

University of Sydney External Review Report

Bruce Hodgkinson AM SC

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As commissioned by the Senate of the University of Sydney

I want to acknowledge the help and assistance I have had from Erina Higgins, Solicitor.

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Executive Summary

The University of Sydney (the University) has experienced a significant amount of protest activity. The protests were primarily brought in opposition to the Israeli war waged in Gaza. In addition to protests a range of other activities were engaged in, in support of the Palestinians' cause. The single largest event was an encampment on the front lawns of the University commencing on 23 April 2024 and ending peacefully on 24 June 2024. In the period immediately following the disbandment of the encampment, protests of various kinds continued on campus. Many allegations have been made regarding antisemitic behaviour and disruption created by the protest activity to the normal function of the University. There have been some complaints that there has been Islamophobic behaviour.

To address the issues on its campus, the University has undertaken a number of initiatives. It has commenced a thorough review of its policies and its complaints procedures, and it is increasing the capacity of campus security. Commissioning this External Review (Review) was another of the initiatives. These actions are directed at its stated aims of making the campus a welcoming and safe place for all.

The Review has been asked to look at the University's policies and processes going forward to ensure that the University is equipped not only to meet its obligations as they arise in the future, but to enhance the experience of all those on campus.

The University did not before 7 October 2023, and has not since, tolerated racism of any kind on its campus. Nor does it tolerate threatening or intimidatory speech or behaviour. Its policies make this clear. Whilst the University policies have always been based on those concepts, the actions taken by the University to maintain them have not been apparent to the public. There is a need for greater transparency so that the public are made aware, in an appropriate way, of the steps taken by the University in this area.

To address transparency a number of recommendations have been made. Two new reports, one dealing with complaints dealt with and the other with the range of penalties imposed for substantiated breaches of policy, have been suggested which would after having gone to the Senate be made public.

The fact that this encampment was the first protest of that particular kind experienced by the University added to the complexity, as does the changing legal framework in which the University operates.

The submissions made to the Review make clear that the University's policies and procedures are not well understood, hard to access and as a result often not consulted by those from outside the University and many from within. They are often dense documents written in language which is not clear as to their scope and intent.

The initiative already commenced by the University involving as it does a deep dive into all the University's policies and the procedures which flow from them is a very important one. It will, no doubt, take a significant commitment to see it through to completion. That commitment on the part of the University needs to be pursued vigorously. The simplification of policies will make them more user friendly and transparent. It will address many of the issues raised with the Review.

The University's complaints procedures have been the subject of wide criticism. This fact was recognised some time ago and the process of its overhaul with a view to creating a user friendly and transparent procedure is under way. This too is an important initiative. Recommendations have been made which are intended to assist this initiative. Making, in appropriate circumstances, student organisations that receive funding from the University responsible for compliance with the University's policies will make enforcement of those policies easier and help simplify the complaints procedures overall.

Some of the traditions of the University have been referred to as the basis for permitting particular types of activity such as sit-ins and other forms of protest in buildings and the addressing of lecture halls with political statements. These traditions grew up in a different time and when the legal framework with which the University must comply was far less complex. The maintenance of these traditions has led to students feeling unsafe. There does not appear to be a reason for their continuation particularly in light of social media communication methods.

By prohibiting all forms of protest in the University's buildings the University will make every building on campus a safe place; a refuge where those who feel unsafe as a result of protest activity can escape that activity.

At the core of the University is the maintenance of freedom of speech and academic freedom. The importance of, and the maintenance of, these freedoms cannot be doubted. Freedom of speech and academic freedom are not, however, without limitations. Primarily, those limitations are imposed on the freedoms by the law, and this has always been the case. As the law changes, so have the intrusions made by it into freedom of speech and academic freedom. Whilst such a development might be lamented by some, it cannot be denied.

However, it can be a very difficult matter to determine when a particular word or phrase is used in a legitimate way and when the same word or phrase is impermissible. Many complaints have been made that words and phrases which have been used on the campus are antisemitic. Others, including some Jewish people, who have heard the same words and phrases have determined that they have been used legitimately.

Finding a balance between the proper exercise of the right to freedom of speech and academic freedom and the use of speech which is not protected by those freedoms is a very difficult matter. Some in the Jewish community advance various definitions and guidelines whilst others from the same community decry the use of those definitions and guidelines as being an attempt to shut down free speech and academic freedom. Some have gone as far as to suggest that those who are relying on definitions and guidelines are weaponising antisemitism to prevent even legitimate criticism.

The context in which speech is used can alter its meaning. This is recognised when interpreting statutes, contracts and other documents. Context is then at least one important consideration when attempting to determine the meaning of a word or phrase. Context is the domain of the speaker. It is the speaker who can, if they choose to do so, make clear the meaning of the words and phrases that they are using. There is no longer room in this debate for those who would use a word or phrase in such a way that they have not made its meaning clear. This is so no matter what freedom they purport to rely on. Clarity is essential.

The section of the Report “Clarity through Context” discusses this issue. The consequence of this discussion is Recommendation 9, The New Civility Rule. That rule would make the speaker responsible for ensuring that the meaning of the words and phrases used by them was clear to the audience being addressed. This obligation would apply to any speaker addressing any form of meeting or lecture held using the University’s facilities.

Other matters have been dealt with in the Report and where it was thought appropriate to do so recommendations have been made. In all 15 Recommendations have been made. Those Recommendations are set out in Appendix A to this Report.

Background

The attack by Hamas which included the murder, rape and the kidnapping of Israelis and foreign workers on 7 October 2023 and Israel’s retaliatory assault on Gaza, which has resulted in the killing of tens of thousands of Palestinians, led to a series of protests across many universities around the world, including in the United States of America (USA). It has been no part of this Review to analyse the actions of Israel, the Palestinians or Hamas.

The protests in the USA took various forms, which involved encampments at some of the major universities including Harvard, Stanford, Columbia, MIT and others. Encampments were also established at Cambridge and the University of Nottingham in the United Kingdom. The response to these encampments differed. Most resulted in agreements being reached between each university and the protestors involving disclosure on a range of topics by the university. In a number of universities in the USA police were called in to break up the encampments and, in some instances, violent clashes and multiple arrests resulted.

At Columbia University three encampments were established. The first of these commenced on 18 April 2024 and the final encampment ended on 2 June 2024. The first two of those encampments were broken up by police, some in riot gear, and hundreds of arrests were made. The third ended after Columbia reached agreement with protestors

which in part involved the disclosure of a list of the university's direct investment holdings.

In April of 2024 a group of University of Sydney students, one of whom openly identified as Jewish, determined that they would protest the war in Gaza and that the protest would take the form of an encampment.

On 23 April 2024 the encampment was established on the lawns in front of the quadrangle building and as a result was very visible to those entering the University through the front gates or attending Fisher Library or those at the Eastern Avenue end of the campus. Initially the encampment consisted of six tents¹ but over a period of a few weeks grew to approximately one hundred tents, not all of which were occupied. The numbers of participants in the encampment fluctuated. That number was significantly higher during the day than at night. Only a small number of individuals occupied tents during the duration of the encampment. Participants in the encampment included students, staff and at times individuals with no connection to the University. Many of the University's students and staff as well as others visited, without participating in, the encampment.

In Australia encampments were also established by students at most of the major universities, including the Australian National University, Monash University, the University of Adelaide, the University of Wollongong, the University of Melbourne and others.

The University has what is often described as a 'rich history of protest', however an encampment as a form of protest had not previously been experienced. Although there were some minor verbal altercations between different groups on a few occasions, the encampment did not erupt into physical violence. The police were regularly consulted and kept informed. The University determined from the outset of the encampment that it did not want any replication of the violence which had resulted from the forceful breaking up

¹ Each of which I understand was purchased for \$10 from Kmart Broadway.

of encampments overseas. The University kept students and staff regularly updated on its approach with communications which are available on its website.²

In the days prior to the encampment being disbanded the University entered into an agreement with a student organisation known as the Sydney University Muslim Students Association (SUMSA). The terms of that agreement were notified to students and staff via a University wide email, and were published on its website.³

The encampment was disbanded and came to a peaceful end on 24 June 2024.

Since the establishment of the encampment and following it being disbanded the University has received a great deal of criticism. That criticism has come from both inside and outside the University and from a wide section of the community. Many aspects of the University's approach to, and handling of, the encampment as well as subsequent events have also been the subject of criticism and media reports. Some complain that the encampment went on too long and as a result caused students and staff, particularly those who are Jewish, distress, and feelings that they were not welcome on the campus and that they were unsafe. Many other issues have also been raised arising from the encampment and subsequent protest-related events on the campus. Others, including some who are Jewish, thought that the encampment was a legitimate form of protest which the University should have allowed to continue.

Entering into the agreement with SUMSA has been widely criticised particularly by sections of the Jewish community. Some had an understanding that the University's position was that it would not enter into an agreement with any of the protestors and complained that they were given no notice of the changed position. Some have suggested that the agreement was a capitulation without regard to the real problems that had been experienced on the campus whilst the encampment had been operating. On 24 June 2024 the Vice-Chancellor of the University sent an email to all students and staff outlining the agreement noting that there would be no restriction on student exchanges, academic partnerships or institutional relationships with any country or industry as part of the agreement. A copy of the Vice-Chancellor's announcement is at Appendix D.

² University of Sydney, 'Our message to our community regarding protest activity on campus', 24 April 2024 <<https://www.sydney.edu.au/news-opinion/news/2024/04/24/statement-regarding-peaceful-protests-on-campus.html>>.

³ Ibid see update titled 'Peaceful end of protest encampment' published 24 June 2024.

The issues raised in the criticisms of the University are complex and wide ranging. Many are not capable of a readily identifiable solution and reaching a consensus amongst all stakeholders in respect of the criticisms was and remains highly unlikely. It was faced with this difficulty and the criticisms coming from all quarters that the University determined that it would commission an External Review.

The Review

On 25 July 2024 the University made the following announcement:

The University of Sydney today announced the appointment of Bruce Hodgkinson SC to conduct an external review of its policies and processes – to ensure they are appropriate and fit for purpose as we safeguard the wellbeing of our community, academic freedom and freedom of speech, and the effective operations of the University into the future.

On 26 August 2024 the University published an invitation for submissions to the Review of policies and processes on its website. The University also sent the same invitation by email to students, staff and interested members of the community who were informed that they could make written submissions to the Review.

In issuing the invitation the University stated that:

We are committed to ensuring that the university has:

- *a campus that is safe and welcoming for all students and staff;*
- *appropriate process and policies in place targeted at preventing discrimination and harassment;*
- *effective protocols and practices to deal with allegations and acts of racism, threats to safety, hate speech, intimidation, threatening speech, bullying or unlawful harassment; and*
- *processes and policies that reflect best practice and are fit for purpose and the times.*

In providing a safe and welcoming environment for all in our community, we also must be in a position to ensure our unwavering commitment to free speech and academic freedom as core principles of the University.

We invite students, staff and interested members of the community to make a submission to the external review. We would like to hear about your experience since 7 October 2023 in relation to the matters outlined above to which the University is committed including what is working well, areas for improvement, and any suggested steps the University might take to ensure its campus is a safe, respectful and inclusive place for all students and staff.

The invitation to make a submission set out the following advice and criteria:

- That a dedicated email address, usyexternalreview@counsel.net.au, had been established to which submissions could be sent, including on a confidential basis.
- That the University does not have access to the dedicated email address.
- That there was no intention to make the submissions publicly available, except where required by law.
- The submissions would not be disclosed to the University, except where in Mr Hodgkinson's discretion he deemed it appropriate or where required to do so by law.
- Submissions could be made anonymously.
- That regard would be had to all submissions lodged before the deadline of 23 September 2024.
- That submissions would be deleted 28 days from the completion of the Review, excluding any submissions provided to the University or otherwise retained in Mr Hodgkinson's discretion.
- That submission makers ought to minimise disclosure of personal information, and not to provide personal information of third parties without their consent.

- That the University intended to publish the report resulting from the Review.

The Review was required to be forward looking. For that purpose, it was not necessary or appropriate to scrutinise each of the decisions made in relation to the encampment, the agreement with SUMSA or in relation to the protest activity and issues that have arisen on the campus since.

The encampment and the activity surrounding it together with events which took place after it was disbanded, have been a focus of most of the submissions received by the Review. The submissions make clear the breadth and complexity of the problems that the University was facing and attempting to deal with. The information set out in the submissions has been used to inform the Review and to formulate Recommendations for the University's consideration. The Recommendations have been formulated having regard to the duties and obligations imposed on the University by law and the desire of the University to ensure that its campus is a safe place for all students and staff.

