**Mandate of the Special Rapporteur on the right to education**

**ACADEMIC FREEDOM AND FREEDOM OF EXPRESSION**

**IN EDUCATIONAL INSTITUTIONS**

**Call for CONTRIBUTIONs**

For her upcoming report to the Human Rights Council to be presented in June 2024, the United Nations Special Rapporteur on the right to education, Ms. Farida Shaheed, will consider academic freedom and freedom of expression in educational institutions.

The report will build on previous work achieved by other United Nations human rights mechanisms on the topic, particularly the Special Rapporteur in the field of cultural rights, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Committee on Economic, Social and Cultural Rights. While recognizing that there is no single, exclusive international human rights framework for the subject, Ms. Shaheed will consider academic freedom through the right to education framework. More precisely, the report intends to consider academic freedom as part of the entitlement to receive and provide quality education, at all levels of education.

The Special Rapporteur intends to take stock of setbacks and progress both under international human rights law and in domestic legislation and practice with respect to defining academic freedom, ensuring its enjoyment by all relevant actors and protecting it from attacks and interferences.

The report will examine existing legal frameworks and normative content of academic freedom as a human right. It will consider subjects and duty bearers of this right. It will also analyze, from a human rights perspective, direct and indirect attacks on and interferences with respect to academic freedom of staff and students, including through commercialization, online surveillance, funding, conditions of work and studies and other pertinent issues.

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| **Name of the country/entity submitting information** | **Australian Feminists for Women’s Rights (AF4WR)** |

**Questions**

**General framework**

*Question 1. How is academic freedom defined and protected in the constitution or laws of your country, and what are possible limitations or restrictions? Please provide the original citation and source, as well as a summary of relevant judicial practice, if any.*

1. Australia has no specific constitutional protection of freedom of expression but the High Court has inferred a constitutional freedom of political communication primarily from sections 7 and 24 of the Constitution, relating to election by universal suffrage of the Senate and House of Representatives respectively. The Australian Attorney General’s office references this High Court doctrine in its [public sector guidance sheet on freedom of expression in Australia](https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/right-freedom-opinion-and-expression#which-domestic-laws-relate-to-freedom-of-opinion-and-expression). The primary reference for the Attorney General nonetheless remains the [International Convenant on Civil and Political Rights](https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ccpr.pdf), to which Australia is a signatory.
2. Primary and secondary education are regulated by individual states but freedom of expression therein is broadly subject to federal law, tempered by any state laws on, for example, discrimination and hate speech. Federal law on academic freedom only concerns higher education institutions.
3. In 2018, the then federal government commissioned a review of freedom of expression in Australian universities, headed up by former Chief Justice of the High Court Robert French. The report handed down in 2019 led to 2021 revisions to the 2003 [Higher Education Support Act](https://www.legislation.gov.au/C2004A01234/2022-01-01/text) with a number of strengthened protections of academic freedom. One of the key stated objects of the Act is “to support a higher education system that…promotes and protects freedom of speech and academic freedom” (Division 2.1[a][iv]). In order to be government-approved higher education providers, all universities, whether public or private, “must have a policy that upholds freedom of speech and academic freedom” (Division 19-115).
4. The Act’s definition of academic freedom includes the freedom to conduct, discuss and publish research, to express opinions and beliefs, and to engage in public debate. The detail of policy is left to each individual higher education institution but most have broadly adopted the recommendations of the French review, some have even improved upon them.

*Question 2. Are academic staff, teachers, students all entitled to academic freedom? Does this differ by level of education? Please explain.*

1. Formally, yes, but growing evidence over recent years shows that the extent and limits of academic freedom are continually being tested in specific areas and on specific subjects for political reasons. In the name of “inclusion and diversity”, both censorship and compelled speech are being imposed through various pressures that range from peer pressure to bullying to workplace sanctions. In reality, the imposed “inclusion” operates to exclude others, and the supposed “diversity” does not extend to diversity of opinion and expression. This doublethink—a term borrowed from George Orwell’s dystopian novel *1984—*and the accompanying political limitations placed on academic freedom are indeed increasingly Orwellian in tone, in that they are authoritarian and operate through psychological pressure to conform. As in Orwell’s novel, academic staff, teachers, students and parents alike are being required to put aside their critical thinking to accept a belief that is at odds with what they know to be reality. This is indoctrination and does not belong in education systems in democratic countries like Australia.

