

**Submission**

**by**

**THE  
NEW ZEALAND  
INITIATIVE**

**to the Ministry of Education**

**on**

**the Education and Training Amendment Bill (No. 2)**

June 2025

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## **1. INTRODUCTION AND SUMMARY**

- 1.1 This submission on the Education and Training Amendment Bill (No. 2) is made by The New Zealand Initiative (the **Initiative**), a Wellington-based think tank supported primarily by major New Zealand businesses. In combination, our members employ more than 150,000 people.
- 1.2 The Initiative undertakes research that contributes to developing sound public policies in New Zealand. We advocate for the creation of a competitive, open and dynamic economy and a free, prosperous, fair and cohesive society.
- 1.3 The Initiative's members span the breadth of the New Zealand economy; a thriving university sector is important for economic growth and prosperity as well as for a flourishing and free society. The views expressed in this submission are those of the authors rather than the New Zealand Initiative's members.
- 1.4 The New Zealand Initiative supports the intention of this bill to protect and enhance academic freedom and institutional neutrality at New Zealand universities. There is now a substantial body of evidence that academic freedom is under threat at our universities, and there is no reason to believe that university managers will fix the problem themselves.
- 1.5 The Initiative rejects the idea that legislating to protect academic freedom constitutes an infringement on universities' independence or autonomy. All the bill seeks to do is ensure that the provision for academic freedom already in the Education and Training Act is implemented.
- 1.6 The Initiative supports many of the new provisions introduced by the Education and Training Amendment Bill No. 2, including the provisions in support of institutional neutrality and against deplatforming, the establishment of a new internal complaints procedure relating to academic freedom, and the requirement for annual reports on the topic.
- 1.7 At the same time, the Initiative believes that the legislation needs to be strengthened and that more mechanisms must be included to ensure compliance on the part of universities. Section 5 of this submission outlines compliance mechanisms that could be included while preserving university autonomy.
- 1.8 We would welcome the opportunity to appear before the Committee to speak to this submission.

## **2. BACKGROUND**

- 2.1 There is now a substantial body of evidence that academic freedom is under threat in New Zealand. This evidence was collected, summarised, and analysed in our report *Unpopular Opinions: Academic Freedom in New Zealand*, which was released last year.
- 2.2 The evidence collected in the report includes 72 testimonies from academics, six surveys of academics and students, and 21 incidents involving academic freedom that have taken place on New Zealand university campuses over the past decade. These notably include the deplatforming of Don Brash at Massey and of gender-critical feminist Daphna Whitmore at AUT, as well as the cancellation of events such as a commemoration of the Tiananmen Square massacre (AUT) and a conference on gender-critical feminism (Massey).

- 2.3 Drawing on this evidence, the report also discussed three main threats to academic freedom in this country: progressive extremism, the Chinese Communist Party, and unaccountable university managers.
- 2.4 In the UK, whose universities face similar problems, a Higher Education (Freedom of Speech) Act was introduced in May 2021 and received royal assent in May 2023. Among its other provisions, the law set up a national Director for Free Speech and Academic Freedom and a new complaints scheme for academics who feel their academic freedom has been violated.
- 2.5 In August 2022, the Education and Training (Freedom of Expression) Amendment Bill was introduced in our Parliament by ACT MP James McDowell. The bill would have required universities to take ‘all reasonable steps’ to ensure that academic freedom was upheld, including for visiting speakers, under threat of cuts to universities’ funding. It would also have required each university to have a ‘code of practice’ for academic freedom. The bill failed at its first reading after a party vote.
- 2.6 In November 2023, the National and ACT parties signed a coalition agreement that pledged to ‘amend the Education and Training Act 2020 such that tertiary education providers receiving taxpayer funding must commit to a free speech policy.’
- 2.7 The current bill, the Education and Training Amendment Bill (No. 2), received its first reading on 10 April this year and was referred to the Education and Workforce Committee for consideration.

### **3. POSITIVE FEATURES OF THE BILL AS CURRENTLY DRAFTED**

- 3.1 We strongly support the introduction of new legislation that ensures universities fulfil their obligations to academic freedom. These obligations are already spelled out in Section 267 of the Education and Training Act, but (as our report shows) universities have failed to uphold them.
- 3.2 We strongly support the requirement for university councils to adopt statements on freedom of expression (Section 281A), for them to establish complaints procedures relating to freedom of expression (281B), and for universities to report on how they have upheld academic freedom on an annual basis (306(4)(h)).
- 3.3 We also strongly support the content universities must include in the freedom of expression statements listed in Section 281(2). In particular, we agree that universities should be required to ‘actively foster an environment where ideas can be challenged, controversial issues can be discussed, and diverse opinions can be expressed’ (281(2)(b)), to adopt institutional neutrality (d), and not to deplatform speakers (f and g).

