

ENCLOSURE BY STATEMENT

A CULTURE-CENTRED ANALYSIS OF THE ACADEMIC FREEDOM AND FREEDOM OF EXPRESSION PROVISIONS OF THE EDUCATION AND TRAINING AMENDMENT ACT 2025

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ABOUT CARE

The Center for Culture-Centred Approach to Research and Evaluation (CARE) at Massey University, Aotearoa New Zealand, is a global hub for communication research that uses participatory and culture-centred methodologies to develop community-driven communication solutions to health and wellbeing. Through experiments in methods of radical democracy anchored in community ownership and community voice, the Centre collaborates with communities, community organisers, community researchers, advocates and activists to imagine and develop sustainable practices for prevention, health care organising, food and agriculture, worker organising, migrant and refugee rights, indigenous rights, rights of the poor and economic transformation.

Prof Mohan J Dutta is the Director of CARE and author of books such as *Neoliberal Health Organizing*, *Communicating Health*, and *Voices of Resistance*.

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ABSTRACT

The Education and Training Amendment Act 2025 inserts into New Zealand law a set of statutory expectations governing how universities must speak, together with a compulsory complaints procedure and an annually reported, parliamentarily tabled count of complaints. This white paper reads that settlement through the culture-centered approach, using a thematic analysis, cluster analysis and network analysis of the thirteen documents that constitute the publicly released policy record, from the first briefing note of August 2024 to the enacted provisions of November 2025. Across 343 coding segments I identify sixteen themes and 1,049 coded instances. Procedural acceleration is the most prevalent theme in the corpus, appearing in 21.9 percent of segments and in twelve of the thirteen documents. Official dissent is the most central node in the theme network. Cluster analysis returns a three-part structure in which a machinery of enclosure, a substantive speech settlement and a set of erased constituencies sit in distinct but connected regions. The actor network shows the Ministry of Education, the ACT party and Cabinet occupying the dense centre, while Māori, disabled people and the Tertiary Education Union sit at the periphery with a combined presence smaller than that of the Free Speech Union. Every load-bearing claim is anchored in the released record by document, METIS number and paragraph, and every quotation has been machine-verified against the extracted corpus and checked against page images. Reading these patterns through structure, culture and agency, I argue that the Act performs six communicative inversions in which the protection of speech becomes the instrument through which the conditions of subaltern voice are dismantled, and I trace how the new complaints machinery connects to a transnational infrastructure of complaint, audit and litigation assembled by the organised right. The paper closes with a counter-architecture built on voice infrastructure, Te Tiriti as a constitutional floor, community counter-benchmarking and organised solidarity.

EXECUTIVE SUMMARY

In November 2025 Parliament wrote into the Education and Training Act 2020 a list of six things a New Zealand university should believe about speech.¹ The provisions are short. They require every university council to protect and promote academic freedom and freedom of expression, to adopt a statement on freedom of expression consistent with six specified factors, to establish and maintain a complaints procedure, and to report annually on compliance and on the number and nature of complaints received. The first reports are due in 2027, covering the 2026 academic year, and they will be tabled in Parliament.²

I have read the whole paper trail that produced this settlement: the eleven briefings and education reports proactively released by the Ministry of Education, the Cabinet paper with its Regulatory Impact Statement and committee minute, and the enacted provisions. The trail is unusually candid, and what it discloses is a policy that its own authors did not recommend,³ built on evidence its own authors described as methodologically compromised,⁴ developed on a timetable that its own authors said would produce unintended consequences,⁵ and enacted without the consultation that its own authors said Te Tiriti o Waitangi required.⁶

The quantitative picture is stark. Procedural acceleration and the foreclosure of consultation is the single most prevalent theme in the record. The recorded dissent of officials is the most central node in the theme network, which is to say that doubt is the connective tissue of this policy rather than an occasional aside. And the themes that carry the interests of the people most exposed to unrestricted speech, Māori communities, disabled students, and staff and students who face racism and harassment, fall to zero in the documents produced after Cabinet made its decision. The doubt is recorded, then it disappears.

The culture-centered approach directs attention to the relationship between structure, culture and agency, and to the erasure of subaltern voice from the sites where decisions about material life are made. Applied here, it produces a clear reading. The Act does not extend the capacity of ordinary members of the university to speak. It extends the capacity of the state to require universities to host speech, to abstain from institutional positions, and to submit their internal culture to a nationally benchmarked metric backed by a compulsory complaints channel. Freedom is the word. Enclosure is the effect.

Six communicative inversions organise the settlement. Freedom secured by statutory instruction. Evidence assembled from a vacuum the record itself names. A freedom of expression policy made by foreclosing expression. Neutrality that takes a side on Te Tiriti. A platform duty that removes the university's capacity to protect. And transparency that arrives as surveillance. A dedicated section then follows the complaints machinery, because the complaint is where this settlement becomes operational, and because the organisations that asked for it have already built the infrastructure to use it.

1. A STATUTE THAT ARRIVES ALREADY FINISHED

The clause that became this law was written before anybody looked. It appears in the coalition agreement between the National and ACT parties as an instruction to “[a]mend the Education and Training Act 2020 such that tertiary education providers receiving taxpayer funding must commit to a free speech policy.”⁷ That sentence is the origin of everything that follows, and the released documents never stop citing it. Every education report in the trail opens with a heading called alignment with government priorities, and under that heading sits the same sentence, reproduced verbatim, thirteen months in a row.

I have spent more than two decades working alongside communities at the margins of health systems, labour markets and migration regimes, and the pattern is familiar. A conclusion is reached in a negotiation between political actors. The apparatus of evidence is then assembled behind it. The people who will absorb the consequences are consulted last, or not at all, and the record notes their absence in a paragraph headed risks.

What makes this particular record valuable is its candour. In October 2024 officials told two ministers that they had limited direct evidence on the extent and impact of these problems in New Zealand.⁸ In December 2024 the Regulatory Impact Statement, prepared inside the Ministry of Education, concluded that its authors did not see a clear case for legislative change and that, given the absence of consultation, they would favour maintaining the status quo.⁹ The Ministry of Education and Ministry of Justice quality assurance panel assessed that statement as only partially meeting the quality assurance criteria, and named the reason as the time constraints imposed on consultation and analysis.¹⁰ The Minister proceeded with the option officials had ranked below their own recommendation, and the Cabinet Social Outcomes Committee agreed on 11 December 2024, confirmed by Cabinet on 16 December 2024.¹¹

That sequence is not a scandal in the ordinary sense. Ministers are entitled to reject official advice, and elected governments are entitled to implement coalition commitments. The question a culture-centered analysis asks is different. It asks what kind of communicative structure is built when a state legislates the speech norms of its critic and conscience institutions on a foundation that the state's own analysts describe as evidentially thin, and it asks who is standing outside the room while that structure is assembled.

2. WHY THE CULTURE-CENTRED APPROACH

The culture-centered approach begins from the observation that communication is organised by structures, that structures distribute the capacity to speak and to be heard unevenly, and that the erasure of subaltern voice from decision-making is itself a structural achievement rather than an accident.¹² Structure, culture and agency are held together in the analysis. Structures are the material and institutional arrangements that organise access to resources and to platforms. Culture is the terrain of meaning through which people make sense of those arrangements and contest them. Agency is the everyday work of negotiating, resisting and remaking both.