Review Process

A total of 51 written submissions from a wide range of individuals and organisations were received. These included students, staff and alumni of the University, parents of students at the University, as well as from representative organisations of students, staff, the Jewish community, and wider community groups.

Where anyone who made a submission has requested that their identity or the information disclosed in their submission, be treated as confidential to the Review that name and information has not been revealed to the University or otherwise made public. Each of the persons who requested that their identity or submission be kept confidential had a sound reason for making the request. No organisation who made a submission to the Review asked that their identity remain confidential.

The following individuals made a submission to the Review and did not seek that their identity remain confidential: Alexander Sherman, Andy Smidt, An Nguyen, Ben Grimes, Catherine Parr, Daej Arab, David Celemajer, Doron Samuell, Douglas Joshua, Emily MacLean, Jennifer Dowling, John Buchanan, Lucia Sorbera, Markela Panegyres,

Matte Rochford, Michael Edwards, Rob Grunstein, Sarah Aamidor and Tatjana Seizova-Cajic.

Organisations who made a submission to the Review were: Australian Academic Alliance Against Antisemitism (5A), Australian Israel & Jewish Affairs Council (AIJAC), Disability At Work Network (DAWN), Executive Council of Australian Jewry (ECAJ), Jewish Council of Australia (JCA), National Centre for Cultural Competence (NCCC), National Tertiary Education Union (NTEU) and the New South Wales Jewish Board of Deputies (NSWJBD).

Some, but not many, requests for an extension of the deadline for the lodgment of submissions were made. Each one of these applications was granted. All of the submissions made to the Review have been considered and the information contained in them has been used to inform the considerations contained in this Report.

Everyone who lodged a submission was advised that they could request a meeting for the purpose of raising any matter which they thought might be of assistance to the Review. Meetings were held with everyone who requested one. 14 meetings were held. The discussions conducted in those meetings were undertaken on a confidential basis so that the participants were able to freely advance anything they thought to be of importance, including the identification of problems they perceived the University had in handling the issues arising on the campus from 7 October 2023. Those who attended the meetings were also asked if they had any suggestions as to how the University might handle the problems they had identified going forward.

Meetings were held with Jillian Segal AO the federally appointed Special Envoy to Combat Antisemitism, David Ossip and Michele Goldman as representatives of the NSWJBD, Zac Morris as a representative of the Australian Union of Jewish Students, Peter Wertheim and Simone Abel as representatives of ECAJ, Michael Abrahams-Sprod and Sarah Aamidor as representatives of 5A, Nick Riemer as a representative of the NTEU and Na'ama Carlin as a representative of JCA.

In addition to the meetings held with the persons who made submissions, others who it was thought might be able to assist the Review were invited to meetings. Those persons included Aftab Malik the federally appointed Special Envoy to Combat Islamophobia, representatives from Mandelbaum House, Michael Edwards, Doron Samuell, Ghena Krayem and others who requested that their identity be kept confidential which request has been respected.

Assistance to the Review

The University has provided the Review with every assistance required for a thorough consideration of the issues which have arisen on campus since 7 October 2023. That assistance has been provided on an open disclosure basis. The University has provided copies of its policies, statements, procedures and guidelines in addition to a large amount of other material covering all the topics relevant to the Review. The Review has been made aware of the ongoing policy development which the University has continued to pursue since the Review was commenced.

Meetings have been held with the Chancellor, Vice-Chancellor, Provost and senior staff members from various parts of the University's administration, including the Vice-Chancellor's Office, the VP (Operations), the Deputy Vice-Chancellor (Education Portfolio), Student Affairs, Workplace Relations, Protective Services and Health and Safety. Everyone who participated in those meetings did so on an open and frank basis. The University's Office of General Counsel has assisted the Review in many ways including by arranging meetings with various people within the University's administration and providing material and information addressing issues in response to questions that have arisen during the Review.

The Parliamentary Senate's Legal and Constitutional Affairs Legislation Committee conducted an inquiry into antisemitism at Australian universities in September of 2024. The University provided a submission and the Vice-Chancellor, Mark Scott, appeared before the Inquiry.

The University cooperated fully in the Senate Inquiry and provided the Review with its submission and a transcript of the Vice-Chancellor's appearance before the Legislative Committee. The University also provided all the submissions made to the Senate Inquiry which mentioned the University. These have been read and considered as part of the Review. They raise similar issues to those raised in the submissions made to the Review.

Issues beyond the scope of the Review

A number of staff members, including some very senior members of the University staff, who made submissions to the Review did so on the basis that their submission, and in particular their identity, remained confidential. The reason expressed for seeking confidentiality was in all cases a fear that there might be some form of adverse impact on their career if it became known within the University that the particular individual had made a submission. The nature of these adverse impacts is not known. The identity of persons who have raised this issue has not been released to the University.

Whilst it is beyond the scope of the Review to investigate fully the basis for these concerns or to take any action to consider them, the issue has been identified consistently with the terms of the invitation to make submissions. The University has enshrined the right of its staff to criticise it as an exercise of academic freedom.⁴ The fact that some members of staff feel the exercise of this right might have an adverse impact on them is worrying.

In its submission to the Review, ECAJ raised that funding through grants, gifts and other means lacked transparency such that the actual source of the funding could not be ascertained. It was suggested that this concern was a reason that had motivated ECAJ to call for a Royal Commission into universities. Such an issue is beyond the scope of the Review.

⁴ University of Sydney Enterprise Agreement 2023-2026 cl 366(b)(ii); See also the University of Sydney Charter of Freedom of Speech and Academic Freedom 2020, definition of 'academic freedom' includes "the freedom of staff and students to express their opinions in relation to the University in which they work or are enrolled."

Definition of Protest

Protests can and do take many forms. They are described in many different ways. Protests are referred to as demonstrations, rallies, sit-ins, boycotts and strikes amongst other descriptors. “Protest” as used in this Report is intended to refer to all actions taken as a protest, whatever that action may be and however that action is described.

University Initiatives

The University has already taken a number of significant steps to address the problems which confronted it arising out of the encampment and the protest activity which accompanied it. Those steps include the introduction of a new Campus Access Policy and the Viva Engage Terms of Use, the establishment of a Policy Working Group which is conducting a deep dive review of existing policies and other documents setting out the University’s procedures, and improvements to CCTV coverage, amongst others. The University has also commenced a full review of its complaints procedures to ensure that the community has trust and confidence that their concerns will be heard and appropriately responded to.

Legal framework

The legislative environment in which the University operates is complex. There are many acts of the federal and state parliaments (Acts) with which the University must comply. Amongst those are the *University of Sydney Act 1989* (NSW) (USYD Act), the *Higher Education Support Act 2003* (Cth) (HES Act), the *Tertiary Education Quality and Standards Agency Act 2011* (Cth) (TEQSA Act), the *Work Health and Safety Act 2011* (NSW) (WHS Act), the *Anti-Discrimination Act 1977* (NSW) (AD Act), the *Racial Discrimination Act 1975* (Cth) (RD Act), the *Sex Discrimination Act 1984* (Cth) (SD Act) and the *Fair Work Act 2009* (Cth) (FW Act). A full list of the Acts applicable to the University is at Appendix C.

Many of the Acts applicable to the University require the University as a person concerned in a business or undertaking (PCBU) to proactively meet the obligations and discharge the various duties imposed by those Acts.⁵ In certain circumstances the common law recognises that an employer has a proactive duty to deal with psychosocial injury.⁶ The *Work Health and Safety Regulations 2011 (Cth)* (WHS Reg)⁷ was amended in 2024 to include, for the first time, psychosocial hazards and risk.

The WHS Act requires the University as a PCBU to ensure so far as is reasonably practicable the health and safety of workers⁸ and other persons⁹ whilst they are on the campus. The WHS Act imposes upon officers¹⁰ a separate duty from that imposed on the PCBU. That duty¹¹ requires the officer to exercise due diligence to ensure that the PCBU complies with its duties and obligations. The duties of workers¹² includes a duty to comply¹³ with reasonable instruction given by the University for the purpose of the University complying with its health and safety duties. Workers are also required to cooperate¹⁴ with reasonable work health and safety policies or procedures. Under the WHS Act if a duty holder (PCBU, officer and worker) breaches the duty imposed upon that duty holder they could be liable to criminal prosecution.

Duties and obligations regarding work environments are imposed by some Acts¹⁵ on PCBUs. The work environment includes the buildings and outdoor areas which are on or make up the University campuses.

Given the proactive requirements in the various Acts, the University is required to have policies and processes to eliminate or minimise issues. Reactive policies and processes such as those dealing with misconduct are also necessary.

⁵ See for example the WHS Act, SD Act and RD Act.

⁶ *Koehler v Cerebos (Australia) Ltd* (2005) 222 CLR 44; *Kozarov v Victoria* (2022) 273 CLR 115.

⁷ WHS Regs 55A, 55B, 55C and 55D.

⁸ WHS Act s 19(1). See also the definition of ‘workers’ in WHS Act s 7.

⁹ *Ibid* s 19(2).

¹⁰ *Ibid* s 4, see the definition of ‘officers.’

¹¹ *Ibid* s 27.

¹² *Ibid* s 28.

¹³ *Ibid* s 28(c).

¹⁴ *Ibid* s 28(d).

¹⁵ See as examples the SD Act and WHS Act.

Issues raised in the Review

As the focus of this Review is forward looking, there is little to be gained by considering individually the merits of each incident or issue to which reference has been made. Rather, consideration has been given to all the incidents and issues raised by them. Similar issues have been dealt with by grouping them and considering them collectively.

Many of the submissions made to the Review dealt with problems experienced by Jewish students and staff members. However, it is also important to highlight that other Jewish students and staff members have informed the Review that they have not experienced problems on the campus as a result of the encampment or protest activity. Some submissions identified problems experienced by others, including persons with disabilities arising from the encampment and protests.

The issues raised involved allegations of antisemitic behaviour and behaviour perceived to be antisemitic, disruptive behaviour, deplatforming behaviour, Islamophobic behaviour and behaviour perceived to be Islamophobic. Submissions to the review also complained of the University's management of complaints, particularly a lack of transparency, poor communication and failure to impose penalties for those who commit misconduct.

Antisemitism

The majority of complaints made involving antisemitism referred to circumstances which arose whilst the encampment was present at the University.

Complaints were made about the use of particular phrases¹⁶ which were antisemitic to some. Some of that speech was clearly antisemitic and contrary to the University's policies and statements which prohibit antisemitic and racist speech.¹⁷ Some of the speech referred to involved words and phrases about which there was a difference of views.

¹⁶ Note that 'phrases' in this Report includes (but is not limited to) slogans, chants, expressions, mottos and sayings.

¹⁷ Student Charter 2020; Anti-Racism Statement <https://www.sydney.edu.au/about-us/vision-and-values/diversity/cultural-diversity.html>>; Bullying Harassment and Discrimination Prevention Policy 2015; Viva Engage Terms of Use 2024.

Behaviours such as the removal of posters depicting photographs of hostages taken by Hamas on 7 October 2023, the removal of Israeli flags, the display of posters said to contain antisemitic statements, as well as the support for Hamas were all examples of antisemitic behaviour identified to the Review. Other behaviour was also identified as antisemitic, including graffiti containing phrases, statements, and symbols such as swastikas.

There is no doubt that there have been examples of antisemitism on the campus, as was acknowledged by the Vice-Chancellor Mark Scott during his appearance before the Senate as part of the Commission of Inquiry into *Antisemitism at Australian Universities Bill 2024*. In extending his apology the VC said:

*"no one should feel at risk, unsafe or unwelcome at any place of learning, and no one should feel the need to hide their identity or stay away from classrooms or campuses."*¹⁸

Many of the submissions identify that the words, phrases and behaviour complained about had caused Jewish students and staff members to feel that they were not safe on the campus. Some Jewish students thought it was unsafe to attend classes. As has already been discussed, antisemitic speech or behaviour is a breach of the laws preventing racism, harassment and intimidation. It is also a breach of the University policies directed at prohibiting the same types of conduct.

To address this behaviour for the future, there is a need to implement some structural change. The suggested changes are contained in the Recommendations found in Appendix A to this Report.

¹⁸ Legal and Constitutional Affairs Legislation Committee Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No. 2), 20 September 2024.