### **4. REASONS TO BE CAUTIOUS**

- 4.1 At the same time, we feel that the bill could use some considerable strengthening to ensure that universities comply with their duties towards academic freedom.
- 4.2 Most concerningly, the bill as currently drafted leaves universities – that is, university senior leaders – to draw up and police their own freedom of expression statements. This is unlikely to solve the problem the bill is designed to address.
- 4.3 As our report shows, university managers are often implicated in violations of academic freedom at our universities. In some cases, as with Massey University Vice-Chancellor

Jan Thomas' deplatforming of Don Brash, they are the main drivers of academic freedom violations.

- 4.4 The academic freedom and institutional neutrality statements that universities have put out so far have shown either a very poor understanding of these topics or a tendency to signal compliance with obligations while trying to find ways to avoid complying with them. (See e.g. James Kierstead and Michael Johnston, 'Victoria University stands up for academic freedom – with a few caveats,' *The Post*, 24 October 2024).
- 4.5 All of this suggests that university managers cannot be trusted to fulfil their obligations to academic freedom without mechanisms to ensure compliance being included in this bill. Section 5 makes some recommendations to that end.

## 5. RECOMMENDED IMPROVEMENTS

- 5.1 Section 281A(2)(b) states that '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.*'
- 5.2 The phrase that we have italicised would allow universities space to repress speech they disagree with. 'In a respectful manner' would allow them to shut down speech they choose to describe as 'disrespectful'. The broad appeal to 'any statute' would allow universities to continue using 'health and safety obligations' (for example) to cancel events, as Massey University did before cancelling the Feminism 2020 conference. (The claim is often made that controversial speech causes serious 'harm' and is thus a health and safety issue.)
- 5.3 We therefore recommend that the phrase we have italicised be removed so that Section 281(2)(b) reads simply, 'universities should actively foster an environment where ideas can be challenged, controversial issues can be discussed, and diverse opinions can be expressed.'
- 5.4 Section 281(2)(d) states that 'universities should not take positions on matters that do not directly concern their role or functions.' Here there are three problems: the lack of an explicit recognition of institutional neutrality, the phrase 'take positions on matters,' and the lack of a definition of universities' 'role or functions' (or of a reference to an appropriate definition).
- 5.5 Institutional neutrality is key to universities' flourishing and to the preservation of academic freedom. (See James Kierstead, Michael Johnston, Kendall Clements and Gaven Martin, 'Why universities must be neutral,' *Newsroom*, 18 December 2024). It had been a key principle of university governance in the US since its classic formulation in the University of Chicago's Kalven report (1967). In the wake of a slew of political statements by institutions over the past few years, a number of top US institutions, including Stanford and Harvard, publicly recommitted to institutional neutrality last year. The Education and Training Act should explicitly recognise this principle, aligning New Zealand universities with international best practice.
- 5.6 The current statement that universities should not 'take positions' opens the bill to the objection that universities have to take implicit positions on a range of matters as an inevitable result of their operations. The University of Otago's recent statement on institutional neutrality accordingly carves out a number of areas that it says cannot be covered by institutional neutrality, including sustainability, equity, and the Treaty of

Waitangi. The bill must close this loophole if the institutional neutrality provision is to have any effect.