Free speech debate in the anglophone university has become a site where these relationships are systematically obscured. The dominant framing treats speech as an individual property that is either permitted or suppressed, and it treats the university as a neutral container in which that permission is administered. The culture-centered approach reads the same terrain differently. It asks which structures determine whose speech carries institutional weight, which histories of dispossession organise who is required to justify their presence in the room, and which forms of speech operate as instruments of erasure against communities whose voices are already thin in the public record. I have developed this argument at length elsewhere as an account of the communicative inversions of academic freedom, in which the vocabulary of freedom is deployed to dismantle the material conditions of voice.¹³

In Aotearoa this question cannot be separated from settler-colonialism and from Te Tiriti o Waitangi. A statutory expectation that universities should not take public positions on matters that do not directly concern their role or functions is not a neutral instruction in a country where the constitutional status of the founding agreement is contested, where universities hold Tiriti obligations in their own governing statute, and where an organised political current has spent several years arguing that those obligations are a threat to academic freedom. Neutrality in a settler-colonial state is a position. It is the position of the settled order.

The method here follows from the theory. I treat the released policy record as a corpus of communicative work, I code it, I count it, and I map the relations among its themes and its actors, because the architecture of a policy is visible in its patterns of association and in its silences. Then I read the resulting structure through structure, culture and agency, and I ask what it does to voice.

3. CORPUS AND METHOD

3.1 *The corpus*

The corpus comprises 13 documents. Eleven are the proactively released briefings and education reports published by the Ministry of Education on its freedom of expression in universities information release page. One is the Cabinet paper of December 2024 together with its Regulatory Impact Statement and the Social Outcomes Committee minute SOU-24-MIN-0167. The last is the enacted text of the academic freedom and freedom of expression provisions as summarised by the Ministry following the passage of the Education and Training Amendment Act 2025 in November 2025. Table 1 lists them.¹⁴

CODE	DOCUMENT	DATE
D1	Briefing Note 1333354, free speech policy, high level timeframe for legislation	2 Aug 2024
D2	Education Report 1333715, free speech commitment, legislative options	14 Aug 2024
D3	Education Report 1337135, freedom of speech in the tertiary education system	10 Oct 2024
D4	Education Report 1338586, university freedom of speech legislation, key policy settings	4 Nov 2024
D5	Education Report 1339458, further advice on prescriptive requirements and oversight	7 Nov 2024

CODE	DOCUMENT	DATE
D6	Education Report 1339489, draft Cabinet paper cover note	15 Nov 2024
D7	Education Report 1340196, further advice on transition and enforcement	22 Nov 2024
D8	Education Report 1340649, Cabinet paper for lodgement, with agency feedback table	3 Dec 2024
D9	Cabinet paper, Regulatory Impact Statement and SOU-24-MIN-0167	11 to 16 Dec 2024
D10	Education Report 1341067, next steps and draft letter to Universities New Zealand	12 Dec 2024
D11	Report 1343743, request to change freedom of speech to freedom of expression in ETAB 2	28 Feb 2025
D12	Report 1343210, freedom of expression reporting, letter to Universities New Zealand	24 Mar 2025
D13	Education and Training Amendment Act 2025, enacted provisions as summarised by the Ministry	Nov 2025

Table 1: The corpus. Documents D1 to D12 are proactive releases under the Official Information Act 1982; redactions are recorded in the originals under sections 9(2)(f)(iv), 9(2)(a), 9(2)(g)(i) and 9(2)(ba)(i).

Four of the released PDFs carry no extractable text layer and were transcribed by optical character recognition: D4, D10, D11 and D12, together with the lodgement report D8. Handwritten ministerial annotations in the margins of the November 2024 decision table were read from the rasterised pages; where an annotation is illegible I rely on the officials' own restatement of the decision in the subsequent report.¹⁵ Where a redaction removes the substance of a paragraph, the paragraph remains in the corpus and its visible frame is coded, because the presence of a withheld passage at a particular point in the argument is itself data about the structure of the record. Three parliamentary sources are used in sections 9.1 and 9.5 to trace what happened to the drafting after Cabinet: the Bill as introduced, the Education and Workforce Committee's commentary, and the Bill of Rights vet, together with the sector submissions that quote the introduced text. These sit outside the coded corpus and are not counted anywhere in sections 4 to 8; they are cited only where the parliamentary stage answers a question the released policy record cannot.¹⁶

3.2 Segmentation and coding

The cleaned corpus was segmented into coding units of approximately three sentences, producing 343 units. A deductive coding frame of sixteen themes was developed from an initial close reading and from the theoretical architecture of the culture-centered approach, and each theme was operationalised as a set of lexical and phrasal patterns applied to the segment text. A segment may carry more than one theme, and 297 of the 343 segments, or 86.6 percent, carry at least one. Table 2 sets out the frame. The full pattern dictionary is reproduced in Appendix A so that the coding can be replicated or contested.

One design choice in that frame should be named rather than left for a reader to find. Theme 10, the discounting of harm to marginalised communities, codes both the raising of harm and its dismissal, so that the Minister's statement that she does not agree the proposals will have a negative impact on these groups is counted as an instance of the theme rather than as evidence against it.¹⁷ That is deliberate, and it follows from the theory: within the culture-centered approach, the denial of harm is itself a communicative act performed upon the people whose harm is denied, and a frame that counted only sympathetic mentions would record the record as more attentive to marginalised communities than it is. But it means T10 measures how much of the record is occupied by the question of harm, not how much of it takes harm seriously, and readers who would draw the boundary differently can redraw it from the dictionary in Appendix A. The same caution applies to the counts generally, and I return to it in section 14.

CODE	THEME	WHAT IT CAPTURES
T1	Coalition agreement as originating warrant	The National and ACT clause cited as the authority for the work
T2	Acknowledged evidentiary vacuum	Officials naming the absence, contestation or weakness of the evidence
T3	Procedural acceleration and foreclosed consultation	Timetable pressure, choice of legislative vehicle, absence of public consultation
T4	Te Tiriti deferral and the exclusion of Māori	Wānanga, tikanga, rangatiratanga, Crown consultation obligations, CO(19)5
T5	Institutional autonomy invoked	Self-regulation, critic and conscience, academic governance, council duties
T6	Privileged advocacy evidence and stakeholder capture	FSU, New Zealand Initiative, Heterodox, Chicago statement, UK Act, ministerial drafting
T7	Invited speakers, deplatforming and the platform duty	Premises, venue hire, security costs, cancellation, the duty to host
T8	Institutional neutrality mandated	The expectation that universities take no position on matters outside their functions
T9	Hierarchy of rights and Bill of Rights inconsistency	BORA s5, competing rights, proportionality, Human Rights Act, international law
T10	Discounting of harm to marginalised communities	Systemic discrimination, wellbeing, safety, harassment, hate speech, social cohesion
T11	Audit infrastructure: benchmarking and reporting	Benchmarked disclosure, compulsory surveying, annual reports, comparability
T12	Reserve coercive power held in abeyance	Regulation-making power, penalties, enforcement, funding levers, statutory officer
T13	Compliance cost transferred to universities	Compliance costs, absorption, unfunded requirements, regulatory burden
T14	Terminological substitution and control of drafting	Speech to expression, statute book consistency, Parliamentary Counsel instructions
T15	Official dissent recorded and overridden	Not recommended, no clear case, warnings of unintended consequences, partial QA
T16	Foreign interference and national security framing	Foreign actors, state-backed speakers, international student revenue

Table 2: The 16-theme coding frame.