Islamophobia

Submissions were made to the Review which identified words, phrases and behaviour used on campus that were Islamophobic. Examples provided include conflating any person of the Islamic faith with terrorism and Hamas, comments about clothing worn by staff members and students and the tearing down of Palestinian flags.

Complaints were made that legitimate criticisms of the government of Israel and its actions have been cast as antisemitic. This, it is said, is contrary to the right to freedom of speech about political, as distinct from ethnic, religious and racial, matters. These complaints suggest that inappropriate allegations of antisemitism are being used as a mechanism to shut down the right to freedom of speech. Some suggest that this is the weaponising of the prohibition against antisemitic behaviour.

The majority of complaints regarding Islamophobia were made by staff members of the University. The complaints were often based on the perception that the University had taken no action in relation to circumstances involving Islamophobia that were clearly contrary to the University's policies. The complaints of Islamophobia included that staff members, and some students, have felt unsafe on campus as a consequence of being subject to Islamophobic words, phrases and behaviour. In addition, where complaints have been made about these words, phrases and behaviour, it is asserted that they have not been acted upon.

The complaints regarding antisemitic behaviour and the complaints regarding Islamophobic behaviour were at one in complaining that antisemitism and Islamophobia have been treated in communications sent by the University in the same category and often in the same sentence. All complaints of this kind suggested either that antisemitism should be treated as its own category of unacceptable behaviour, or where the complaints were in relation to Islamophobic issues, that Islamophobia should be treated as its own category of unacceptable behaviour.

Encampment

There was at the time of the commencement of the encampment a lack of clarity as to whether the University had the right to remove persons, including students, from the campus under the *Inclosed Lands Protection Act 1901* (NSW) (ILP Act). It is now understood that the University is covered by the ILP Act.¹⁹ This confirms the legal right of the University to remove people from its campus.²⁰ The Campus Access Policy contains reference to the ILP Act and the University's right to remove persons from the campus.²¹ The position would be put beyond any level of dispute if the Government amended the definition of 'prescribed premises' to include 'universities' in the ILP Act.

The existence of the encampment and its longevity gave rise to many complaints that students and staff and others were subjected to inappropriate, threatening or racist speech and that some students and staff felt unsafe. That the encampment provided an opportunity for persons from outside the University, including members of Hizb ut-Tahrir, to have a presence on the campus and an influence on those involved in the encampment contributed to the feeling the campus was an unsafe place for some, particularly Jewish students and staff.

The University monitored to the extent possible the encampment and the activities being carried on within it. Protective and Risk Services (PRS) patrolled the areas around the encampment and were in regular communication with participants and police. Notwithstanding these efforts, the University had little real control over the encampment and the people participating in it, particularly as participation was a protest directed at the University itself. The University had little detailed knowledge of what activities were going on at any particular time and no way of gaining that knowledge. People were coming and going from the encampment as they pleased, so the University could not be aware of precisely who attended and when. Cooking, cleaning, attending to personal hygiene, putting up tents and other temporary structures as well as many other activities involve some level of risk to health and safety. Weather altered conditions potentially give rise to new risks. That people were present overnight involved a different consideration of risk. Many other factors may have added to risk or altered the risks. The

¹⁹ ILP Act s 3.

²⁰ Ibid s 6.

²¹ Campus Access Policy 2024 cl 13(4).

University is not a camp site manager. The lack of clarity as to what was transpiring at any particular time in the encampment made its management difficult.

Following the disbandment of the encampment the University reviewed the rule applying to access to the campus and published on 28 June 2024 a new Campus Access Policy. That policy identifies camping as an unacceptable activity on the campus. The Campus Access Policy is currently under review by the University as was promised at the time of its introduction. The Campus Access Policy going forward should maintain the prohibition on encampments as a form of protest on any University campus.

See Recommendation 1

Feeling unsafe on campus

The Review received many complaints that students felt unsafe on campus resulting from protests (which included the encampment) and the activity that accompanied them. A wide variety of circumstances was referred to which included antisemitic speech, racist threats, and the capacity to move around the campus without being confronted by the protest activity. There were also complaints that activities such as the flying of flags, the display of posters in areas not permitted by the University's policy and the display of banners created circumstances where people felt unsafe.

Even peaceful protest activity undertaken in the outdoor areas of the University campus brings with it the possibility of risk to the health and safety of persons engaged in the protest and others who are affected by a protest. Where a protest takes place over a short period of time the likelihood of exposure to those risks is minimised. The Campus Access Policy has addressed some of these matters. Provision of security personnel, advising others on the campus of the area in which the protest is taking place and ensuring that the protest remained peaceful were all steps which were taken by the University to make the campus a safe place for all.

Many submissions referenced incidents about which they had heard from media reports as the reason for the feeling that the campus was not a safe place. It is not to be doubted that where a person becomes aware of circumstances through media, they could as a result of those reports, feel unsafe. That could be the case even if the individual did not have any direct experience of the behaviour reported on. It is important that incidents or events, such as those reported on the campus, are reported accurately.

One incident reported on by the media which many submissions referred to in support of the proposition that Jewish people on the campus were unsafe was the visit to the University by Tel Aviv University (TAU) academics. The visit by the academics, Professor Milette Shamir and Sharon Ziv Kafri, was interrupted when pro-Palestinian demonstrators entered a function room in which the TAU academics were present. It was clearly inappropriate behaviour that the visit of these two distinguished persons should have been interrupted, particularly as they had been invited to the University and were involved in running an information booth promoting international student exchanges.

Unfortunately, this incident was the subject of inaccurate media reporting, which wrongly asserted that the University of Sydney locked pro-Palestinian activists in a room with senior Israeli university staff for an hour and a half. The Israeli university staff referred to in the media were the two visiting academics from TAU. The submissions made to the Review which reference this incident all refer to the asserted fact that the visiting academics from TAU were locked in a room with pro-Palestinian activists and the fact that those academics were locked in a room was a reason why Jewish people felt unsafe on campus.

In an interview which appeared in the [Australian Jewish News](#) on 28 March 2024, Professor Shamir described the incident as “unpleasant” because of the proximity of the demonstrators, having noted that she had encountered multiple demonstrations of “this type in different parts of the world”.²² Importantly, she said “I will say that at no point were we not allowed to leave or unable to leave”.²³ The Professor went on to say “the choice to stay there was ours...we did not feel that we were physically threatened”²⁴

²² Peter Kohn and Shane Desiatnik, Australian Jewish News, ‘Israeli academic recounts ordeal’, 28 March 2024 <<https://www.australianjewishnews.com/israeli-academic-recounts-ordeal/>>.

²³ Ibid.

²⁴ Ibid.

although both professors “felt very uncomfortable because it was loud...”²⁵. It is clear that the media reporting relied upon by many is simply wrong to suggest that the TAU academics were locked in a room by the University. This article is at Appendix E.

This incident has been set out at some length to identify that a lack of safety legitimately felt by some Jewish students and staff at the University has been caused or contributed to by the inaccurate reporting of this incident.

Protests in buildings

The holding of protests within a building on the University campus is also said to be part of the rich tradition of protest at the University. In years gone past storming of the Chancellor's office, sit-ins, taking over lecture halls and the occupation of buildings have all been engaged in. Protests which take place inside University buildings are more likely than protests staged outside of buildings to disrupt the ordinary course of the University's business and interrupt students engaged in learning. Protests which are held in buildings, as a consequence of their risk profile, do not fit within the modern legislative framework and as a result permitting them places the University at risk of being in breach of the various legal duties and obligations.

The WHS Reg requires that a PCBU provide the capacity for persons to enter and exit a workplace without risk to health and safety, both under normal and emergency circumstances.²⁶ That obligation will be met if the entry and exit to a building is not impeded by a protest.

Protest activity that is carried on within a building involves risk to those involved in the protest and those affected by it. The potential for persons to be harassed or bullied is greater when a protest is held inside a building. The confined nature of the space has the potential to magnify the adverse impact that a protest might have on a person in the vicinity of the protest. A person may not be able to remove themselves from the vicinity of protest activity taking place inside a building. Loud chanting or message delivery,

²⁵ Ibid.

²⁶ WHS Reg 40.

particularly if megaphones are used by the protestors is likely to cause risk and possible harm to persons in the building.

The Campus Access Policy prohibits protests in buildings.²⁷ The policy also states that protests must not unreasonably impede the access or movement of people or vehicles.²⁸ This policy is presently under review. Some of the submissions made to the Review have criticised this policy as being an attack on the right to freedom of speech. None of those submissions have mentioned the duties and obligations imposed by the WHS Act.

The Campus Access Policy post review should continue the prohibition against all forms of protests in buildings. It should also clearly prohibit the impeding of access to and exit from buildings, which is supported by WHS Reg 40(1).

The continuation of a policy prohibiting protests within buildings would have a number of other benefits. Firstly, it would result in every building on the campus being a safe place in which anybody could seek refuge, particularly in circumstances where activity taking place outside of buildings was making them feel unsafe. Secondly, the disruption to the ordinary course of the University's business and students' capacity to learn by protest activity would be decreased. This would address a number of the complaints that people felt unsafe on campus as a result of the encampment and the protest activity accompanying it.

See Recommendation 2

Disruption to lectures

Lectures generally commence at the University at five minutes past the hour. The five-minute period is used by students to prepare for the lecture. This period has also been used as a time during which a student or group of students can, with the permission of the lecturer, address the gathered students who are attending the lecture. That opportunity is said to be one of the traditions of the University.

²⁷ Campus Access Policy 2024 cl 8(4).

²⁸ Ibid cl 8(5).

No doubt before the advent of social media platforms the opportunity to address a collected group of students face to face was an important one. However, communication of events, social or political, can now be made to the wider student population using social media platforms including the University's online forums.

Many complaints to the Review have been made about the use of this five-minute period to deliver messages considered to be inappropriate interruptions and which have no relevance to the course of study being undertaken. Many students find this disturbing, including students with disabilities, who have complained that in addition to it being upsetting, that it makes it difficult to prepare for the lecture. Since 7 October 2023 some have described announcements being made regarding the war in Gaza and the messages being delivered as antisemitic. Some have described being harassed and yelled at.

One example of the type of interruption raised in the Review involved students from the encampment who came into the classroom before the lecture commenced. Those students were not members of the student group attending the lecture. The students from the encampment took photographs of all the students in the class without asking their permission, which they said would be posted on social media. The students were told by those taking the photographs that if they did not want their photograph taken, they could hold a piece of paper in front of their face. Additionally, there are allegations that the message being delivered was antisemitic. Whatever the content of the message, taking over a classroom and making demands is likely to be intimidation, bullying and at the very least an unwanted interruption for those students preparing for the upcoming lecture.

It appears to be the case that at least on some occasions the opportunity to address students awaiting the commencement of a lecture has been taken without first obtaining the permission of the lecturer. While a lecturer can ask a student to leave it can be difficult to remove them if they do not want to comply with the request. If a lecturer has difficulty convincing the student to leave this only causes greater disruption to those waiting for the commencement of the lecture.

A student who is presently awaiting their lecture to commence really has no option but to sit through the announcement, even if doing so makes them feel uncomfortable or worse. The circumstances where students feel they are being yelled at, harassed, made to feel

unwelcome or unsafe should not be permitted. This consequence is eliminated if students are prohibited from addressing those gathered in the lecture theatre prior to a lecture commencing.

There should be no opportunity provided for students to make any announcement before a lecture commences. Making any announcement to those gathered to attend the lecture by a student or students before a lecture commences should be an identified category of misconduct.

See Recommendation 3

If social media does not provide a sufficient means for students to communicate and there is a compelling reason to provide students with an opportunity to address those gathered in a lecture, then that opportunity could be provided to students at the end of the lecture. Providing the opportunity to address those at the end of the lecture permits those who wish to leave to do so. Any message delivered following the end of the lecture should first require the lecturer's permission. It must also be made clear, if this opportunity is provided, that the prohibition against protests in buildings applies and if the student(s) delivering the message are using this opportunity to protest that they would be in breach of that prohibition and dealt with for misconduct.

Posters

The Review has been told of many circumstances where posters have been put up around the University in places not permitted by the University's Advertising on Campus Policy which regulates areas in which posters can be displayed. That policy is currently under review by the Policy Working Group. There are many photographs and descriptions of posters which are in areas not permitted by the Advertising on Campus Policy, and which contained material that some found antisemitic, intimidating or threatening. The presence and proliferation of these posters caused some to feel unsafe on campus.

The University's PRS staff were removing posters from unauthorised areas of the campus on a daily and sometimes twice daily basis. This did not prevent the posters in large numbers being continuously replaced in unauthorised areas of the University campus.