- 5.7 Harvard's recent 'institutional voice' statement says the university should not 'issue official statements about public matters.' Forbidding universities from 'issuing official statements' would enable academics and students to voice their own views free from intimidation by their institution, but would also allow universities to take up implicit positions due to operational decisions. Stipulating further that universities should not issue official statements on '*public* matters' would make clear that universities are allowed to comment on issues that affect them – their finances, for example.
- 5.8 The current reference to universities' 'role or functions' is vague. This helped the University of Otago carve out numerous exceptions to institutional neutrality because equity and sustainability, for example, could be claimed to be part of their role or functions. This loophole also needs to be closed.
- 5.9 Fortunately, the Education and Training Act already defines universities' role and functions in Section 268(d) of the Education and Training Act. Universities should only be allowed to comment on issues or events that affect their ability to carry out their aims and purposes as described there, which mainly have to do with teaching and research.
- 5.10 We therefore recommend that Section 281(2)(d) be amended to read, 'universities must maintain institutional neutrality; they must not issue official statements on public matters that do not directly affect their ability to carry out their teaching and research purposes as stipulated in Section 268(d) of the Education and Training Act 2020.'
- 5.11 The bill should establish an Academic Freedom Ombudsman (AFO) on the model of the UK's Director for Freedom of Speech and Academic Freedom. The AFO should be responsible for overseeing the implementation of the academic freedom provisions in this act (including the complaints process) and universities' compliance with them as well as for publicly advocating for academic freedom. They should also report directly to the Minister for Universities on the climate for free speech at universities.
- 5.12 The complaints procedure that universities are required to adopt in Section 281A of the bill should be fleshed out and should not be confined to the universities. In view of what our report found about university managers' involvement in violating academic freedom, there is a real risk of an entirely in-house complaints procedure denying complainants just resolution of their claims.
- 5.13 Accordingly, the bill should also establish an independent decision-making body, appointed by the AFO, to which complainants can make appeals if they are not satisfied with the internal process.
- 5.14 In addition, the bill should allow complainants to apply to the High Court for judicial review of the decision of the independent decision-making body.
- 5.15 Finally, the bill should allow academics and students to bring civil proceedings against universities for breach of duties resulting in loss of any kind (pecuniary or non-pecuniary) if the internal complaints procedure has been exhausted and a finding has been made by the independent decision-making body or the High Court.

## 6. REPLIES TO OBJECTIONS

- 6.1 Sandra Gray, National Secretary of the Tertiary Education Union (TEU), has said this bill is 'hypocritical' because it smacks of the 'nanny state.' ('The government's free speech bill is hypocritical,' TEU website, 9 April 2025.) In a similar vein, Hon. Shanan Halbert

(Labour) said in Parliament that it was ‘ironic’ for ‘a government and the ACT party that believes in organisations making their own decisions and making their own choices’ to be supporting the bill (Hansard, 14 May 2025).

- 6.2 Sandra Gray has also stated that the TEU looks forward to ‘exposing ‘the government’s ‘hypocrisy next time they try to “cancel” a course in the social sciences they think is “useless” or “woke”’ and adds that it is in fact ‘already doing that via their changes to the Marsden Fund.’ (‘The government’s free speech bill is hypocritical,’ TEU website, 9 April 2025.)
- 6.3 We opposed the scrapping of Marsden Fund grants in the humanities and social sciences (see James Kierstead, ‘The Heterodox Hiatus,’ *Insights* newsletter, 7 February 2025), so Gray’s accusation of hypocrisy does not apply to us. And in any case, we would question whether it is accurate to describe that move as cancelling courses.
- 6.4 As for the idea that the right-of-centre parties are being hypocritical in supporting government regulation in this case, it would, of course, follow, by the same logic, that the left-of-centre parties are being hypocritical in opposing government regulation in this area.
- 6.5 But these are superficial points about party politics, not the merits of this bill. This is all that matters in our assessment of the bill, and so this is what we have chosen to focus on in this submission.
- 6.6 One objection to the bill (and to our strengthened version of it) is that it would violate or degrade university autonomy. Universities should of course be autonomous in teaching and research. But they are not free to repress or ignore the academic freedom of their academics and students. On the contrary, they are explicitly required to uphold academic freedom by the Education and Training Act (Section 267).
- 6.7 Since there is now considerable evidence that universities are failing to uphold their obligations to academic freedom, it makes sense for the government to take steps (such as this bill) to ensure that they do so going forward. This is no more a violation of universities’ autonomy than it would be a violation of hospitals’ autonomy to ensure that they were treating patients according to the highest medical and ethical standards.
- 6.8 It should be noted, moreover, that the autonomy granted to universities in the Education and Training Act is not absolute. Section 267(2) stipulates that ‘in exercising their academic freedom and autonomy, institutions must act in a manner that is consistent’ with ‘the highest ethical standards’ and with ‘the need for institutions to be accountable and make proper use of resources allocated to them.’
- 6.9 So even if this bill threatened to damage universities’ autonomy (which it does not), it would do so only in a permissible way. University managers violating the academic freedom and free speech rights of academics and students is clearly not consistent with ‘the highest ethical standards.’ Nor does it represent accountability or proper use of the resources allocated to universities.
- 6.10 Professor Jack Heinemann of the University of Canterbury has argued that universities have academic freedom as institutions and that this allows them to issue statements on public issues. (Jack Heinemann, ‘Political neutrality is contrary to academic freedom,’ TEU website, 3 October 2024.)
- 6.11 But this is a misreading of the Education and Training Act. Section 267 of the act does give ‘institutions’ the right (as part of their academic freedom) to ‘regulate the subject matter of courses,’ to ‘teach and assess students in the manner that they consider best,’ and to ‘appoint...staff.’ The right ‘to question and test received wisdom, to put forward new

ideas, and to state controversial or unpopular opinions,' however, is reserved to 'academic staff and students.' (See Michael Johnston, James Kierstead, Kendall Clements and Gaven Martin, 'Why universities must be neutral,' *Newsroom*, 18 December 2024.)