3.3 Analytic procedures

Three procedures follow. First, prevalence: the number of segments carrying each theme, the proportion of the corpus, the raw count of coded instances, and the number of documents in which the theme appears. Second, cluster analysis: a Jaccard association matrix over theme co-occurrence at segment level, converted to a distance matrix and submitted to average-linkage hierarchical clustering. The cophenetic correlation of the resulting solution is 0.78, which indicates that the dendrogram represents the underlying distances reasonably well. Third, network analysis: the same Jaccard matrix read as a weighted graph, with weighted degree, eigenvector centrality and betweenness computed for each theme node, and a parallel actor network built from a 23-actor dictionary applied to the same segments. Normalised pointwise mutual information was computed alongside Jaccard as a robustness check on the strongest ties, and the two measures agree on the ordering of the leading associations.¹⁸

4. COUNTING THE THEMES

The corpus yields 1,049 coded instances distributed across 343 segments. Table 3 and Figure 1 give the distribution.

CODE	THEME	SEGMENTS	% OF CORPUS	INSTANCES	DOCUMENTS
T3	Procedural acceleration and foreclosed consultation	75	21.9	125	12
T5	Institutional autonomy invoked	59	17.2	74	9
T9	Hierarchy of rights and Bill of Rights inconsistency	51	14.9	101	8
T7	Invited speakers, deplatforming and the platform duty	48	14.0	99	8
T15	Official dissent recorded and overridden	46	13.4	56	8
T10	Discounting of harm to marginalised communities	41	12.0	80	5
T11	Audit infrastructure: benchmarking and reporting	40	11.7	98	7
T6	Privileged advocacy evidence and stakeholder capture	39	11.4	55	9
T12	Reserve coercive power held in abeyance	35	10.2	52	8
T4	Te Tiriti deferral and the exclusion of Māori	30	8.7	83	7
T1	Coalition agreement as originating warrant	25	7.3	70	11
T14	Terminological substitution and control of drafting	25	7.3	51	6
T13	Compliance cost transferred to universities	24	7.0	45	6
T8	Institutional neutrality mandated	15	4.4	27	5
T2	Acknowledged evidentiary vacuum	14	4.1	24	3
T16	Foreign interference and national security framing	3	0.9	9	3

Table 3: Theme prevalence across 343 coding segments drawn from 13 documents.

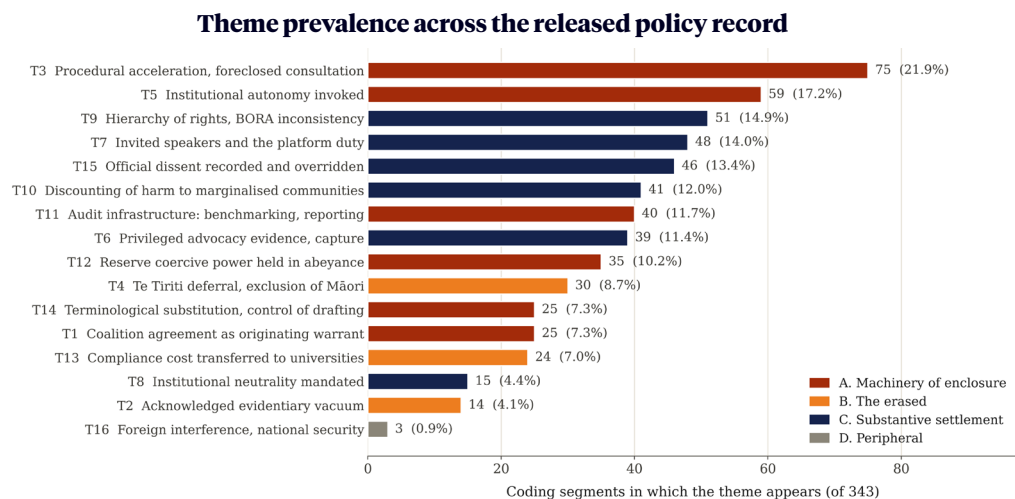


Figure 1: Theme prevalence, coloured by the four-cluster solution reported in section 5.

Three features of this distribution matter. The first is what sits at the top. The most prevalent theme in a record ostensibly about the freedom to speak is the management of a timetable. Procedural acceleration appears in more than one segment in five and in 12 of the 13 documents, which is a wider spread than any other theme. The corpus is saturated with the language of lodgement dates, deadlines, drafting instructions, deprioritisation and jeopardised timelines. The choice to run the amendments through the Education and Training Amendment Bill No. 2 rather than the slower Bill No. 3 was made in full knowledge of what it cost. Officials wrote in August 2024 that the faster vehicles would provide limited time for policy decisions and would not allow for any consultation ahead of introduction, that this would create risks to policy quality and may result in ineffective legislation or unintended consequences, and that a lack of consultation about the policy prior to introduction also poses Te Tiriti risks around the Crown's obligations to consult on Māori interests.¹⁹

The second is what sits near the top and should not. Official dissent recorded and overridden appears in 46 segments across eight documents. This is not a policy in which officials raised a technical caveat. It is a policy in which the department that drafted the legislation wrote, in its own Regulatory Impact Statement, that it did not see a clear case for legislative change, and in which the Ministry of Justice warned repeatedly that a prescriptive requirement which does not allow competing rights to be considered may be assessed as inconsistent with the New Zealand Bill of Rights Act 1990.²⁰

The third is what sits at the bottom. The acknowledged evidentiary vacuum appears in only 14 segments, and in only three of the 13 documents. The absence of evidence is stated clearly when it is stated at all, and then it stops being mentioned. That is a distributional fact with consequences, and I return to it in section 8.

5. CLUSTER ANALYSIS

Hierarchical clustering of the 16 themes on Jaccard distance produces the structure shown in Figure 2. Foreign interference separates immediately as a near-isolate, which is expected given its low frequency. The substantive solution is a three-cluster structure, reported in Table 4 with the four-cluster labels used throughout the paper.