By restricting the areas in which posters can be put up, the Advertising on Campus Policy provides students and staff an opportunity to either see or avoid the posters so that they are not confronted by them in a way which they cannot avoid.

A number of formal complaints were made by students and staff about the presence and content of the posters on the campus through the University's complaints procedure. There were a large number of issues raised to the Review about the complaints system itself, which are dealt with later in the Report.

The Advertising on Campus Policy places the responsibility for compliance on individuals. In most cases the complainant was not present when the poster was put up. In those circumstances the identity of the individual(s) who put up the posters will not be known to the complainant and very often will not be able to be established. Where the identity of the individual is not established there is nothing under the present system regulating complaints that can be done, and the complainant is advised that no further action can be taken. This will often leave complainants feeling aggrieved. In those circumstances to some it appears that the University is unwilling, unable to, or uninterested in acting on the issue raised in their complaint. This has created a belief that the University is permitting posters to be put up in contravention to the Advertising on Campus Policy.

Where some action is taken because of a complaint, the complainant is far more likely to be satisfied with the process than if no action is taken at all.

The majority of posters on campus are produced by student organisations (Organisations) These student organisations and groups are registered with the University²⁹ so that they are eligible to receive funding to support their activities from the University through the Student Services and Amenities Fee (SSAF) Fund and in some cases from other sources. Where posters are put up on the campus which identify an Organisation or Organisations as the author, or where the posters are advertising an event that is being run by an Organisation or more than one Organisation, then the Organisation(s) should be held responsible for ensuring that their posters are put up in compliance with the Advertising

²⁹ Student Association Policy 2020; Student Associations Procedures 2021.

on Campus Policy. Compliance with that policy and all other University policies should be a condition of registration for funding.

Where an Organisation's posters are put up on the campus in a way or place that breaches the Advertising on Campus policy it is the Organisation who should be liable to sanction. The range of appropriate sanctions which could be imposed on an Organisation will need to be carefully considered. The range of sanctions imposed should neither be too harsh nor so insignificant that it will not discourage Organisations from breaching University policy. The type of sanction might depend on the policy that has been breached by the Organisation. Where an Organisation has breached the Advertising on Campus Policy for the first time, or infrequently, and the breach is identified early, it may be sufficient to require the Organisation to remove the offending posters immediately.

A sanction where an Organisation is in breach of a policy may involve withholding or reducing the Organisation's funding. It may be appropriate, depending on the circumstances of the breach and the record of the Organisation to make the sanction one which suspends funding, on a temporary basis or permanently. Where an Organisation is in breach of the University's policies on a repetitive basis consideration might have to be given to precluding its office and position holders (or some of them) from being eligible to hold an office, elected or otherwise in any Organisation which receives funding from the University.

Holding an Organisation responsible where it breaches the Advertising on Campus Policy would address the allegation that the making of a complaint on this issue results in no action being taken. It will also minimise the likelihood that posters are put up "all over" the University. It will make dealing with a complaint of that kind simpler to process and therefore likely to be dealt with in a timely way. As the sanction would be imposed on an Organisation, there would be no reason the complainant could not be informed of it. By doing so the University would demonstrate that it will not permit a breach of its policies and that it is not unwilling to, unable to, or uninterested in acting on a complaint.

Complaints Procedure

The Review has received many submissions identifying problems with the University's complaints procedure. They are that the complaints procedures are complex, slow, receive generic communications and lack transparency.

Those involved in administering and dealing with complaints are highly trained, diligent and professional in the way they treat all aspects of the complaints made to the University. All complaints are treated seriously. Those dealing with complaints face many issues, some of which are:

- The subject matter of complaints is very diverse as a complaint may arise in any part of the University's operations.
- Complainants may wish to remain anonymous.
- The information provided may not identify the individual(s) who are responsible for or involved in the behaviour complained about.
- The information provided by the complainant may be insufficient.
- Persons named in complaints may seek legal advice and sometimes legal representation.
- Privacy considerations may be and often are involved.
- Whatever the result of the complaint someone may refer it to the Ombudsman for review of the substance or the process.
- An appeal to the Administrative Division of the Supreme Court of NSW may be possible.

The problems which have been raised have not been caused or contributed to by the personnel handling complaints. It is the system which they administer for the handling of complaints which gives rise to these problems and is currently under review.

Where a complaint is made, the investigation resulting from it is initially directed to establishing if there is evidence to identify, with a sufficient degree of certainty, the individual(s) who engaged in the misconduct complained about. If that evidence is available, then the individual(s) is advised, and the investigation continues to determine if the misconduct on the part of the individual is established. This involves providing the individual(s) whose identity has been established with a proper opportunity to explain and raise any matter which they think is relevant. This opportunity is necessitated by the rules of natural justice to which all individuals alleged to have engaged in misconduct are entitled to by law.

Some submissions suggest that the complaints system is not worth pursuing as nothing will result. Many have complained that the process takes too long. Individuals who feel that the University has taken inadequate or no action and have seen the activity complained about continue, such as posters appearing in unauthorised areas of the campus, have described themselves as feeling unsafe.

The complaints procedures are presently the subject of a comprehensive review initiated by the University's Office of General Counsel.

Complexity

The University's complaints procedures are complex. They involve multiple entry points, policies, processes, systems and complaints handlers. This is added to by a complex and onerous regulatory framework with multiple laws and regulations which have to be considered and can impact complaints.

Which of the procedures is engaged and who within the University is responsible for the processing of the complaint will vary depending on a variety of factors. These factors include who the complaint is made by and about whom the complaint is made.

Complaints made by students about students go to the Student Affairs Unit,³⁰ complaints made by staff members about students first go to Workplace Relations and are then referred to the Student Affairs Unit if necessary,³¹ complaints made by students about

³⁰ Student Complaints Procedures Policy 2015 cl 7(1).

³¹ Ibid cl 7(3)(a).

staff members first go to the Student Affairs Unit and may then be referred to either the relevant faculty, Provost, administrative unit or Workplace Relations,³² and complaints about sexual matters including harassment go to the Safer Communities Office.³³ A complaint which raises an academic consideration will be reviewed by a different person or persons than a complaint made about an academic regarding behaviour not associated with academia.³⁴

Complaints have been made to the Review that accessing complaint forms and the procedures which explain how to commence the different complaints is not easily done. Forms have been produced for different types of complaints however finding the correct form for a particular type of complaint can be challenging. The University website is not easy to navigate for this purpose. Going through the process of finding the correct form, the correct area of the University to lodge a particular complaint and understanding what is required to make a particular type of complaint from a website which is not user friendly can be confusing and frustrating.

Where a complaints procedure is difficult to access or navigate it may result in under reporting. Under reporting is an issue as trends and problems are not clearly identified at an early time. The identification of trends and problems is necessary to be proactive.

The present review should be continued to achieve a complete overhaul and simplification of every aspect of the complaints procedures. That review should be detailed and is likely to identify more issues than have been raised with the Review. The following suggestions regarding the overhauling of the complaints procedures are drawn from the submissions made to the Review and are included for the assistance of the University's ongoing review.

A single central office (the Complaints Office) should be established. This will create a single place in the University where all complaints are directed to, no matter who is making them, who is being complained about or what the subject matter of the complaint is can be lodged and processed.

³² Ibid cl 8(11)(c).

³³ Staff Sexual Misconduct Policy 2023 cl 13; Student Sexual Misconduct Policy 2023 cl 13.

³⁴ University of Sydney (Student Academic Appeals) Rule 2021; Student Complaints Procedures 2015 cl 1(3)(a).

Once established the Complaints Office should be in a position to triage complaints making sure that they are dealt with or relevant aspects of them are considered by the persons with the necessary experience and skills to deal with the particular subject matter of the complaint. The Complaints Office should be responsible for ensuring that complainants are kept informed of the progress of their complaint including the reason for any delay. This approach together with disclosure of any reasons for delay will address the criticism that the process is not transparent.

It is likely that a complete overhaul of the complaints procedures will result in the need for an investment in appropriate technology. Technology is also likely to speed up the handling of complaints. It is beyond the scope of this Review to consider or investigate the types of technology that might best suit the University, and no attempt has been made to do so.

There are complaints received by the University which do not go through the existing complaints procedures because they are sent to senior personnel within the University including the Vice-Chancellor. In addition to creating a burden on the staff assisting those senior persons, there remains the potential that complaints end up being missed or dealt with inconsistently because they have not become part of the complaints procedures. Those complaints received by senior personnel should be referred to or logged with the Complaints Office. This will assist in creating transparency in the process.

See Recommendation 5

Alternative Dispute Resolution

The University's policies that deal with the resolution of complaints, include some alternative dispute resolutions mechanisms. Unfortunately, those mechanisms have not been widely used. As part of the review of the complaints procedures consideration should be given to strengthening the University's alternative dispute resolution mechanisms. Mediation, which is a voluntary process, is an option offered in many dispute and complaint processes. Mediation provides an alternative to the completion of formal processes and can provide a quick alternative to a formal determination of the

complaint. It provides the parties to the complaint, who opt to participate in it, an opportunity to air the subject matter of the complaint confidentially and explore a pathway to resolution of the issue the subject of the complaint. Whether mediation is an appropriate option will depend on the subject matter and seriousness of the complaint.

Where mediation is appropriate, it provides the parties to the complaint with an opportunity to reach an agreement which does not involve the imposition of a penalty. Often complaints, particularly those about behaviour, can be resolved through discussion between the parties by such things as an apology, the recognition of an alternate position or the gaining of insight into the other person's motivation for the behaviour, amongst others. The parties to a dispute can often achieve a personally satisfactory result to a dispute through mediation which would otherwise not be available through the complaints procedure.

See Recommendation 6

Reporting on Complaints

There is a perception that the University does not take actions on complaints. This perception has found its way into many areas including the media. There is little or no information available in the public arena to identify how many complaints are received by the University, the subject matter of those complaints, how many of those complaints are dealt with to completion and how many are substantiated. The consequence of this lack of public information is that the public perception, particularly as it is reflected in the media, is a very negative one. Publicly, the number of complaints received is thought to be a significantly higher number than the University's records show to be the fact. The subject matter of the complaints is thought to be more damning than is reflected by the records of those complaints. Issues such as the time taken to process complaints is speculated on. There is a perception that the University is unwilling, unable to, or uninterested in acting on complaints.

This problem of perception could readily be addressed by having a report sent to the Senate on a regular bi-monthly basis (or another suitable interval) and thereafter released

to the public. Paying proper regard to privacy considerations the report would identify the nature of the complaints received by grouping similar complaints together so that there is no need to identify the specific circumstances of individual complaints. The report would also need to include how many of the complaints received since the last report had been dealt with and the expected timeframe for the completion of the balance of those complaints. Publishing a report of this kind would immediately provide an accurate basis for those in the community, including the media, to assess the University's progress in the handling of complaints and be more accurately aware of the nature of the subject matter raise in complaints.

There may be other matters which could appropriately be included in such a report. These matters will no doubt become obvious during the review of the complaints procedures. The report would dispel the perception that there is any level of inaction or that the University is not, or not interested in handling complaints made to it.

Where it is public knowledge that complaints are being dealt with and that they are being dealt with in a timely fashion, the system disclosing that information is unlikely to have a significant under reporting problem.

See Recommendation 7

Reporting on Substantiated Complaints

Where complaints are substantiated the person or Organisation found to have breached the University's policies or rules will receive some form of penalty or a suspended penalty. At the present time, however, driven by considerations given to privacy, others are generally not made aware of the penalties the University is imposing for breaches of its policies. Where penalties imposed are not known by the general student and staff population of the University, those penalties do not act as a deterrent to others. That penalties should act as a deterrent to others is a recognised element of our legal system.

To achieve a deterrent effect, the nature of a penalty imposed for a breach of the University's policies must be known publicly. Given that complaints are made about

individuals there are relevant and compelling privacy considerations to which attention must be paid.

It is not suggested that the University should publish individual penalties or that the identity of those upon whom the penalty has been imposed be made public. A report could be sent to the Senate, possibly on an annual basis, which identified in a group fashion the nature of complaints that had been substantiated and the range of penalties imposed in respect of each of those groups. The report would have to be made public.