- 6.12 Shanán Halbert has said in response to this bill that 'universities are independent institutions that can absolutely manage themselves' (Hansard, 14 May 2025). Universities are indeed independent in many respects, and this bill will do nothing to change that.
- 6.13 However, as our report showed, New Zealand universities have problems when it comes to academic freedom. The draft academic freedom policies they have been putting out have only confirmed that they are not capable of putting their own house in order. (See e.g. James Kierstead and Michael Johnston, 'Victoria University stands up for academic freedom – with a few caveats,' *The Post*, 24 October 2024).
- 6.14 Shanán Halbert has also said that universities have not asked for this bill. 'Tell me a university or a tertiary institution in this country that says that this is a priority,' he challenged the government in the house (Hansard, 14 March 2024).
- 6.15 But we would not expect universities to ask for this bill. As our report showed, university senior managers have often been involved in violations of academic freedom. These managers – who usually speak on behalf of the universities – are thus obviously not going to be seeking more oversight of their own (very questionable) behaviour in this area. But bringing in this act is nonetheless the right thing to do to protect the academic freedom rights of academics and students, many of whom have said in surveys and testimonies that they feel stifled.
- 6.16 Hon. Phil Twyford (Labour) has suggested that this bill would place 'an unnecessary burden on our tertiary institutions and our universities,' which would face 'a heavy bureaucratic reporting regime' (Hansard, 14 March 2025).
- 6.17 But the regulatory burden placed on universities by the current version of the bill is extremely light. All it requires is for universities to adopt freedom of expression statements with certain features, to set up an internal complaints procedure, and to include a section on academic freedom in the annual reports they already file.
- 6.18 The regulatory burden of the strengthened version of the bill that we recommend here would be not much greater. Neither the independent complaints committee (with the possibility of judicial review), the new AFO, or the new civil proceeding would impose any additional administrative burden on universities. Nor would any of our changes to the wording of the bill.
- 6.19 It is true that the independent decision-making body, together with the possibility of judicial review and the new civil proceeding, would establish a path to litigation against the universities. But if university managers are right that the academic freedom crisis is overblown, they have nothing to fear. Also, in order to be virtually certain of avoiding litigation, all universities have to do is not transgress the well-defined academic freedom rights of their academics and students.
- 6.20 Phil Twyford has expressed concern that the effect of this bill 'would be to tie the hands of our tertiary institutions, forcing them to provide their public facilities to people who are preaching hate against, for instance, the trans community, to people who are Islamophobic, and to people who are Holocaust deniers.' He opposed the idea that 'anyone with any view and with anything to say should be given the space, particularly in a public institution, to express those views.' (Hansard, 14 March 2025.)

- 6.21 Nothing in the bill would force institutions to host talks by ‘anyone with any view.’ Speakers would need to be invited by academics or student groups, as currently happens. All the bill would do is require universities to commit to a policy that they will have ‘invited speakers of diverse viewpoints’ and that they will not ‘deny the use of university premises by an invited speaker because of that speaker’s ideas or opinions.’
- 6.22 We would stress that even the strengthened version of the bill we recommend in this submission is in line with past bills in this country and with emerging international best practice. In seeking to make New Zealand universities accountable for failures to uphold academic freedom, our version of the bill builds on James McDowell’s 2022 private members’ bill. In including an independent complaints committee and an AFO, it also takes its cue from the UK’s Higher Education (Freedom of Speech) bill, which is now in force.
- 6.23 Finally, we would emphasise that the arguments in this section apply as much to our strengthened bill as they do to the current version. In particular, our strengthened bill no more undermines university autonomy than the current bill. We have already acknowledged that universities are autonomous when it comes to teaching and research. But they will not be less so if there is an AFO or an independent complaints procedure about academic freedom.