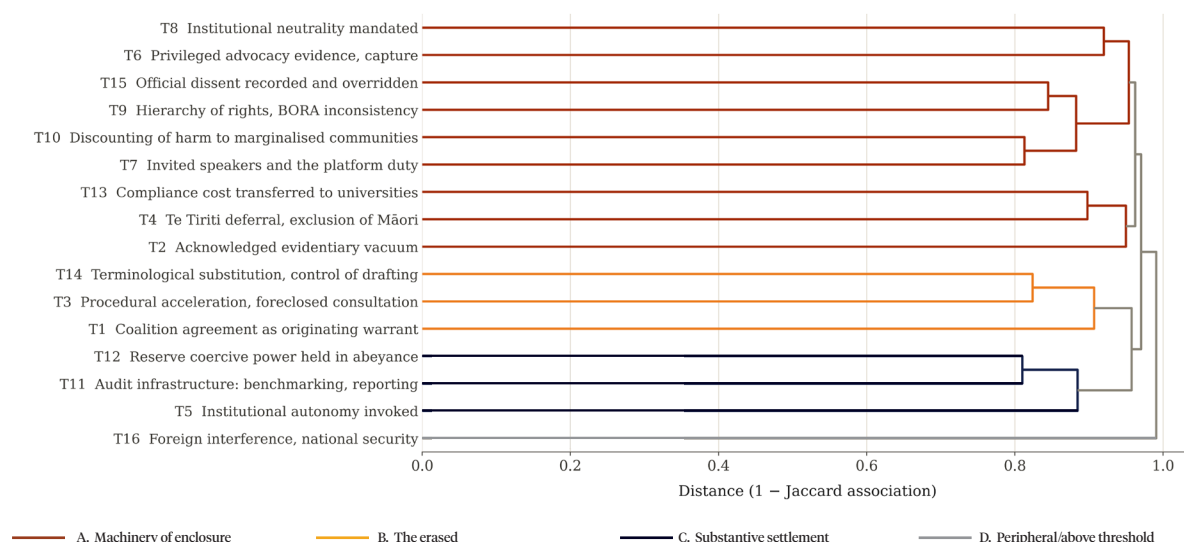


Figure 2: Average-linkage dendrogram over 1 minus Jaccard association. Cophenetic correlation 0.78.

CLUSTER	THEMES	INTERPRETATION
A. The machinery of enclosure	T1, T3, T5, T11, T12, T14	The procedural apparatus. A coalition warrant, an accelerated timetable, autonomy invoked as the thing being respected, an audit system built to measure compliance, a reserve regulation-making power, and control of the drafting language.
B. The erased	T2, T4, T13	What the process could not absorb. The evidentiary vacuum, Te Tiriti and the exclusion of Māori, and the cost pushed onto institutions. These themes associate with one another and connect only weakly to the machinery.
C. The substantive settlement	T6, T7, T8, T9, T10, T15	The contested content. Advocacy evidence, the platform duty, institutional neutrality, the hierarchy of rights, the discounting of harm, and the official dissent that attends all of them.
D. Peripheral	T16	Foreign interference, present in nine instances and structurally detached.

Table 4: The four-cluster solution.

The interesting result is the separation of cluster B. In a well-integrated policy process one would expect the evidentiary basis and the Tiriti analysis to be woven through the machinery, shaping the timetable and the design. Here they form their own small region, associating with each other and with cost, and connecting only thinly to the apparatus that produced the law. The one moderately strong tie into the machinery runs from Te Tiriti deferral to compliance cost, which is a revealing pairing: Māori interests enter this record most reliably at the point where somebody is calculating what an obligation would cost.

Cluster C is the argumentative heart. The platform duty, institutional neutrality, the hierarchy of rights and the discounting of harm cohere because they are the same argument seen from four angles, and official dissent sits inside the cluster rather than outside it because every one of those four positions drew a written objection from somebody in the system.

The architecture of the record

Theme co-occurrence network, themes grouped by cluster. Node size and bracketed figure = coding segments; chord width = Jaccard association (ties of 0.07 and above shown)). Full theme names in Table 2.

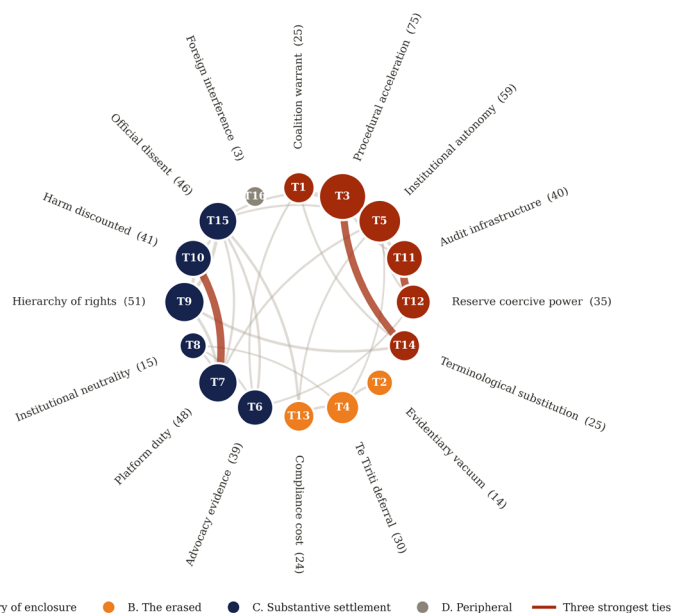


Figure 3: Theme co-occurrence network, themes ordered by cluster. Node size is segment frequency, chord width is Jaccard association, colour is the cluster solution. Full theme names appear in Table 2.

6. NETWORK NODES AND NETWORK STRENGTHS

Read as a weighted graph, the theme co-occurrence matrix identifies which ideas hold the record together. Table 5 reports three measures for each node. Weighted degree is the sum of a node's association strengths. Eigenvector centrality asks whether a node is connected to other well-connected nodes. Betweenness asks whether a node sits on the shortest paths between other parts of the network, which is the measure that identifies a broker.

CODE	THEME	WEIGHTED DEGREE	EIGENVECTOR	BETWEENNESS
T15	Official dissent recorded and overridden	0.890	1.000	0.124
T3	Procedural acceleration and foreclosed consultation	0.857	0.861	0.076
T5	Institutional autonomy invoked	0.846	0.895	0.143
T9	Hierarchy of rights and Bill of Rights inconsistency	0.845	0.955	0.105
T7	Invited speakers, deplatforming and the platform duty	0.780	0.861	0.133
T10	Discounting of harm to marginalised communities	0.778	0.878	0.010
T6	Privileged advocacy evidence and stakeholder capture	0.726	0.750	0.086
T11	Audit infrastructure: benchmarking and reporting	0.650	0.678	0.057
T4	Te Tiriti deferral and the exclusion of Māori	0.622	0.602	0.076
T14	Terminological substitution and control of drafting	0.565	0.620	0.067
T12	Reserve coercive power held in abeyance	0.561	0.610	0.010
T13	Compliance cost transferred to universities	0.538	0.595	0.019
T1	Coalition agreement as originating warrant	0.459	0.483	0.010
T8	Institutional neutrality mandated	0.436	0.423	0.057
T2	Acknowledged evidentiary vacuum	0.384	0.422	0.000
T16	Foreign interference and national security framing	0.136	0.131	0.000

Table 5: Node-level measures on the theme network.