Publishing de-identified statistics on employee misconduct in the form of an annual report is a practice that is becoming more prevalent among corporations. For instance, the KPMG ‘Our Impact Plan 2024’ discloses the number of conduct reports raised, the number closed out, the type of misconduct (breach of the code of conduct, discrimination or sexual harassment) and the number that were substantiated.³⁵ The Deloitte ‘Making an Impact FY24 Annual Report’ discloses the number of concerns raised, the number investigated and closed out, the number substantiated and the number of those dealt with either by counselling, reprimand or firm exit. Examples of this kind of reporting should be considered by the University.³⁶

See Recommendation 8

Freedom of Speech and Academic Freedom

Both students and staff have the right to freedom of speech at the University.³⁷ The essential elements of freedom of speech and academic freedom “mark it as a defining characteristic of universities and like institutions.”³⁸ The scope of freedom of speech and academic freedom in the sector is not settled as there is no common consensus as to the boundaries of each.³⁹ The maintenance of freedom of speech and academic freedom is fundamental to the University’s operations. For the purposes of the Review academic

³⁵ KPMG, ‘Our Impact Plan 2024’, page 19.

³⁶ Deloitte, ‘Making an Impact FY24 Annual Report’, page 24.

³⁷ Charter of Freedom of Speech and Academic Freedom cl 5(1).

³⁸ The Honourable Robert French AC, ‘Report of the Independent Review of Freedom of Speech in Australian Higher Education Providers’ March 2019, page 114.

³⁹ Ibid page 13.

freedom and intellectual freedom are considered to have the same meaning. The terms have been used herein interchangeably. In taking this approach the discussion of the meaning of academic freedom contained in the French Report, page 18 is acknowledged. Freedom of speech is not and has never been without limitations. In exercising the right to freedom of speech it must be done consistently with the law at the time of its exercise. The law prohibits “various forms of excessive conduct including that which is offensive, insulting or obscene, harassing or intimidating.”⁴⁰ Freedom of speech does not permit the use of hate speech or vilification.

Freedom of speech and academic freedom includes the right to peaceful protest. However, boundaries of this freedom are not well understood and often ignored. The French report provides:

“It does not carry with it a right to go onto private land in order to express a particular view.

It does not carry a right to protest against the speech of others by shouting them down or otherwise acting to prevent them from speaking. There are, and always have been, limits.

It does not permit negative speech directed toward particular classes of persons defined by their attributes, ancestry or religious beliefs, can contravene laws giving effect to humans rights norms.”⁴¹

In March 2021 the Federal government amended the HES Act to require that all higher education providers including the University have a policy that “upholds freedom of speech and academic freedom.”⁴² This amendment reflected the recommendations contained in the Report of the Independent Review of Freedom of Speech in Australian Higher Education Providers (the French Report). The University’s Charter of Freedom of Speech and Academic Freedom (the Charter), which was amended following the

⁴⁰ Ibid page 103.

⁴¹ Ibid pages 102-103.

⁴² HES Act s 19-155. See also objects cl 2-1(a)(iv).

publishing of the French Report and before the HES Act was amended, meets this legislative requirement.

The Charter acknowledges that although the right to freedom of speech and academic freedom is fundamental, it is not without restriction.⁴³ Both statute and common law place restrictions on both freedom of speech and academic freedom.⁴⁴ The Charter acknowledges the right of persons at the University to protest and disagree subject to restrictions imposed by law.⁴⁵ In addition to the Charter the University's commitment to freedom of speech and academic freedom is reiterated in many of its policies and statements.⁴⁶

The *University of Sydney Enterprise Agreement 2023-2026* (the Agreement 2026) also embodies the University's commitment to the protection and promotion of intellectual freedom⁴⁷. The exercise of intellectual freedom recognises that staff members of the University are at liberty to express unpopular or controversial views, without impact on their employment, provided that in doing so they do not engage in harassment, vilification or intimidation.⁴⁸ The exercise of intellectual freedom under the Agreement 2026 must be "in accordance with the highest ethical, professional and legal standards."⁴⁹ This is also an acknowledgement in the Agreement 2026 that intellectual freedom must be exercised in accordance with the restrictions imposed by the law.

The limits imposed by the law on freedom of speech have altered with the introduction of new laws and amendment of existing laws. As laws develop to reflect changing societal standards, they have imposed on many aspects of life including the right to freedom of speech. Laws such as the WHS Act, The AD Act and the SD Act and others in the employment field have created duties and obligations which must be met by PCBU's. The

⁴³ Charter of Freedom of Speech and Academic Freedom 2020 cl 5.

⁴⁴ The Honourable Robert French AC, 'Report of the Independent Review of Freedom of Speech in Australian Higher Education Providers' March 2019, page 103.

⁴⁵ Charter of Freedom of Speech and Academic Freedom 2020, cls 5(1)(a) and 5(5)(a).

⁴⁶ Anti-Racism Statement, <https://www.sydney.edu.au/about-us/vision-and-values/diversity/cultural-diversity.html>.

⁴⁷ University of Sydney Enterprise Agreement 2023-2026 cls 366-368.

⁴⁸ Ibid 366(b)(iv).

⁴⁹ Ibid 368. See also University of Sydney Enterprise Agreement 2018-2022 cl 317; *University of Sydney v NTEU* [2024] FCAFC 57.

meeting of those duties and obligations may, and in some circumstances will, impose limits on the right to freedom of speech.

There does not appear to have been any significant consideration given in either case law or academic writing to the impact the WHS Act might have on freedom of speech or academic freedom. However, as speech can result in risk to health and safety the WHS Act does operate as a law which limits freedom of speech and academic freedom.

Clarity through Context

*“One should aim not at being possible to understand,
but at being impossible to misunderstand”*

Quintillian, 95AD

Freedom of speech and academic freedom have been considered earlier in the report. They are fundamental to all universities. They are part of the foundation of the University and what the University stands for.⁵⁰ They are, as earlier discussed, not without their limits; they, and their use, are subject to the law.

The Review has received submissions identifying particular words and phrases, which some argue are legitimate expressions of a political view, whilst others argue those same words and phrases are antisemitic or racist. Determining which of these competing views is correct has proven to be difficult for the University and many others who have attempted it. Those who allege that the words and phrases are antisemitic do so as part of a wider argument that antisemitism is on the rise in the community generally and at the University. One expression of this point of view is:

⁵⁰ The Honourable Gareth Evans AC QC FASSA FAIIA, ‘Maintaining Universities’ Raison D’etre: Meeting the Challenge, Inaugural Chancellor’s Oration’ to the University Chancellors’ Council (UCC) 11th National Conference on University Governance, *The Challenge of Change for Australian Universities*, 4 October 2018.

“Antisemitism is a light sleeper which has awoken with a vengeance on the University of Sydney Camperdown campus, often justified under the cover of anti-Zionism and oxygenated under the cover of ‘free speech.’”⁵¹

Whilst this is an eloquent description of the problem of antisemitism experienced on the University campus, it does not reflect the view of all Jewish people or those who support them.

In another submission to the Review the author wrote:

“I have deep roots in the Australian Jewish community. It is from this position that I write to express my disappointment and frustration at the weaponisation of antisemitism accusations to silence forms of protest and critique that are legitimately directed at the State of Israel and the political ideology of Zionism”⁵²

Some Jewish authors pointed out that there are no Jewish communal leaders or organisations who speak for all Jewish people in Australia on the issues the subject of the Review, “no community is a monolith”. Clearly the Jewish community is one in which there is a divergence of strongly held views each of which has proper foundation and must be respected. Like many in the Jewish community, others expressed strongly held but divergent views on what it is that constitutes antisemitism and in particular which words and phrases, if used, were antisemitic.

All submissions to the Review appear to support the concept of freedom of speech and the encouragement of open, vigorous and serious debates⁵³ about any topic including political ones. However, there is deep disagreement over what words and phrases are permitted in such debates and where the boundary between legitimate freedom of speech and impermissible speech lies.

⁵¹ 5A submission to the Review.

⁵² The author sought to remain anonymous.

⁵³ Debate is not used in any technical sense and should be read to include all forms discussion heated or otherwise.

Shortly after 7 October 2023 the University recognised this problem and set about trying to establish what speech did and what did not constitute antisemitism. To assist, it sought expert advice both from inside and outside the University, which was not illuminating. It looked widely at the experience of other universities around the world and other places of higher learning. Academic papers on the topic of antisemitism and racism generally were considered. The various definitions of antisemitism were reviewed. This process led to the same position facing the Review: there is no universally accepted definition of antisemitism and there is no definitive guidance on precisely where the line between acceptable and unacceptable speech exists.

Resulting from its consideration of these issues, the University published its Anti-Racism Statement which states that the University will not accept any form of “discrimination based on colour, descent, caste, national or ethnic origin, language, sex, sexual orientation, gender, gender identity or expression, sex characteristics, marital or relationship status, age, disability, religion, migration status, refugee or asylum status, socio-economic status, or other status.”⁵⁴ The supplementary resources to the Anti Racism Statement identify and refer to the most widely accepted definitions of antisemitism and recommend them as guidelines.

The difficulty is in determining how serious debate can be held about difficult topics in which controversial opinions are raised. At present, given the circumstances confronting the University and the world, that difficulty is most prominent in relation to antisemitism, Islamophobia and racism. However, the same difficulty, what is and is not acceptable speech when used in a debate which is held having regard to freedom of speech, will arise in the future in relation to topics other than the war in Gaza. The University’s policies and procedures must be developed having regard to that likelihood.

In addressing this issue, concentration has been initially focused on antisemitism. As will be made clear, the result from this consideration is of general application to debates at the University.

⁵⁴ Anti-Racism Statement, <https://www.sydney.edu.au/about-us/vision-and-values/diversity/cultural-diversity.html>>.

Where a word or phrase is obviously antisemitic, then clearly it cannot be used. Doing so would breach the University's policies and statements⁵⁵ which would amount to misconduct on the part of a student or staff member who used the word or phrase. It may also amount to a breach of the law. Repeated use of a word or phrase over a period of time may expose those offended or upset by it to psychosocial harm. That could be the case if the same word or phrase is used over time in different settings such as a chant, in an address to a class gathered for a lecture, in a meeting and if used to shout down a person with a different view so that they are not able to be heard.

It is not the words or phrases that are clearly antisemitic which cause the problem. It is words and phrases which can be used as a legitimate expression of view or in a way which is antisemitic. Often it will be claimed by the person using the word or phrase that they have done so in a legitimate context whilst those who have heard what was said are certain that an antisemitic word or phrase has been used. If a person is later trying to determine whether the speaker or the listener is correct, they will need to look to the context in which the word or phrase was used. The context is often difficult to establish, leaving open whether the word or phrase was legitimately used, or it was an antisemitic expression. Trying to establish context after the event can be a challenging, time consuming and often a fruitless exercise.

The legitimate utilisation of word or phrases which could also be considered antisemitic or racist is well explored by Rabbi Jill Jacobs in her paper titled

‘Criticism of Israel and Antisemitism: How to Tell Where One Ends and the Other Begins.’⁵⁶

In that paper Rabbi Jacobs explores the circumstances involving protests against the war in Gaza in the USA since 7 October 2023, including those on American university campuses. In the paper the Rabbi points out:

⁵⁵ Bullying, Harassment and Discrimination Prevention Policy 2015; Anti Racism Statement; Viva Engage Terms of Use 2024 cl 6(5)(b); Student Charter 2020 cls 8(1)(a) and 8(1)(c).

⁵⁶ Rabbi Jill Jacobs, ‘Criticism of Israel and Antisemitism: How to Tell Where One Ends and the Other Begins’, 22 May 2024.

“As protests against the war have erupted, so has significant confusion – sometimes deliberate and sometimes not – about the boundaries between criticism of Israel and antisemitism”⁵⁷

The Rabbi identifies the division of opinion within the Jewish community:

“In order to fight antisemitism, it is important to be clear about what it is and what it is not. Too many on the right have levied false charges of antisemitism against virtually any criticism of Israel. This has allowed for crackdowns on legitimate free speech and has allowed some on the left to conclude that no criticism of Israel is antisemitic. But some criticism does, in fact, cross the line into antisemitism.”⁵⁸

Rabbi Jacobs has explored “instances in which criticism of Israel does not necessarily cross the line into antisemitism”⁵⁹ and those in which it does. One of the examples explored by the Rabbi is the use in protests and other places of the phrase “from the river to the sea, Palestine will be free.” The Rabbi opines that some proponents of that phrase:

“Argue that a free Palestine will also include Jewish citizens in a single democratic state. This belief is not antisemitic, as long as one is sincere about protecting Jews within such a state.

