areas such as economics, health and the environment. This has

been recognised by the Minister for Innovation, Industry, Science and Research, Senator Kim Carr. He has moved to restore the independence and authority of the Australian Research Council and has promised new charters for public research agencies such as the CSIRO. The charters will provide for their independence and for the freedom of their researchers to conduct their work and to comment in public. Carr has said that such charters will "enshrine not only the right, but the obligation, of scientists and other researchers to participate in public research debates". This takes matters one step too far. While Carr is right to support the worthy idea that "We need to reinvigorate the concept of the public intellectual", charters of

academic freedom should not make media and other public work an obligation. Researchers should be free to comment publicly, but should not be compelled to do so. Charters for organisations are a good start, but they are not a solution to the legal threat posed by anti-terror and other laws. This requires a legal response. Australia needs specific legal recognition of academic freedom so as to place it beyond the easy reach of partisan politics and short-term reactions. Like other nations, we should provide a legal shield for academic freedom against unreasonable encroachments from other areas. Without reform of the law, academic freedom may continue to be eroded over time as existing threats remain and new threats emerge. To protect academic freedom over the longer term, it must also be seen as part of a larger debate that extends to other important values in Australian public life. These include the freedom of the media, the independence of the public service and its capacity to provide government with fearless and frank advice and the ability of non-government organisations such as charities to engage in public advocacy and not lose their funding as a result. Attacks on these values are made more possible because Australia does not take seriously the need to protect our most important democratic rights. Even freedom of speech has

no secure protection in Australian law and instead depends upon the favour of the government of the day. When this is in short supply, or during a climate of popular fear, freedom of expression can be curtailed and with it a number of other important principles such as freedom of information and open justice. If we do not take free speech seriously, it is hard to argue for the maintenance of academic freedom. The best way forward is to combine specific protection for academic freedom with broader reform to our system of government and to the legal rules. That reform should include the better protection of democratic freedoms through a national charter of human rights. The ACT has provided an excellent starting point for such a law with its Human Rights Act 2004. This issue has been put on the agenda by federal Attorney-General Robert McClelland. He has said there will be a national inquiry into an Australia charter of rights. This process should be supported so that any charter is effective in protecting freedom of expression, including that by Australia's scientific and other researchers. George Williams is the Anthony Mason Professor at the University of New South Wales and a visiting fellow at the ANU College of Law. This edited article is based on a presentation to the Federation of Australian Scientific and Technological Societies.

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