## **7 WRAP-UP AND CONCLUSION**

- 7.1 In conclusion, the Initiative strongly supports the introduction of new legislation addressing the academic freedom deficit that we documented in our report last year. We would support this bill in its current form even if no changes were possible.
- 7.2 Fortunately, there is still time to add some compliance mechanisms into this bill. The mechanisms we recommend in this submission would ensure that universities comply with their obligations to academic freedom without undermining their autonomy.
- 7.3 We have heard some commentators suggest that the current bill might be all that is possible for the time being, and that more ‘teeth’ can be added to the bill at a later stage, perhaps as part of a third Education and Training Amendment Bill.
- 7.4 We reject this view. This may be our only chance to address the deep-seated issues with academic freedom at our universities. We have to get this bill right and ensure that powerful university managers with a record of violating academic freedom are not left to police themselves.
- 7.5 The added provisions we recommend in this submission would inject the steel the current bill badly needs. We hope you will give it your fullest consideration.

## **SUMMARY OF RECOMMENDATIONS/SUGGESTED AMENDMENTS**

**Section 281A(2)(b)** of the bill currently reads as follows: ‘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.’

We recommend changing this to: ‘universities should actively foster an environment where ideas can be challenged, controversial issues can be discussed, and diverse opinions can be expressed.’



**Section 281(2)(d)** of the bill currently states that ‘universities should not take positions on matters that do not directly concern their role or functions.’

We recommend changing this to: ‘universities must maintain institutional neutrality; they must not issue official statements on public matters that do not directly affect their ability to carry out their teaching and research purposes as stipulated in Section 268(d) of the Education and Training Act 2020.’

**Section 281B** of the bill currently reads as follows:

‘Requirement for university council to establish complaints procedure relating to academic freedom and freedom of expression

- (1) The council of a university must establish and maintain a complaints procedure relating to academic freedom and freedom of expression.
- (2) See also section 306(4)(h), which requires the nature and number of complaints relating to academic freedom and freedom of expression to be included in the council’s annual report.’

We recommend adding a new section (2) and making the current section (2) into a new section (3), as follows:

‘281B Requirement for university council to establish complaints procedure relating to academic freedom and freedom of expression

- (1) The council of a university must establish and maintain a complaints procedure relating to academic freedom and freedom of expression.
- (2) The complaints procedure shall comprise the following:
  - a) An internal complaints process
  - b) An independent decision-making body appointed by the Academic Freedom Ombudsman to which an appeal by complainants from internal complaints process may be made
  - c) In the event that a complainant is dissatisfied with the decision-making body referred to in Clause (b) hereof, the complainant may apply to the High Court for judicial review of the decision of the independent decision-making body
- (3) See also section 306(4)(h), which requires the nature and number of complaints relating to academic freedom and freedom of expression to be included in the council’s annual report.’

We also recommend adding two new sections as follows:

**‘Section 281C** Civil Claims for Breach of Duty

- (1) A person may bring civil proceedings against
  - a) A university in respect of a breach by a university or a constituent institution of a university of any of its duties under section 281A of this Act that causes that person to sustain loss; or
  - b) A student’s union or other representative organisation of students in respect of a breach of any of its duties imposed by any academic freedom statement made pursuant to section 281 A of this Act

- (2) In subsection (1) loss means loss of any kind (pecuniary or non-pecuniary)
- (3) A person may bring proceedings under subsection (1) only if
  - a) the person has brought a complaint relating to the same subject matter as the proceedings under a relevant complaints scheme as provided in section 281 B of this Act, and
  - b) a decision was made under that scheme as to the extent to which the complaint was justified or rejecting the complaint.
- (4) Subsection (3) does not apply where the civil proceedings under subsection (1) are for an injunction only.

**Section 281D Academic Freedom Ombudsman**

- (1) The Minister shall appoint an Academic Freedom Ombudsman
- (2) The Academic Freedom Ombudsman is responsible for:
  - a) Overseeing the freedom of speech and academic freedom requirements provided in this Act
  - b) Promoting and enforcing the freedom of speech and academic freedom provisions of this Act
  - c) Advocating and promoting the importance of academic freedom and freedom of speech within universities and defending the right of university staff and students to express their views, even if those views are controversial or unpopular.
  - d) Overseeing and investigating the performance of universities in complying with their academic freedom and freedom of speech requirements and responsibilities in this Act
  - e) Overseeing the internal complaints process within universities as provided in section 281B (2)(a) of this Act
  - f) Appointing an independent decision-making body for appeals by complainants from internal complaints procedures within universities
  - g) Reporting to the Minister about compliance or non-compliance by universities with their freedom of speech and academic freedom requirements provided in this Act.'