However, most Jews hear this slogan as a call to expel Jews from Israel. The fact that this slogan appears in Hamas’s 2017 charter makes it difficult for Jews to understand the words otherwise. The terms also echoes Syrian leader Hafez el-Assad’s 1966 declaration, “We shall only accept war... We have resolved to drench this land with our blood, to oust you, aggressors, and throw you into you the sea for good.”

⁵⁷ Ibid page 1.

⁵⁸ Ibid page 2.

⁵⁹ Ibid.

Therefore, it is advisable for anyone who does not want to be viewed as antisemitic to avoid this phrase or use it only when there is an opportunity to clarify their meaning.

As is the case in other situations of potential prejudice, the impact is often more important than the intent. And there are many other ways to declare one's commitment to the freedom of Palestinians without suggesting that Israeli Jews should leave.”⁶⁰

As Rabbi Jacobs makes clear in her paper and in the extract set out above, it is the context in which a particular phrase or word is used that will make the statement a legitimate criticism or one which crosses the line into antisemitism. The context is the domain of the user of the phrase. It is important therefore that the context be made clear by the user of the phrase, so that they are not mistaken for being antisemitic when their intention was to convey legitimate criticism.

Although, by referring to the paper by Rabbi Jacobs, an example of a particular phrase that could be antisemitic or used in a legitimate way depending upon context has been explored, the same observations apply to statements that could be used legitimately or otherwise in other areas such as the use of phrases which could be, depending on context, sexist, racist, bullying or Islamophobic.

Academics are familiar with the need to identify and explain context. Academic writing requires clarity of argument. Clarity is not achieved if the reader is left to determine for themselves the meaning to the words and phrases used to advance the argument. To achieve clarity the academic must inform the reader of the context in which particular words and phrases have been used.

Persons who seek to use language presumably do so in circumstances that do not breach laws prohibiting racism, sexism, bullying, hate speech, intimidation or harassment and, for that purpose, would usually make the listener aware of the context in which the speech is being used so no adverse conclusion as to its use could be drawn and there can be no suggestion that a law has been broken.

⁶⁰ Ibid page 12.

That the user of speech which has the potential to offend if used in a particular context has the obligation to establish the context in which the speech is being used finds support in the approach taken by the Full Federal Court of Australia in its decision in *University of Sydney v National Tertiary Education Industry Union* [2024] FCAFC 57.

In that matter the University had dismissed Dr Anderson for misconduct arising out of certain statements made by him and posts he made on social media which were said to be impermissible. Dr Anderson maintained that the statements he made, and his social media posts, were permitted by the clauses in the *University of Sydney Enterprise Agreement* (2018 -2021) (2018 Agreement)⁶¹ dealing with Intellectual Freedom.

Justices Perram and Lee both found that it was Dr Anderson who was required to prove that his “various comments had complied with the highest ethical, professional and legal standards referred to in clause 317.”⁶² Put in legal terms, Dr Anderson bore the onus. It was for Dr Anderson to explain how his “conduct could be characterised as being consistent with the highest ethical, professional and legal standards referred to in cl 317.”⁶³

Any person using a word or phrase that could possibly be interpreted in such a way that it is unlawful or otherwise impermissible should be made responsible for identifying to the audience at the time the word or phrase is used, the context in which it is used. Requiring a speaker to identify the context as suggested here reflects the approach taken by the Full Federal Court in the Dr Anderson proceedings. By identifying context which establishes the legitimacy of their use the words and phrases could not be understood to have an impermissible meaning. They will not be construed as sexist, bullying, harassment or racist. The speaker will have ensured clarity.

⁶¹ University of Sydney Enterprise Agreement (2018 -2021) Cls 315-317.

⁶² *University of Sydney v National Tertiary Education Industry Union* [2024] FCAFC 57 Perram J at [2], [12], [14], [21]. See also Lee J at [28] and [31].

⁶³ *Ibid* Perram J at [14].

Civility

In the exercise of freedom of speech, the University through policy, statements and guidelines requires students and staff members to engage in discourse of all kinds with civility. Engaging with civility underpins the way in which the University seeks its academic staff and students to speak and behave in all situations.

The Student Charter seeks to “protect academic freedom and safeguard the presentation of ideas through the presentation of ideas through robust, informed and respectful debate that is free from discrimination and harassment⁶⁴ (emphasis added). Students are expected to:

- Treat others with respect regardless of gender, religion, race, sexuality or disability;⁶⁵
- Avoid engaging in bullying, harassment or discriminatory behaviour, including on social media;⁶⁶ and
- Support academic freedom and freedom of speech for themselves and for others.⁶⁷ (emphasis added)”
-

The Charter of Freedom of Speech and Academic Freedom states as follows:

- The University of Sydney greatly values courage, civility and respect and promotes a climate where people disagree well.⁶⁸
- The duty to foster the wellbeing of staff and students includes the duty to ensure that no member of staff and no student is subject to threatening or intimidating behaviour by another person or persons on account of anything they have said or proposed to say in exercising their freedom of speech.⁶⁹ (emphasis added)

The University of Sydney Statement on Respectful Engagement on Campus, 16 March 2024⁷⁰ (Statement) includes the following: “a campus is place of civility and mutual

⁶⁴ Student Charter 2020 cl 7(f).

⁶⁵ Ibid cl 8(1)(a).

⁶⁶ Ibid cl 8(1)(c).

⁶⁷ Ibid cl 8(1)(f).

⁶⁸ Charter of Freedom of Speech and Academic Freedom pt 1 cl 2(5).

⁶⁹ Ibid pt 2 cl 4(b).

⁷⁰ Anti-Racism Statement, <<https://www.sydney.edu.au/about-us/vision-and-values/diversity/cultural-diversity.html>>.

respect, where everyone feels welcome, safe and included.”⁷¹ The Statement refers to “respectful protest and cultural safety”, as well to “robust, non-violent, informed civil debate.”⁷² It notes that courage and civility are greatly valued at our University as is the promotion of culture where people disagree well.

The University published in 2024 an education module titled ‘Engaging with Civility.’ That module refers to the Student Charter and draws attention to clause 8(1)(a) which is set out above. The module contains the following statements:

- “The University is committed ensuring an inclusive, anti-racist institutional culture and has recently issued the Anti-Racism Statement.”⁷³
- “We all have a responsibility to be inclusive, respectful and considerate in our words and actions to ensure everyone at the University feels connected and is treated with respect, regardless of gender, religion, race, sexuality or disability.”⁷⁴ (emphasis added)

Consistently with this approach, the requirement for a speaker to identify the context in which the words and phrases being used are to be understood should be seen as a means of ensuring that persons engage with civility.

See Recommendation 9

As discussed below, the New Civility Rule should be enforced in all lectures, seminars, tutorials and meetings which take place within any of the University’s buildings.

Staff members and students have a right to use the University’s buildings and facilities (facilities) subject to the law and any lawful requirement imposed by the University for

⁷¹ Ibid.

⁷² Ibid.

⁷³ University of Sydney Engaging with Civility Module.

⁷⁴ Ibid.

doing so. The University's requirements for using its facilities can be found in various policies, procedures and statements.

Lectures, seminars and tutorials are all conducted by members of the University staff who will, resulting from the changes suggested above, be responsible to ensure that the context in which they deliver their material and each aspect of it is clear to their audience.

The University should require that staff and students holding or participating in any form of lecture, seminar, tutorial or meeting in any of its facilities comply with the New Civility Rule. This is intended to be in addition to, and not in substitution of, the University rules which are already in place for the conducting of lectures, seminars, tutorials and meetings.

A failure to comply with the New Civility Rule should be dealt with as a misconduct matter.

See Recommendation 10

There are at the University many meetings conducted in the University buildings by Organisations. One meeting, held by the Student Representative Council on 7 August 2024, has been the subject of a number of different complaints to the Review, most of which have informed consideration already outlined in the report.

An important aspect of the complaints made about the meeting is that a motion which was proposed by a group of Jewish students was shouted down by those assembled. No proper opportunity was given to those moving this motion to address it or for them or others to speak to it. They were not treated with respect or listened to as required by the Student Charter. One of the Jewish students at the meeting, Celina Di Veroli, recorded her experience of the meeting in an article published in The Australian Jewish News on 9 August 2024.⁷⁵ In describing the meeting Ms Di Veroli said “What should have a forum for open dialogue instead became a crucible of hostility,....”

⁷⁵ Celina Di Veroli, Australian Jewish News, ‘Silenced Voices: Rejecting Mob Mentality’, 9 August 2024 <<https://www.australianjewishnews.com/silenced-voices-rejecting-mob-mentality/>>.

Where a person or persons are not allowed an appropriate opportunity to engage by expressing their view even if a majority of those present hold a different view, no matter how strongly, the right to freedom of speech and the University's present rules regarding civility and the obligation to "disagree well" are not met.

It falls to the persons or Organisations conducting the meeting to ensure that the meeting is conducted consistently with the University's policy and the obligation to listen. Where instead of respectful debate a meeting descends into a sea of angry voices or speakers are shut down by other means, only those responsible for the calling of the meeting are able to bring it back to civility.

The University's policies should reflect that it is the convenor of a meeting being held in the University's facilities who must ensure that the meeting is conducted consistent with the University's engaging with civility principles. It should be made clear that this obligation includes the requirement to comply with the New Civility Rule.

Where a student Organisation holds a meeting using University facilities, the Organisation should be accountable if they do not conduct those meetings in compliance with the civility principles. Sanctions should be imposed on the Organisation if it fails to comply with the University's civility principles whilst running meetings.

See Recommendation 11

To ensure that Organisations and their office and position holders are aware of and able to ensure that all meetings are held in compliance with the University's civility principles, the University should make it compulsory that every office holder undertake the Engaging with Civility module, noting that it will need to be amended to reflect the adoption of the New Civility Rule. Existing office and position holders within University funded student associations should be given some appropriate time by which they would be able to establish that they had done the Engaging with Civility module.

It should be a requirement in all University funded Organisations that any new office or position holder is only permitted to occupy the office within the Organisation if they have completed the Engaging with Civility module. Where a student Organisation permits any

of its office and position holders to act in or discharge the responsibilities of that office or position, the responsibility for breaching the requirement in respect of the completion of the Engaging with Civility module should rest with both the individual and the Organisation. In the case of an individual, a breach of the policy would be misconduct. The Organisation should be made accountable by the imposition of a sanction which could include withdrawal of their funding in whole or in part if they fail to comply with the requirement that all their office and position holders have completed the Engaging with Civility module.

See Recommendation 12

Policies

The University has a complex system of policies, guidelines, rules, procedures, provisions, faculty resolutions and other resolutions. There are 102 policies. Many of these policies overlap. Some deal with small areas of activity that could otherwise be comfortably accommodated somewhere else. Many appear to deal with a limited circumstance which has a small area of impact. There are also a small number of policies that have not been reviewed for many years and have little or no relevance to the University's present-day circumstances and operations.

Identifying which policy or policies is applicable to a particular issue is often a difficult task. Where policies overlap it is not easy to identify how they are intended to work together. The policies are often expressed in general terms which lack sufficient clarity to be certain. They are often lengthy and use words and phrases that have multiple meanings. Policies which use language of this kind make it difficult to identify the University's position on a matter and more difficult to comply with the policy.

Where an organisation has a very large number of policies, it is often the case that the policies are not well understood and, in some cases, not referred to at all. Having various other documents to which regard must be had to understand the University's actual position on a matter compounds this problem. Putting to one side staff members whose function is directly affected by a policy or policies, the submissions made to the Review

make it clear that the University's policies are not well understood and rarely consulted. People from outside of the University have difficulty locating them and even more difficulty gaining clarity from them. The existing system of policies and other University position documents does not create transparency.

Recognising this, the University is currently undertaking a robust policy transformation project to ensure its policies are fit for purpose and simplified.

In March 2024, the University implemented a Policy Working Group. To date, the Policy Working Group has introduced two new policies, the Viva Engage Terms of Use 2024, which outlines appropriate use of the Viva Engage online platform used by staff, and the Campus Access Policy 2024, which governs use of, and conduct, on its land. Following the events on campus since 7 October 2023 including the encampment, further policies have been identified as a priority for review. The Policy Working Group is currently reviewing its Flag Guidelines, the Acceptable Use of ICT Resources Policy, University Staff and Students Broadcast Email Policy, Public Comment Policy and Advertising on Campus Policy. The University should continue with this initiative to review all of its policies with the aim of simplification, clarity of language and to ensure that its policies are fit for purpose.