Official dissent is the most central node on both weighted degree and eigenvector centrality. It is the theme most likely to appear alongside whichever other theme is under discussion, which means that objection is distributed through the whole architecture rather than concentrated in a single dissenting passage. Institutional autonomy has the highest betweenness, which identifies it as the broker of the record. Autonomy is the concept through which the machinery of enclosure connects to the substantive settlement, and it performs that work by being invoked on both sides. Officials invoke autonomy to argue against prescription. The Minister invokes autonomy to explain why universities will be asked to write their own statements, inside a list of six things those statements must say.²¹

The evidentiary vacuum has a betweenness of zero. It connects to nothing and brokers nothing. In network terms, the absence of evidence is a cul-de-sac in this record. It is stated and then it goes nowhere.

TIE	THEME	JACCARD	NPMI	CO-OCCURRING SEGMENTS
1	T11 audit infrastructure and T12 reserve coercion	0.190	+0.322	12
2	T7 invited speakers and T10 harm discounted	0.187	+0.279	14
3	T3 procedural acceleration and T14 terminological substitution	0.176	+0.323	15
4	T9 hierarchy of rights and T15 official dissent	0.155	+0.196	13
5	T5 institutional autonomy and T11 audit infrastructure	0.151	+0.194	13
6	T9 hierarchy of rights and T10 harm discounted	0.150	+0.202	12
7	T7 invited speakers and T9 hierarchy of rights	0.125	+0.126	11
8	T9 hierarchy of rights and T14 terminological substitution	0.118	+0.204	8
9	T13 cost transfer and T15 official dissent	0.111	+0.200	7
10	T6 advocacy evidence and T15 official dissent	0.104	+0.113	8
11	T4 Te Tiriti deferral and T13 cost transfer	0.102	+0.205	5
12	T10 harm discounted and T15 official dissent	0.101	+0.100	8

Table 6: The 12 strongest ties in the theme network, with normalised pointwise mutual information as a robustness check.

The strongest tie in the network joins the audit infrastructure to the reserve coercive power. Benchmarked disclosure and the regulation-making power were designed together and travel together, and the record is explicit about why. In December 2024 officials advised that universities should first be asked to develop a standardised approach to reporting themselves, and that to mitigate the risk that they either fail to agree or propose something the Minister does not like, the Minister should hold a statutory power to make regulations. The Bill was drafted to include that reserve power. The invitation to self-govern and the instrument for overriding self-government were written in the same paragraph.²²

The second strongest tie joins the platform duty to the discounting of harm. Wherever the record discusses the obligation to host invited speakers, it is also discussing wellbeing, safety, harassment and the possibility of hate speech, and it is resolving that tension in one direction. The third joins procedural acceleration to terminological substitution, which is the signature of a drafting process run at speed, where the decision to replace freedom of speech with freedom of expression across the Bill was taken in three working days under a delegated authority to resolve outstanding issues of detail.²³

7. THE ACTOR NETWORK: WHO SPEAKS AND WHO IS SPOKEN ABOUT

The same 343 segments were coded for the presence of 23 institutional actors. The result is a map of the communicative field.

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Actor network in the released policy record

Theme Actors ordered clockwise by prevalence. Node size and bracketed figure = coding segments in which the actor appears; chord width = joint presence. "Those spoken about" = Māori, disabled people, staff, students, unions and rights bodies.

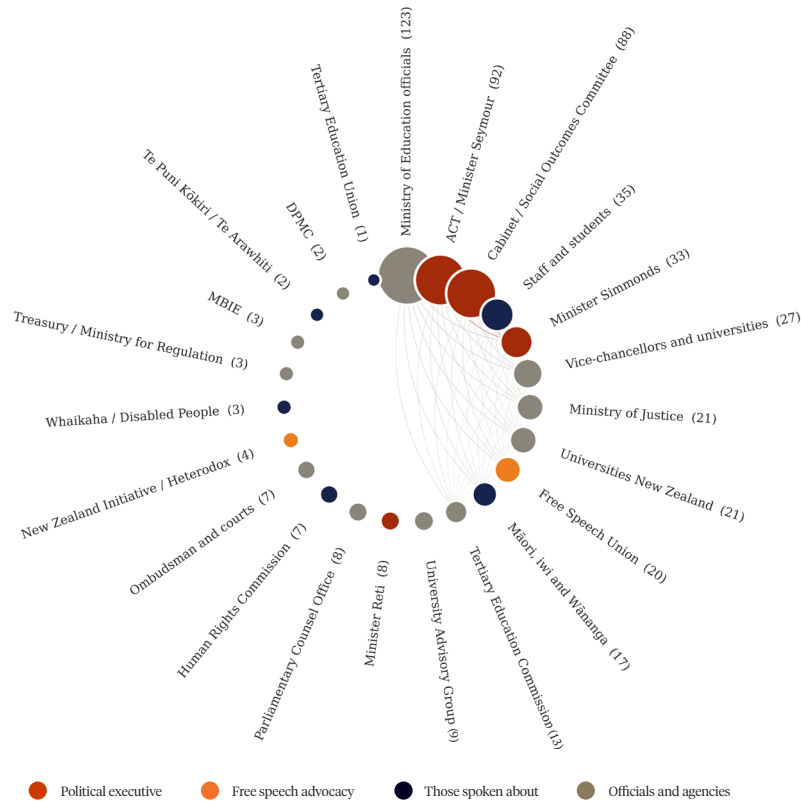


Figure 4: Actor network in the released policy record, actors ordered clockwise by prevalence. Node size and the bracketed figure record the number of coding segments in which the actor appears; chord width records joint presence among the most frequent actors.

ACTOR	SEGMENTS	% OF CORPUS	DOCUMENTS	DOMINANT THEMES
Ministry of Education officials	123	35.9	12	T3, T5, T15
ACT and Minister Seymour	92	26.8	13	T1, T9, T6
Cabinet and Social Outcomes Committee	88	25.7	12	T3, T11, T12
Staff and students	35	10.2	7	T7, T5, T10
Minister Simmonds	33	9.6	12	T3, T1, T11
Vice-chancellors and universities	27	7.9	6	T6, T5, T10
Ministry of Justice	21	6.1	6	T9, T15, T3
Universities New Zealand	21	6.1	5	T12, T11, T3
Free Speech Union	20	5.8	5	T6, T3, T5
Māori, iwi and Wānanga	17	5.0	5	T4, T13, T5
Tertiary Education Commission	13	3.8	7	T6, T10, T12
University Advisory Group	9	2.6	6	T11, T12, T4
Minister Reti	8	2.3	3	T11, T3, T12
Parliamentary Counsel Office	8	2.3	5	T14, T3, T11
Human Rights Commission	7	2.0	4	T9, T10, T3

ACTOR	SEGMENTS	% OF CORPUS	DOCUMENTS	DOMINANT THEMES
Ombudsman and the courts	7	2.0	3	T7, T9, T10
New Zealand Initiative and Heterodox	4	1.2	3	T6, T2, T4
Whaikaha and disabled people	3	0.9	2	T10, T4, T6
Treasury and Ministry for Regulation	3	0.9	2	T13, T9, T1
Ministry of Business, Innovation and Employment	3	0.9	2	T3, T9, T10
Te Puni Kōkiri and Te Arawhiti	2	0.6	2	T4, T10, T6
Department of the Prime Minister and Cabinet	2	0.6	2	T3, T9, T6
Tertiary Education Union	1	0.3	1	T6, T15

Table 7: Actor presence in the record and the themes with which each actor most frequently co-occurs.