**Universities**

1. In 2019 the University of Sydney—Australia’s oldest and one of its most prestigious—dismissed lecturer Tim Anderson for having displayed on a classroom lecture slide a swastika over an Israeli flag. Dr Anderson was already known for his controversial ideas, provocatively expressed, and in this case the University deemed him to have incited hatred against Jewish people. The National Tertiary Education Union (NTEU) took the University to court and in 2022 the Federal Court found that Dr Anderson was exercising his academic freedom which included the right to express controversial, even offensive, ideas. The University was ordered to reinstate him.
2. Yet, around the same time, a quite different scenario was unfolding at the University of Melbourne, another of Australia’s prestigious universities. The year after the University of Sydney sacked Tim Anderson, gender-critical academic Associate Professor Holly Lawford-Smith started to become the target of vilification and threats. By 2021 she and tutors teaching on her courses had become the focus of ongoing protests and harassment, encouraged, worryingly, by the University branch of the same trade union that was at that time in the process of defending Tim Anderson’s right to academic freedom in Sydney. Worse, the NTEU adopted, at its 2022 National Council, a resolution stating that censorsip of gender-critical views within the union did not constitute a breach of academic freedom. This resolution contravenes both the union’s own long-held principles and university codes of academic freedom throughout the country. The University’s Vice-Chancellor Duncan Maskell’s initial reaction was veiled reprimands for Lawford-Smith; he only came to her defence when she and her students started to be targeted by violence from transactivists and security guards had to be placed outside her classrooms. In 2023 Lawford-Smith made a formal complaint to WorkSafe Victoria, “[accus[ing] her employer of occupational health and safety breaches, of bullying her for her political views, and of undermining the university’s stated commitment to academic freedom](https://www.smh.com.au/national/target-of-trans-rights-campaign-lodges-claim-against-university-of-melbourne-20230511-p5d7tm.html.)”.
3. Lawford-Smith is not the only academic in Australia to be targeted for expressing gender-critical views, but the treatment to which she has been subjected is particularly egregious. Sadly, it is being reproduced in various contexts across the country, with the full support of the [trade union (NTEU) that claims to be the country’s leading defender of academic freedom](https://www.nteu.au/NTEU/PolicyManual/Public_Policy/Academic_Freedom/Academic_Freedom_Policy.aspx). Other gender-critical academics have been no-platformed at University conferences in Australia or harassed or stalked online by transactivists, some of whom have also complained to University employers about “hate speech”, with varying responses by University managements.
4. Academic freedom in Australian universities is thus very much a matter of the political mood of the time and of the subject about which the right to academic freedom is being invoked.