See Recommendation 13

Surveillance

Many complaints arising from activity in the outdoor areas of the campus have been unable to reach a positive conclusion due to a lack of evidence as to who was engaging in the activity complained about. The University's CCTV system has limitations in its coverage of the outdoor areas of the campus. The University is at the present time upgrading its CCTV capacity both in respect of the technology and coverage it will provide. The completion of this project will enhance the capacity to identify those responsible for inappropriate behaviour about which a complaint has been made. The increase in the capacity of the CCTV monitoring system will create a safer environment by enabling quicker and more decisive responses to circumstances as they arise and complaints as they are made.

Security Protocols

The University has had a number of visits by persons who require particular security measures to be implemented when visiting the campus. Politicians and dignitaries, domestic and foreign, as well as others, are increasingly requiring or require security assessments of the places they visit and a particular level of security in place when they do. The University has some capacity to provide security for visitors to the campus which is geared to the provision of such services at a level appropriate for usual activity. Even with well-planned visits the events surrounding them can require an increased security or peace keeping presence on short notice. Often in the case of visiting politicians and dignitaries, this additional level of security will be provided by the state or federal police. Where coordination between the University security service and external security services is required, it is essential that protocols are in place to ensure that the expectations of each party to the protocol are well understood.

The circumstances that have arisen on campus since 7 October 2023 have resulted in the University's PRS dealing with NSW police on many occasions. Whilst these interactions have been handled very professionally by the PRS, they have been ad hoc meetings and discussions which were dealing with a particular issue which had arisen.

There have been circumstances where, as a result of a particular level of protest activity on campus, the provision of security services has not been appropriate. The protest activity directed at the visit to the campus by the Honourable Malcolm Turnbull AC resulted in the interruption by protestors of his visit leading to its early conclusion. I have earlier referred to the visit to the University by academics from the Tel Aviv University. There have been occasions when University security became aware of a need for, and the presence of, police on the campus only after the arrival of those police.

The establishment of protocols through agreements with police which can be acted on in any appropriate circumstance is an important step in proactively maintaining safety on the campus. Agreements of this kind not only operate to ensure the safety of visitors but also provide reassurance for others on the campus that their safety will be maintained.

See Recommendation 14

Footbridges

There are two footbridges which pedestrians use to enter and leave the University's Camperdown campus. The footbridge over City Road is owned by the University, whilst the footbridge over Parramatta Road is owned by Roads and Maritime Services.

Individuals and Organisations do, as part of a protest, hang banners over the railing on the footbridge so that the messaging on the banner can be seen from passing cars. Both footbridges would be a means of access and egress for which the University bears a health and safety duty.⁷⁶

The hanging of banners from the footbridges involves risk, and the possibility that the banner might fall onto the roadway below creates a risk to passing traffic. There is a risk arising from working at height whilst the banner is being positioned or removed. Weather conditions such as rain and wind may add further risk. To comply with WHS Act duties and obligations all the risk arising from the hanging of banner must be assessed and eliminated or, if it is not reasonably practicable to do so, minimised. The opportunity to assess the risk is not available to the University before a banner is put up where that is done as part of a protest. However, the risk of the banner becoming detached remains and is a matter for which that University has a work health and safety duty under the WHS Act.

To meet health and safety standards the University should prohibit the hanging of banners in any circumstance from the footbridges. This would eliminate the risk.

The hanging of a banner from either footbridge in breach of this prohibition should be recognised as misconduct. Organisations should be held responsible for compliance with this prohibition in the same way, and with the same consequences for breach, as has been set out in the section of this report dealing with the placing of posters on campus.

See Recommendation 15

⁷⁶ WHS Reg 40(1).

Conclusion

As is clear from the commissioning of this Review, the University is looking for ways to deal with problems and issues on campus. Where those issues reflect a serious world problem the task of keeping the campus a place where students and staff feel safe is complex. There are no easy answers.

Despite having policies and procedures which are intended to address these issues the University has still been criticised for not doing enough and for not doing anything. Taking additional steps will help build public trust in the University. Despite the difficulty in doing so, striking a balance between the use of impermissible speech and the proper application of freedom of speech and academic freedom is now imperative. The University deserves credit for the initiatives it is undertaking. However, it will need to take additional steps so that students, staff, alumni and all other stakeholders are confident that their association with the University is something of which they are proud.

Appendix A

List of Recommendations:

1. The prohibition on encampments as a form of protest on any University campus should be maintained as part of the current review of the Campus Access Policy.
2. The prohibition against any form of protest within a building on the University campus, and the impeding of access to and exit from any building by protest, be maintained following the review of the Campus Access Policy.
3. The University prohibit any student from addressing those present in a lecture, seminar or tutorial prior to the commencement of the lecture, seminar or tutorial on any subject matter. A breach of the prohibition may be considered misconduct.
4. The University should hold Organisations responsible if posters identifying them or an event which they are involved in are put up on campus in breach of the Advertising on Campus Policy.

That the University develop a range of sanctions including the withholding of funding to an Organisation which can be imposed on an Organisation found to be in breach of University policy.

Where an Organisation is repeatedly acting in breach of University policy, consideration should be given to precluding its office and position holders (or some of them) from being eligible to hold an office in that or any other Organisation receiving University funding.

5. The University should continue to support its review of its complaints procedures with a view to a complete overhaul and simplifying every aspect of it.

The review of its complaints procedures should consider establishing a single central office to receive and process all complaints.

6. The University should strengthen existing mechanisms for alternative dispute resolution processes, such as mediation, as part of its review of the complaints procedures. Complainants should be advised, where appropriate, that alternative dispute resolution is an option available to them.
7. The University should publish a regular report to the Senate containing the number of complaints received, the nature of the complaints, the number of complaints resolved since the last report and the timeframe for the resolution of outstanding complaints. The information contained in the report should be presented in such a way that it does not identify the individuals mentioned in the complaints.
8. The University should publish a public report that identifies the range of penalties imposed in matters where a breach of University policy has been substantiated.
9. The University should amend its policies and procedures to make clear that each person utilising a word or phrase is responsible at the time the word or phrase is used to identify to the audience the context in which it is used. (New Civility Rule)
10. A failure to conduct a lecture, seminar, tutorial or a meeting which takes place within any of the University's facilities in accordance with the New Civility Rule should be recognised as misconduct and treated accordingly.
11. The University's policies be amended to make clear that Organisations are responsible for conducting all meetings held by them using University facilities in compliance with the Civility Principles.

Where an Organisation breaches this requirement, it will be liable to sanction for breach of the University's policy.

12. The University policies should be amended to require Organisations, when conducting a meeting using University facilities, to comply with the University's Civility Principles.

In order to hold an office or position within an Organisation the persons holding that office or in that position must have completed the Engaging with Civility module.

Where an Organisation permits a person to hold an office or act in a position, and that person has not completed the Engaging with Civility module, both the Organisation and individual should be held accountable.

Where a person holds an office or occupies a position without completing the Engaging with Civility module, the person's breach of the policy would amount to misconduct.

An Organisation should be held responsible for a breach of the policy where it permits a person who has not completed the Engaging with Civility module to hold an office or occupy a position and subject to sanction which could include the withdrawal of their funding in whole or in part.

13. The policy review presently being undertaken and the Policy Working Group should be supported with a view to achieving a review of all of the University's policies and the simplification of them.
14. The University should approach both the NSW Police and the Federal Police with a view to entering into with them formal protocols which set out how they can assist the University if the need arises.
15. That attaching banners to the footbridges be prohibited.

Appendix B

List of University policies and statements relevant to the Review:

- Acceptable Use of ICT Resources Policy 2019
- Advertising on Campus Policy
- Anti-Racism Statement
- Anti-Racism Statement (Supplementary Resource Guide) 2024
- Bullying, Harassment and Discrimination Prevention Policy 2015
- Bullying, Harassment and Discrimination Resolution Procedures 2015
- Campus Access Policy 2024
- Charter of Freedom of Speech and Academic Freedom 2020
- Privacy Policy 2017
- Public Comment Policy
- Reporting Wrongdoing Policy 2023
- Resolution of Complaints Policy 2015
- Smoke Free Environment Policy 2019
- Staff and Affiliates Code of Conduct 2021
- Staff Sexual Misconduct Policy 2023
- Student Associations Policy 2020
- Student Associations Procedure 2020
- Student Charter 2020
- Student Complaints Procedures 2015
- Student Sexual Misconduct Policy 2023
- University Events Planning and Management Policy 2021
- University of Sydney (Campus Access) Rule 2009
- University of Sydney (Student Discipline) Rule 2016
- Viva Engage Terms of Use 2024
- Work Health and Safety Policy 2016
- Work Health and Safety Procedures 2016

Appendix C

List of legislation under which the University has obligations:

- A New Tax System (Australian Business Number) Act 1999 (Cth)
- A New Tax System (Goods and Services Tax) Act 1999 (Cth)
- Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)
- Age Discrimination Act 2004 (Cth)
- Agricultural and Veterinary Chemicals Act 1994 (Cth)
- Agricultural and Veterinary Chemicals Code Act 1994 (Cth)
- Agricultural and Veterinary Chemicals Code Regulation 1995 (Cth)
- Agricultural and Veterinary Chemicals Act 1994 (NSW)
- Agricultural and Veterinary Chemicals (New South Wales) Regulation 2015 (NSW)
- Anatomy Act 1977 (NSW)
- Animals Act 1977 (NSW)
- Animal Research Act 1985 (NSW)
- Animal Research Regulation 2021 (NSW)
- Anti-Discrimination Act 1977 (NSW)
- Apprenticeship and Traineeship Act 2001 (NSW)
- Australian Charities and Not-for-profits Commission Act 2012 (Cth)
- Australian Charities and Not-for-profits Commission Regulation 2013 (Cth)
- Australian Human Rights Commission Act 1986 (Cth)
- Autonomous Sanctions Act 2011 (Cth)
- Autonomous Sanctions Regulations 2011 (Cth)
- Biodiversity Conservation Act 2016 (NSW)
- Biological Control Act 1985 (NSW)
- Biosecurity Act 2015 (Cth)
- Biosecurity Regulation 2016 (Cth)
- Biosecurity (Human Health) Regulation 2016 (Cth)
- Biosecurity Act 2015 (NSW)
- Biosecurity Regulation 2017 (NSW)
- Building and Construction Industry Security of Payment Act 1999 (NSW)
- Building Products (Safety) Act 2017 (NSW)
- Business Names Registration Act 2011 (Cth)

- Charitable Fundraising Act 1991 (NSW)
- Charitable Fundraising Regulation 2021 (NSW)
- Charitable Trusts Act 1993 (NSW)
- Charitable Trusts Regulation 2017 (NSW)
- Chemical Weapons (Prohibition) Act 1994 (Cth)
- Cheques Act 1986 (Cth)
- Child Protection (Working with Children) Act 2012 (NSW)
- Child Protection (Working with Children) Regulation 2013 (NSW)
- Child Support (Registration and Collection) Act 1988 (Cth)
- Children’s Guardian Act 2019 (NSW)
- Children’s Guardian Regulation 2022 (NSW)
- Circuit Layouts Act 1989 (Cth)
- Circuit Layouts Regulations 1990 (Cth)
- Civil Aviation Act 1988 (Cth)
- Civil Aviation Safety Regulations 1998 (Cth)
- Companion Animals Act 1998 (NSW)
- Companion Animals Regulation 2018 (NSW)
- Competition and Consumer Act 2010 (Cth)
- Contaminated Land Management Act 1997 (NSW)
- Conveyancing Act 1919 (NSW)
- Copyright Act 1968 (Cth)
- Copyright Regulations 2017 (Cth)
- Data Availability and Transparency Act 2022 (Cth)
- Data Availability and Transparency Regulations 2022 (Cth)
- Data Availability and Transparency (National Security Measures) Code 2022 (Cth)
- Data Availability and Transparency (Consequential Amendments) Act 2022 (Cth)
- Data Availability and Transparency (Consequential Amendments) Transitional Rules 2022 (Cth)
- Data Sharing (Government Sector) Act 2015 (NSW)
- Defamation Act 2005 (NSW)
- Defence Trade Controls Act 2012 (Cth)
- Defence Trade Controls Regulation 2013 (Cth)