Three actors occupy the dense centre. The Ministry of Education appears in more than a third of all segments, Cabinet in a quarter, and ACT together with Minister Seymour in more than a quarter across all 13 documents, which is the widest document spread of any actor including the Ministry itself. The strongest actor ties are between the Ministry and Cabinet, the Ministry and ACT, and ACT and Cabinet. Minister Seymour did not hold the tertiary education portfolio at any point in this process, yet his interventions are traceable at every stage. The work itself began because his office asked for a timeline.²⁴

His office supplied the initial legislative drafting. Education Report 1337135 of October 2024 states that “Minister Seymour’s office has shared suggested legislative drafting with us (Annex 1), which has informed this advice.”²⁵ That annex is explicit about its sources. Its council-duty clauses open with the words “The following could be adopted from the Higher Education (Freedom of Speech) Act 2023,” the United Kingdom statute,²⁶ and its statement clause reads “Include in a schedule the Model Freedom of Expression Resolution Based on University of Chicago Statement,” followed by a link to the website of the Foundation for Individual Rights and Expression, the United States advocacy organisation known as FIRE.²⁷ The annex also proposed applying the ACT party’s own Protection of Freedom of Expression Bill to tertiary institutions, making the code of practice a condition of Tertiary Education Commission funding, and amending the Human Rights Act 1993 so that claims relating to breaches of an institution’s code could be made directly to the Human Rights Review Tribunal.²⁸

When officials proposed principles, his office asked for rules. Education Report 1339458 records that “Minister Seymour indicated that he did not think the approach outlined in the paper was strong enough. He prefers that the proposed legislative expectations set clearer or falsifiable standards ... more prescriptive so that it can be objectively assessed whether or not universities are complying,” and that his office “raised concerns about the adequacy of monitoring and redress arrangements.”²⁹ In November 2024 his feedback on the draft Cabinet paper asked for external independent reporting on universities’ performance and for a note that “an enforcement/penalties regime could be introduced in future if universities are not considered to be complying.”³⁰ Each of those interventions is visible in the enacted law: the platform and premises expectations, the benchmarked survey-based reporting, the complaints procedure, and the reserve regulation-making power all correspond to requests that entered the record through his office, moderated by officials at each step.³¹

Now look at the other end of the table. Māori, iwi and Wānanga appear in 17 segments. Te Puni Kōkiri and Te Arawhiti together appear in two. Whaikaha appears in three. The Tertiary Education Union, which represents the academic staff whose working conditions this legislation reorganises, appears once. The Free Speech Union, a membership organisation whose 2022 survey the Ministry’s own documents describe as having a 3.1 percent response rate and self-selection bias, appears in 20 segments, which is more than Māori, disabled people and the staff union combined.³²

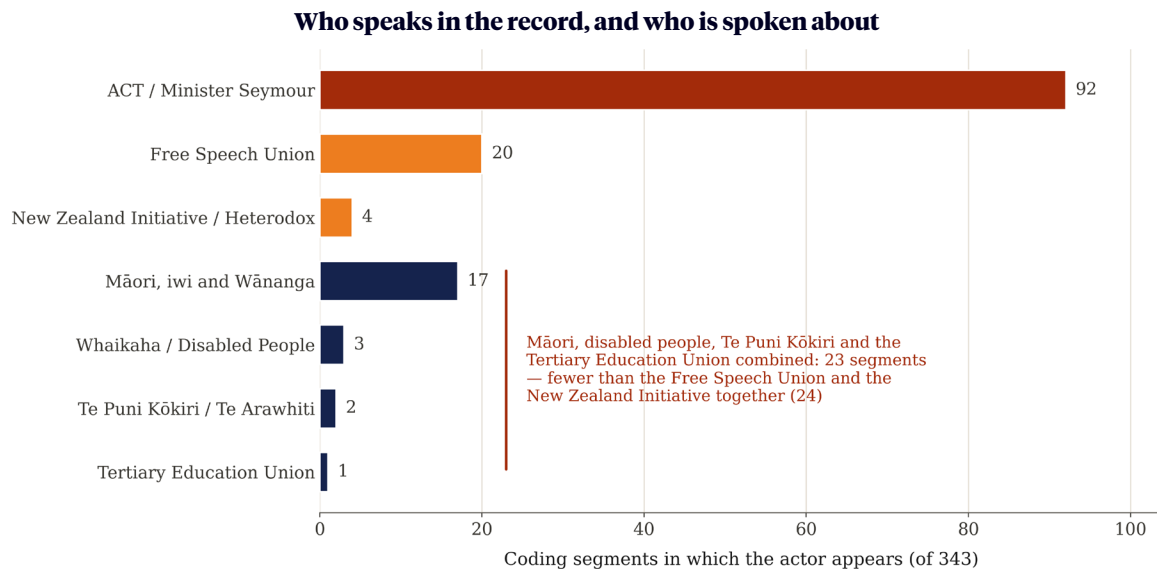


Figure 5: *Who speaks in the record and who is spoken about.*

The distinction that matters is not only volume. It is grammatical. The Free Speech Union appears as a source of positions: it shared a briefing paper proposing substantive changes to academic freedom obligations, changes to the Te Tiriti provisions of the Education and Training Act, and a new statutory office within the TEC or the Ministry of Education to set free speech expectations and oversee compliance;³³ it advocated, it emphasised, it acknowledged constraints, it indicated it would support targeted changes as a first step.³⁴ Māori appear as a risk category: Māori views could not be tested, the Wānanga would be problematic, the Crown’s obligations pose a risk, and these concerns are mitigated by limiting the application of the legislation.³⁵ Staff and students appear 35 times, and almost never as speakers. They appear as the objects of a protection they were not asked about, and as the population that will be surveyed from 2026 onward so that their sense of freedom can be benchmarked.

The record even documents the asymmetry of access as the Bill reached the House. In the same week that officials advised the Minister for Universities to write to Universities New Zealand about reporting, the report notes that the Minister was meeting the Free Speech Union on 25 March 2025 and the New Zealand Initiative on 26 March 2025, and that “freedom of expression legislation is likely to be discussed.” No equivalent meeting with the Tertiary Education Union, a student association, or any Māori or disabled people’s organisation appears anywhere in the released record.³⁶

This is what the culture-centered approach means by the erasure of subaltern voice. It is not that the excluded are absent from the text. They are present throughout, as content. What they lack is the position from which speech becomes consequential.

8. THE FLOW ACROSS TIME

Figure 6 tracks each theme as a proportion of the segments in each document, in chronological order.