**Schools**

1. A similar scenario is playing out in schools, although the populations concerned are far more vulnerable, because either minors themselves or adults working with minors. At this point in time, state Departments of Education require schools to “affirm” transgender children with scant regard to the rights and safety of other children or indeed of the children being so “affirmed”. [This webpage](https://education.nsw.gov.au/rights-and-accountability/legal-issues-bulletins/transgender-students-in-schools) from the New South Wales Department of Education is typical of the policies being applied throughout the country.
2. For example, pubescent girls are now expected to share changerooms, toilets, and dormitories or tents while on overnight excursions with male students who “identify” as female (this is also the case in universities). We have evidence from mothers and fathers of girls (particularly girls) who are being bullied by students and staff alike because they raise objections to these sorts of policies. In some cases the parents themselves are also being harassed; when they complain to school principals they are sometimes told the principal is unable to speak up for fear of losing her or his job.
3. In other cases schools are encouraging “gender transition” of children as young as ten while keeping this information secret from parents. No voices are allowed to be raised in opposition to these diktats and in some states parents who suggest alternative therapies for their children to instant gender transition risk legal sanctions in the form of fines or even prison.
4. These developments are particularly worrying as concerns the mental and physical health of girls. In Australia as in other democracies, there has been a several-thousand percent increase in the last ten to fifteen years of children and adolescents presenting with “gender dysphoria” and the overwhelming majority of them are girls. Particularly vulnerable to this “dysphoria” narrative are children who are autistic, have suffered trauma related to sexual abuse, have ADHD or anxiety disorders, or do not conform to sex-role stereotypes (many of this last group would turn out to be homosexual if left alone). Yet throughout the country, school policies are being imposed that mandate the “gender affirmation” approach to the exclusion of all else. This is a flagrant breach of Australia’s treaty obligations to protect the welfare of children under the [Convention on the Rights of the Child](https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child).
5. There is thus a chilling silence being imposed on students, parents and staff alike, with real risks to individuals’ safety, progess in study or employment. Where the ideology of gender identity is concerned, *no one* in Australian public schools today benefits from freedom of expression or academic freedom, and the physical and psychological risks to children are significant, as the growing number of lawsuits being brought by young detransitioners (particularly women) attests.

*Question 3. What do you consider to be (a) the main challenges to academic freedom, and (b) gaps in the legal framework for protecting academic freedom?*

1. The main challenges to academic freedom are dogma and thought policing as discussed above. While it is presumed that academic debate is conducted respectfully and with reference to evidence and research, in practice University managements, School boards and government legislators alike have shown themselves to be subservient to certain types of propaganda.
2. Overall freedom of expression protections in Australia are relatively weak, notwithstanding the abovementioned High Court doctrine and Higher Education Support Act. We have no Bill of Rights as in the USA, no Human Rights Act as in the UK, and no Fundamental Rights Act as in the EU.

**Autonomy of educational institutions**

*Question 4. Please explain the autonomy and self-governance enjoyed by educational institutions at the different tiers of education. Please explain what autonomy and self-governance entail. Are there restrictions on police or military personnel entering educational institutions? If so, please share the rules.*

1. Australian higher education providers have certain compliance requirements (including academic freedom policies) in order to be accredited and further requirements are placed on public universities accepting government-funded students. Moreover, each public university in Australia is established by an Act of Parliament in the state in which it is located, and has a representative from the state government on its university council. University governing bodies also have elected staff and student representatives but most universities have moved to limit their numbers in recent years, thus undermining collegial governance.
2. Schools, whether public or private, are regulated by state legislation and must be registered with the state. Curricula are decided state-by-state but all states provide for thirteen years of school education following curricula that fall within nationally-set parameters. State authorities are responsible for hiring and payment of teachers in the public sector. Private schools also benefit from a certain level of both state and federal funding. Denominational private schools also benefit from hiring and firing rights that would be considered discrimination in the public sector: for example, they are allowed to insist that staff are from the faith of the school. This right, based on a particular interpretation of Constitutional protection of religious freedom, was [reaffirmed in 2023 by the Prime Minister](https://www.theguardian.com/australia-news/2023/feb/14/pm-reaffirms-commitment-to-allow-religious-schools-to-hire-staff-based-on-faith), Anthony Albanese.
3. The technical education system (Technical and Further Education or TAFE), which is a joint responsibility of state and federal governments, prepares students for state and national accreditation in specific trades or skills. Local institutions are generally responsible for hiring staff.
4. More information on the regulation of schools can be found [here](https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/pubs/rp/rp2223/Quick_Guides/SchoolEducation).

*Question 5. Please provide examples of institutional guidelines/codes of conduct developed to ensure respect for academic freedom, including from external public or private actors.*

1. Below are links to two policies.
2. [University of Sydney Charter of Freedom of Speech and Academic Freedom](https://www.sydney.edu.au/policies/showdoc.aspx?recnum=PDOC2011/64&RendNum=0). This is one of the more comprehensive University policies.
3. [Australian Government Guidelines to Counter Foreign Interference in the Australian University Sector](https://www.education.gov.au/download/4798/guidelines-counter-foreign-interference-australian-university-sector/24603/guidelines-counter-foreign-interference-australian-university-sector/pdf). These guidelines were developed in 2021 in response to concerns about foreign interference from China in particular.