- Disability Discrimination Act 1992 (Cth)
- Education Services for Overseas Students (Registration Charges) Act 1997 (Cth)
- Education Services for Overseas Students (Registration Charges) Regulations 2021 (Cth)
- Education Services for Overseas Students (TPS Levies) Act 2012 (Cth)
- Education Services for Overseas Students Act 2000 (Cth)
- Education Services for Overseas Students Regulations 2019 (Cth)
- Environment Protection and Biodiversity Conservation Act 1999 (Cth)
- Environment Protection and Biodiversity Regulation 2000 (Cth)
- Environmental Planning and Assessment Act 1979 (NSW)
- Environmental Protection Act 1994 (Qld)
- Environmental Protection Regulation 1994 (Qld)
- Explosives Act 2003 (NSW)
- Explosives Regulations 2013 (NSW)
- Export Control Act 1982 (Cth)
- Fair Work Act 2009 (Cth)
- Fair Work Regulations 2009 (Cth)
- Firearms Act 1996 (NSW)
- Firearms Regulation 2017 (NSW)
- Food Act 2003 (NSW)
- Food Regulations 2015 (NSW)
- Foreign Influence Transparency Scheme Act 2018 (Cth)
- Fringe Benefits Tax Act 1986 (Cth)
- Fringe Benefits Tax Assessment Act 1986 (Cth)
- Gene Technology Act 2000 (Cth)
- Gene Technology Regulation 2001 (Cth)
- Gene Technology (Licence Charges) Act 2000 (Cth)
- Gene Technology (New South Wales) Act 2003 (NSW)
- Government Information (Public Access) Act 2009 (NSW)
- Government Information (Public Access) Regulation 2018 (NSW)
- Government Sector Audit Act 1983 (NSW)
- Government Sector Finance Act 2018 (NSW)

- Health Care Complaints Act 1993 (NSW)
- Healthcare Identifiers Act 2010 (Cth)
- Health Insurance Act 1973 (Cth)
- Health Practitioner Regulation National Law Act 2009 (NSW)
- Health Records and Information Privacy Act 2002 (NSW)
- Heritage Act 1977 (NSW)
- Heritage Regulation 2012 (NSW)
- Higher Education Support Act 2003 (Cth)
- Human Tissue Act 1983 (NSW)
- Income Tax Act 1986 (Cth)
- Income Tax Assessment Act 1997 (Cth)
- Income Tax Assessment Act 1936 (Cth)
- Income Tax Rates Act 1986 (Cth)
- Independent Commission Against Corruption Act 1988 (NSW)
- Independent Contractors Act 2006 (Cth)
- Indigenous Education (Targeted Assistance) Act 2000 (Cth)
- Industrial Chemicals Act 2019 (Cth)
- Industrial Chemicals (General) Rules 2019 (Cth)
- Liquor Act 2007 (NSW)
- Liquor Regulation 2018 (NSW)
- Medicines Poisons and Therapeutic Goods Act 2022 (NSW)
- Modern Slavery Act 2018 (Cth)
- Modern Slavery Act 2018 (NSW)
- Narcotic Drugs Act 1967 (Cth)
- Narcotic Drugs Regulation 2016 (Cth)
- Narcotic Drugs (Licence Charges) Act 2016 (Cth)
- National Greenhouse and Energy Reporting Act 2007 (Cth)
- National Greenhouse and Energy Reporting Regulations 2008 (Cth)
- National Health Act 1953 (Cth)
- National Health Security Act 2007 (Cth)
- National Health Security Regulations 2018 (Cth)
- National Parks and Wildlife Act 1974 (NSW)

- National Parks and Wildlife Regulation 2019 (NSW)
- Nuclear Non-Proliferation (Safeguards) Act 1987 (Cth)
- Nuclear Non-Proliferation (Safeguards) Regulations 1987 (Cth)
- Ombudsman Act 1974 (NSW)
- Ozone Protection Act 1989 (NSW)
- Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (Cth)
- Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995 (Cth)
- Payroll Tax Act 2007 (NSW)
- Pesticides Act 1999 (NSW)
- Pesticides Regulation 2017 (NSW)
- Plant Breeder's Rights Act 1994 (Cth)
- Poisons and Therapeutic Goods Act 1966 (NSW))
- Poisons and Therapeutic Goods Regulation 2008 (NSW)
- Prevention of Cruelty to Animals Act 1979 (NSW)
- Prevention of Cruelty to Animals Regulation 2012 (NSW)
- Privacy Act 1988 (Cth)
- Privacy and Personal Information Protection Act 1998 (NSW)
- Privacy and Personal Information Protection Regulation 2019 (NSW)
- Protection from Harmful Radiation Act 1990 (NSW)
- Protection from Harmful Radiation Regulation 2013 (NSW)
- Protection of the Environment Operations Act 1997 (NSW)
- Protection of the Environment Operations (General) Regulation 2022 (NSW)
- Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019 (NSW)
- Protection of the Environment Operations (Waste) Regulation 2014 (NSW)
- Public Health Act 2010 (NSW)
- Public Health Regulation 2022 (NSW)
- Public Interest Disclosures Act 2022 (NSW)
- Public Interest Disclosures Regulation 2022 (NSW)
- Public Interest Disclosures Act 2022 (NSW)
- Racial Discrimination Act 1975 (Cth)

- Radiocommunications Act 1992 (Cth)
- Retail Leases Act 1994 (NSW)
- Retail Leases Regulation 2022 (NSW)
- Rural Fires Act 1997 (NSW)
- Security Industry Act 1997 (NSW)
- Security Industry Regulation 2016 (NSW)
- Security of Critical Infrastructure Act 2018 (Cth)
- Sex Discrimination Act 1984 (Cth)
- Smoke-free Environment Act 2000 (NSW)
- Smoke-Free Environment Regulation 2016 (NSW)
- Soil Conservation Act 1938 (NSW)
- Space (Launches and Returns) Act 2018
- State Authorities Superannuation Act 1987 (NSW)
- State Emergency and Rescue Management Act 1989 (NSW)
- State Records Act 1998 (NSW)
- State Records Regulations 2015 (NSW)
- Stock Medicines Act 1989 (NSW)
- Stock Medicines Regulation 2019 (NSW)
- Student Identifiers Act 2014 (Cth)
- Student Identifiers Regulation 2014 (Cth)
- Superannuation Act 1916 (NSW)
- Superannuation Guarantee (Administration) Act 1992 (Cth)
- Superannuation Guarantee Charge Act 1992 (Cth)
- Surveillance Devices Act 2007 (NSW)
- Surveillance Devices Regulation 2022 (NSW)
- Taxation Administration Act 1953 (Cth)
- Taxation Administration Act 1996 (NSW)
- Tertiary Education Quality and Standards Agency Act 2011 (Cth)
- Tertiary Education Quality and Standards Agency (Charges) Act 2021 (Cth)
- Therapeutic Goods Act 1989 (Cth)
- Therapeutic Goods Regulation 1990 (Cth)
- Therapeutic Goods (Medical Devices) Regulations 2002 (Cth)

- Trustee Act 1925 (NSW)
- Trustee Regulation 2020 (NSW)
- Unclaimed Moneys Act 1995 (NSW)
- University of Sydney Act 1989 (NSW)
- University of Sydney By-law 1999 (NSW)
- Veterinary Practice Act 2003 (NSW)
- Water Management Act 2000 (NSW)
- Water Management (General) Regulation 2018 (NSW)
- Weapons of Mass Destruction (Prevention of Proliferation) Act 1995 (Cth)
- Weapons of Mass Destruction Regulations 2018 (Cth)
- Work Health and Safety Act 2011 (NSW)
- Work Health and Safety Regulation 2017 (NSW)
- Work Health and Safety Act 2011 (NSW)
- Work Health and Safety Regulation 2017 (NSW)
- Workers Compensation Act 1987 (NSW)
- Workplace Injury Management and Workers Compensation Act 1998 (NSW)
- Workers Compensation Regulation 2016 (NSW)
- Workers' Compensation (Dust Diseases) Act 1942 (NSW)
- Workplace Gender Equality Act 2012 (Cth)

Appendix D

The University's announcement regarding the peaceful end to the encampment:

Update: Monday 24 June 2024

Peaceful end of protest encampment

Today Vice-Chancellor and President, Professor Mark Scott, wrote to [students](#) and [staff](#) confirming the peaceful end of the protest encampment on campus.

Dear colleagues and students,

I wanted to let you know that the protest encampment on the University's front lawns has packed up and we're looking forward to holding Semester 2 Welcome there in a few weeks.

After weeks of discussions and deep listening to members of our diverse community, we are pleased that the encampment has ended peacefully without violence. We know it has been a very difficult time for many members of our community.

Summary

As part of the agreement to end the encampment, we have upheld the core principles of freedom of speech and academic freedom. Specifically, we will not restrict student exchanges, academic partnerships or institutional relationships with any country or industry as part of this agreement.

[As we said on 5 June](#), we are:

- doubling our expenditure over the next three years to support academics and PhD students under the Scholars-at-Risk Program
- convening a working group to provide feedback on our investment policies with a lens to ensure they reflect our commitment to human rights, including consideration of the position of defence- and security-related industries in our Investment Policy and our Integrated ESG Framework
- as is standard practice for many universities globally, disclosing our defence- and security-related research activities including research contracts and research grants, subject to contractual, legal and privacy obligations

I share our community's distress at the events in the Middle East and the ways in which that conflict is reverberating here in Australia. Our focus from the beginning has been to de-escalate tensions on campus, and our top priority is always the safety of our students, staff and the broader community. We have zero tolerance for any form of racism, threats to safety, hate speech, intimidation, threatening speech, bullying or unlawful harassment, including antisemitic or anti-Muslim language or behaviour.

Since the conflict broke out, the University has been clear that we condemn violence, terrorism and any breach of human rights; and we continue to hold collective hope for an immediate cessation of hostilities.

I'm pleased we've been able to reach a peaceful resolution to the encampment, and I look forward to students enjoying Welcome Fest on the front lawns in a few weeks' time.

Kind regards,
Mark

Mark Scott
Vice-Chancellor and President

Appendix E

The Australian Jewish News article with regarding the TAU Academics visit to the University:

Israeli academic recounts ordeal

After an ordeal lasting around 90 minutes, with no apparent intervention from University of Sydney security personnel, the Israeli guests were escorted off the premises.

By Peter Kohn and Shane Desiatnik March 28, 2024, 11:55 am

When pro-Palestinian demonstrators at the University of Sydney invaded a function room where Tel Aviv University (TAU) academics were running an information stall, Professor Milette Shamir, one of the Israeli visitors, was just metres from the rampage.

Shamir, TAU's vice-president for international academic relations and Sharon Ziv-Kafri of TAU's Lowy International School found themselves in the same room as the demonstrators who had burst in and were shouting anti-Israel slogans.

There are reports that with another anti-Israel demonstration on campus, the function room's doors were locked, but a University of Sydney spokesperson was adamant that nobody inside the function room had been forcibly detained.

After an ordeal lasting around 90 minutes, with no apparent intervention from University of Sydney security personnel, the Israeli guests were escorted off the premises.

The Israelis had been invited by University of Sydney to run the information booth as part of a March 19 international fair promoting student exchanges.

Shamir told The AJN she had encountered multiple demonstrations of this type in different parts of the world.

“It wasn't a huge shock or surprise, as I'm familiar with what's going on now on campuses. This one was particularly unpleasant because it was very close to where we were. There was no buffer between us and demonstrators.

“We were for a long time in the same room with the pro-Palestinian protesters. I will say that at no point were we not allowed to leave or unable to leave.

“The choice to stay there was ours – simply because we didn't think it was right, having travelled so far, to put an end to what we set out to do.

“We did not feel that we were physically threatened. We felt very uncomfortable because it was loud and there were accusations [relating to] Tel Aviv University,” she said, recounting slogans shouted by the demonstrators accusing TAU of complicity “with genocide and apartheid – all the slogans that we’re familiar with”.

TAU president Ariel Porat sent a stern letter to University of Sydney vice-chancellor and president Mark Scott on Wednesday, describing the invasion of the information expo as “a violent instance of verbal assault against two women, preventing them from fulfilling the purpose for which they were invited”.

“I request a detailed explanation from you regarding what appears to be an extreme neglect by your university in preventing or at least taking responsibility for this shameful incident,” wrote Porat.

Shamir told The AJN that TAU is waiting to hear from Scott about the university’s account of what happened, and that meanwhile, University of Sydney’s international office has been providing support for the Israeli visitors.

“They were concerned about our safety and wanted to help us,” she said.

The TAU visitors, including Professor Karen Avraham, TAU’s faculty dean of medicine and life sciences, are in Australia to expand partnerships with Australian universities.

Australian Friends of Tel Aviv University president David Solomon said University of Sydney must take steps to ensure such incidents are not repeated. “We’re concerned that the university didn’t take stronger action to protect our people and also other stallholders.”