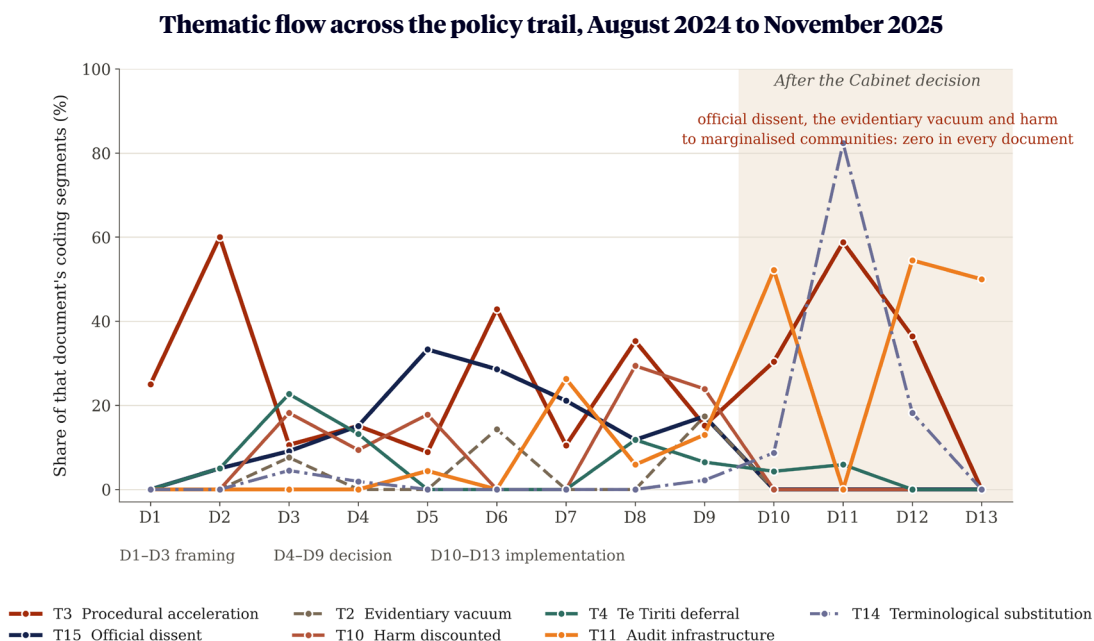


Figure 6: Thematic flow across the policy trail, August 2024 to November 2025. Seven themes are plotted; full theme names appear in Table 2.

The trajectory has three phases. In the framing phase, D1 to D3, the coalition warrant and the advocacy evidence dominate, and Te Tiriti reaches its highest share of the record at 23 percent of D3. In the decision phase, D4 to D9, the hierarchy of rights, the platform duty, the discounting of harm and official dissent all peak. Official dissent occupies a third of D5, the report in which officials told the Minister that the more prescriptive option she preferred carried a greater scope for unintended consequences, including limiting universities' ability to respond to bullying and intimidation that does not cross the legal threshold.³⁷ In the implementation phase, D10 to D13, the audit infrastructure and the reserve coercive power take over, and terminological substitution accounts for 82 percent of D11.

The single most important pattern in this figure is a set of zeroes. After the Cabinet decision, official dissent falls to zero and stays there across all four remaining documents. The acknowledged evidentiary vacuum falls to zero. The discounting of harm to marginalised communities falls to zero. Te Tiriti drops to 4 percent, then 6 percent, then zero, then zero. In the enacted provisions themselves the only themes present are institutional autonomy, the platform duty, institutional neutrality and the audit infrastructure.

Part of that fall is a property of the documents rather than of the politics. The genre shifts across the trail: D1 to D9 are advice, written to inform a decision that has not yet been made, and advice is where objection belongs; D10 to D13 are implementation instruments, and a drafting-instruction report or a letter to Universities New Zealand has no place in its form for a paragraph on evidentiary weakness. A critic could say the zeroes are therefore an artefact. I would say they are the mechanism itself. The point is not that officials fell silent because they changed their minds, but that a policy process is built so that the phase in which doubt can be registered ends, and everything after it is drafting. The doubt does not have to be answered or withdrawn. It simply stops being the kind of thing the paperwork is for, and the statute that emerges carries no trace that it was ever raised.

This is how a policy becomes a fact. The doubt is recorded, dated, signed and filed. The law that emerges carries none of it. A reader who encounters the Education and Training Amendment Act 2025 in the statute book, or on the Ministry's web page describing what is required of university councils, encounters a clean instrument with six tidy expectations and a reporting cycle. Every trace of the Ministry of Justice's warning, the Human Rights Commission's account of speech that damages social cohesion, Te Puni Kōkiri's finding that a clear case had not been made, Whaikaha's concern about disabled people's participation, and the Ministry of Education's own conclusion that it did not see a case for legislating, has been metabolised out of the text.³⁸

9. SIX COMMUNICATIVE INVERSIONS

A communicative inversion occurs when a communicative practice describes itself as the opposite of what it materially achieves. The released record supports six.

9.1 *Freedom secured by statutory instruction*

The Act requires each university council to adopt a statement on freedom of expression that must be consistent with six factors specified by Parliament.³⁹ The Ministry described this as striking a balance between maintaining the institutional autonomy of universities and providing assurance that they will adopt a stance that aligns with their statutory roles and public expectations.⁴⁰ Read plainly, the university is free to write anything it likes provided it says these six things. Institutional autonomy is the most frequently invoked concept in the record and the highest-betweenness node in the network precisely because it must be carried on both sides of this contradiction. Section 267 of the principal Act already protects academic freedom, and section 268 already establishes the critic and conscience role. The 2025 provisions add nothing to the freedom of any academic to question received wisdom. They add a requirement that the institution declare a position on speech that Parliament has pre-approved.⁴¹

The vetting of the Bill under the New Zealand Bill of Rights Act 1990 rests on a reading that makes the same point from the opposite direction. Advice to the Attorney-General concluded that the provisions were consistent with the Act because each of the specified factors states what a university should do rather than what it must do, which leaves room for a university to comply with the Bill of Rights Act.⁴² The reassurance, in other words, is that the expectations need not be followed to the letter. A university council reading the same words under an annual reporting duty, a benchmarked comparison and a complaints ledger will not experience them as optional, and the Law Society's submission put the corollary plainly: a statement containing these features would at best affirm what existing law already requires, while introducing complexity about how council statements interact with the overriding requirements of freedom of expression and academic freedom.⁴³

9.2 *Evidence assembled from a named vacuum*

The record contains its own refutation. Officials wrote that they had limited evidence, that there is no consistent data collection, that the New Zealand Initiative report relies on a Free Speech Union survey with a 3.1 percent response rate and self-selection bias, on a Heterodox survey that does not reveal the source of the reluctance it measures, and on an incident list assembled since 2013.⁴⁴ They noted that the Australian French review, the most thorough comparative inquiry available, "concluded that there was no evidence to establish a systemic pattern of freedom of speech being undermined in Australian higher education."⁴⁵ They noted that the United Kingdom legislation on which the drafting was modelled had been halted by an incoming government citing concerns about the impact on vulnerable groups and costs.⁴⁶ And then the Cabinet paper opened with the assertion that in recent years there have been increasing concerns about how universities approach freedom of speech, which is true, and which is not the same thing as a demonstrated problem. The evidentiary vacuum has the lowest betweenness in the network because it was never permitted to do any work.