**Funding**

*Question 6. How is funding, including for research, regulated? Is the process transparent, and are there any guarantees put in place to ensure respect for academic freedom?*

1. Universities receive research funding from the following sources:

* Research Block Grants, calculated according to the university’s combined research output and the number of students enrolled in higher degrees by research; the government also runs a national research student funding scheme (competitive)
* National competitive grants schemes: The Australian Research Council (ARC) and the National Health and Medical Research Council. (NH&MRC): funding awarded on a competitive basis to individuals or research teams. The ARC and NH&MRC are government bodies with government-appointed leadership, which includes senior academics, but are managed as independent entities.
* Industry funding, notably for the physical sciences, and philanthropic funding from individuals or associations.

1. From within their block funding, universities run their own internal small grants schemes for staff and research students. It is up to each university how these schemes are administered. As concerns the ARC, the NH&MRC and internal university grants, the processes are normally transparent although we know of cases where conflicts of interests have not been adequately addressed.
2. As concerns the ARC, the main government funding body for all university research outside the medical sciences, the general funding pool available for competitive grants is significantly lower than, for example, in the European Research Council or even some national funding bodies within the EU. Former College of Experts members have reported that usually some two thirds of applications qualify for funding but the pool of funds is simply inadequate, with the result that only around 20% of applications are funded each year.
3. There is evidence that certain academic fashions may lead to some projects being funded while others are not, and it is certain that research projects critical in any way of the ideology of gender are unlikely to obtain competitive internal or external funding at this time.
4. There is also evidence of political influence, once again from the “gender” lobby, on terminology proposed to be used by the NH&MRC, which includes absurd suggestions such as the removal of common words like “woman” or “mother” in favour of reductionist terms such as “cervix-haver” or “birthing person”, and the imposition of compelled speech with terms such as “cisgender”. Researchers have protested these proposed changes which are seen as politically and not scientifically motivated. The NH&MRC is still deliberating at the time of this submission.

*Question 7. Which rules and regulations protect academic freedom from interferences by commercial actors and financial sponsors, at different tiers of education? Please explain how conflicts of interest that may arise are addressed.*

1. All Australian public universities have conflict of interest policies; any conflicts of interests by researchers must be declared, as must income from research consultancies.
2. A recent controversy over political interference concerned a proposal by the [Ramsay Centre for Western Civilisation](https://www.ramsaycentre.org/) (the Centre) set up privately-funded teaching programs on “Western Civilisation”. The RC is a private foundation whose board includes two former ultra-conservative prime ministers. Its logic was that “Western Civilisation” as it is narrowly understood by the Centre’s directors and board was inadequately taught in Australian universities, which was a decidedly odd claim to make, given the proliferation of existing programs in the literatures, cultures, history, societies and politics of the Western world.
3. A number of university managements, hungry for funds after decades of decreases in real government funding, entered negotiations with the Centre, leading to massive student and staff protests at a number of universities and a high-profile media debate. Some universities backed down—or the Centre did—but it still has partnerships with three Australian universites and currently funds some ninety scholarships in “Western civilisation” undergraduate programs at these universities.
4. The fact that the Centre did not succeed as well as hoped in obtaining fruitful and prestigious university parternships is an indication that academic freedom and democratic debate are alive and well in Australian universities. On the other hand, the tempestuousness of the debate, and the three existing partnerships, are an indication that these values continue to be under threat.

**Surveillance**

*Question 8. Please explain whether and the extent to which academic staff and students, at all levels of education, are subject to surveillance by public authorities, for example through on-site cameras or online scrutiny. Has this led to undue restrictions to academic freedom and freedom of expression in educational institutions?*

1. Not public, but in-house. In universities, staff and students are increasingly required to use online reporting systems and their educational or workplace behaviour is thus increasingly monitored via these systems. This increased blunt-instrument *measurement* of work processes is certainly not only occurring in universities and other educational institutions. But it is characteristic of a particular type of stealth-surveillance in the digital age, impacting deleteriously on staff stress levels, fatigue and indeed academic freedom in that, as one academic put it: “we are being required to report more and more on what we have less and less time to actually do”. Research is also increasingly expected to conform to metrics that do not always bear a direct relationship to the actual intellectual quality of the output.
2. However, the most concerning example of surveillance or attempted surveillance in Australian educational institutions has been monitoring of students through their mobile phones. For example, in 2020 the University of Newcastle introduced software to track students’ attendance in classes via their mobile phones. There is some evidence that such monitoring was also introduced in some Australian schools. These attempts have led to public outcry. Mobile phones are now banned in most Australian public schools during school hours, making such monitoring impossible, in schools at least.
3. There are fears that data tracking of students, and perhaps staff, could become more widespread in the future. Although personal information is protected in Australia under the 1988 Privacy Act and the 2022 Privacy Legislation Amendment, electronic data protections are not as strong as they are, for example, in the EU. It is likely that data tracking in educational institutions will continue to be a subject of controversy and protest.

**Freedom of expression in teaching and access to books**

*Question 9. Do teachers and professors, at all levels of education, enjoy freedom of expression in their own teaching? Are there any limitations imposed, such as remaining “neutral” or forwarding a particular perspective, e.g. on religious and political matters?*

**Schools**

1. As noted above, school curricula are decided at state level and although each institution has some degree of choice among teaching modules and textbooks and/or online materials, these must broadly correspond to the requirements of the state curriculum and prepare children and teenagers for state examinations. The state curricula include teaching on gender identity. In these curricula, including sex education classes, the term “gender” is used ambiguously: sometimes it means sex, sometimes it means gender identity, and sometimes it means both. The conflation of these two concepts under the umbrella “gender” is obfuscating and confusing, and makes it difficult for girls in particular to talk unreservedly about their experience as female people, even though sex education classes now have an accent on “respectful relationships” after several inter-student sexual harassment issues were exposed in both state and private schools.

**Universities**

1. Each academic responsible for a unit of study is free to choose the teaching materials she or he wishes to use and academics responsible for degree programs have a great deal of freedom over course content, within the structural constraints of university regulations. Exceptions are professional degrees such as medicine, nursing, pharmacy, engineering, law and teaching where professional accreditation requirements must be met. Curricula in these areas thus must meet certain externally-mandated criteria, but once those criteria are met, universities have considerable liberty as to content.
2. That said, the freedom of academics to teach critical materials in certain areas has been tested, as we have seen. Either through direct punitive action by a university management, as in Anderson’s case, or failure to protect staff and students from bullying and indeed violence, as in Lawford-Smith’s case, or indeed through the mandating the teaching of certain “gender” ideologies in health programs, university managements have been complicit in assaults on academic and intellectual freedom.

*Question 10. Please explain the extent to which teachers and professors at different education levels can chose school manuals and other books/resources for teaching, and the reasons for any restriction in this regard. Have any specific books/materials been banned, including from school libraries, and alternatively is some material mandatory? If so, why?*

1. See answer to (9) above.
2. As concerns banned books in schools, Australia has had [some surprising bans in school libraries](https://www.school-news.com.au/events/banned-books/), but these have not been widespread. Apart from the mandating of “gender theory”, mandated material is to comply with school curricular requirements including to prepare state examinations, and is discussed above.

**How to submit information**

Submissions should be sent electronically no later than **2 February 2024 to** [hrc-sr-education@un.org](mailto:hrc-sr-education@un.org), using the email title: “Contribution: Academic freedom”.

Please select and answer the questions most relevant for your agency. Kindly limit your responses to **3,000 words** and attach annexes where necessary. To facilitate their consideration, please send responses in a Word document, and in English, French, or Spanish. **Please clearly specify the entity making the contribution on the document itself and add paragraph numbers**.

All inputs received will be posted on the OHCHR website. Please indicate if you have any objections regarding to your reply being posted on the OHCHR website.