9.3 A freedom of expression policy made by foreclosing expression

There was no public consultation. There was a two-week period of targeted engagement, comprising a brief discussion with vice-chancellors on 17 October 2024, in-depth meetings with two universities and with the Free Speech Union, and written feedback from the leadership of three more.⁴⁷ The Regulatory Impact Statement records the obvious point: a lack of consultation on this option may be perceived by some stakeholders as directly at odds with the policy objective to protect freedom of expression and promote diversity of opinion.⁴⁸ The staff and students whose speech is the ostensible subject of the law were not asked. Neither were the community groups who told the University of Otago panel, during its own consultation, that they were disproportionately affected by speech deemed offensive; officials wrote that they had not had time to seek out the perspectives of these groups.⁴⁹ A statute about who may speak was made by not listening. Procedural acceleration is the most prevalent theme in the corpus because speed was the mechanism of exclusion.

9.4 Neutrality that takes a side

Section 281A(2)(d) provides that universities, as institutions, should not take public positions on matters that do not directly concern their role or functions. The Cabinet paper is candid that this “mandates institutional neutrality.”⁵⁰ In a settler-colonial state this is not a neutral instrument. The Free Speech Union argued in its engagement with officials that universities’ commitments to Te Tiriti may be inconsistent with institutional neutrality, particularly where they “delegitimise academic debate on these issues.”⁵¹ Officials disagreed on the record, and noted that the Tiriti provisions of the Act would be reviewed separately through a Treaty clause review led by the Ministry of Justice.⁵² But the expectation now sits in statute, and it will be interpreted by councils that include ministerial appointees, under an annual reporting duty, by institutions under financial pressure. The question of whether a university’s Tiriti commitments, its anti-racism work, its position on the health of its Pacific and Māori communities, or its response to a genocide directly concern its role or functions is now a live compliance question rather than a matter of institutional conscience. Neutrality did not remove politics from the university. It relocated the decision about which politics count as institutional business into a statutory test and a reporting line.

9.5 A platform duty that removes the power to protect

Section 281A(2)(f) provides that universities should provide a platform for invited speakers of diverse viewpoints and should not deny the use of university premises by an invited speaker because of that speaker’s ideas or opinions. Section 281A(2)(e) provides that universities should not limit the freedom of expression of staff or students except where the exercise of free expression is likely to be unlawful or to disrupt the ordinary activities of the university.⁵³ The record shows officials trying, repeatedly, to explain what this would mean in the specific legal environment of Aotearoa. New Zealand has no general hate speech law. The main restrictions are threatening behaviour, intimidation and incitement of racial disharmony. Officials wrote that a provision requiring universities to host all invited speakers “could encompass a range of extreme, but legal, speech, including incitement of hatred against religious and other groups.”⁵⁴ That sentence was written in October 2024, and it describes the country in which the Christchurch mosque attacks happened.

The strongest substantive tie in the theme network joins the platform duty to the discounting of harm because the two are inseparable. The Human Rights Commission told the Ministry that its concerns were not about speech that is shocking or offensive but about speech that is inciteful, that damages social cohesion, and that leads to safety concerns including by empowering others to commit acts of violence. It warned that the university environment could become hostile for some population groups since universities could contribute to the growth of racist, sexist, transphobic and other movements. It suggested that the health and safety of students, visitors and staff be recognised as a fundamental duty of universities. None of that suggestion is in the Act.⁵⁵

There is one further detail, and it is now fully traceable. Cabinet's agreed expectation of December 2024 read that universities should foster an environment where ideas can be challenged, controversial issues discussed, and diverse opinions expressed, "in a respectful manner consistent with any university codes." That qualifier survived into the Bill as introduced on 7 April 2025, where clause 12 rendered it "in a respectful manner consistent with any statute made by the university."⁵⁶ It was still there when the sector submitted: Universities New Zealand read section 281A(2)(b) as providing that the exercise of freedom of expression must be respectful and consistent with any statute made by the university, and asked for clarity about how that sat alongside the staff and student provision in subsection (2)(e).⁵⁷

The clause was then removed, and the removal was neither silent nor accidental. The Education and Workforce Committee, reporting on 11 September 2025, recommended deleting it, and gave a reason: a "respectful manner" could be a subjective assessment, and this could limit contentious but legitimate discourse. The committee added that the amendment would not substantially alter the intent of the provision and would not prevent universities from setting their own conduct expectations.⁵⁸ So the record is complete, and it says something more precise than a drafting slip. The only expectation in the entire list that pointed back to a university's own codes of conduct was removed on the express ground that a requirement of respect might restrict speech. Conduct standards were not merely omitted; they were identified as a potential limit on expression and taken out for that reason. What the committee treated as a subjective encumbrance is, for a staff member facing a legal but abusive campaign, the only thing in the provision that had pointed toward the institution's power to protect them. The tilt described throughout this section is not an artefact of hurried drafting. At the one point where Parliament looked directly at the balance between expression and conduct, it resolved it in the same direction as every other step in this record.

9.6 Transparency that arrives as surveillance

From the 2026 academic year every university must survey its staff and students about academic freedom and freedom of expression, report the results in an annual report tabled in Parliament, and report the number and nature of complaints. The reporting must be sufficiently consistent to allow performance to be compared and benchmarked over time.⁵⁹ Behind this sits a reserve regulation-making power allowing regulations to prescribe what must be reported, which the Ministry advised should be held in case the universities either fail to agree or propose something that does not meet the Minister's expectations. The strongest tie in the entire theme network joins these two things.⁶⁰

This is governance by metric of a kind familiar from ranking regimes and performance-based research funding. It produces a number, the number produces a league table, the league table produces institutional anxiety, and institutional anxiety produces behavioural change without anyone having to issue an instruction. The metric will measure the perceived freedom of those who respond to a survey. It will not measure whether a Muslim student can walk past an invited speaker's event without fear, whether a Māori academic can teach mātauranga Māori without a complaint file being opened, or whether a disabled student can access a lecture theatre that has been booked for a speaker whose ideas concern their right to exist. The complaints count will record volume, not vindication. And costs are absorbed by universities, as the Treasury asked the Cabinet paper to state explicitly.⁶¹

10. THE COMPLAINTS MACHIEERY AND THE INFRASTRUCTURE THAT AWAITS IT

The complaint is where this settlement stops being a statement of values and becomes an operating system. Section 281B requires every university to establish and maintain a complaints procedure relating to academic freedom and freedom of expression. Section 306(h) requires every annual report to record the number and nature of complaints made under that procedure, and those reports are tabled in Parliament. This section unpacks what has been built, on the record of how it was built, and then traces the infrastructure that is positioned to use it.

10.1 *What the Act establishes*

The design has four features. First, the complaints channel is universal and content-open: any alleged failure to protect or promote freedom of expression, as defined by a statement whose content Parliament has specified, is complainable. Because the statement expectations extend to invited speakers and the use of premises, the procedure is open not only to staff and students but, in practice, to the constituency of any speaker or host whose event is declined, conditioned or relocated. Second, the complaint is counted before it is judged: what enters the parliamentary record is the number and nature of complaints, not their merit, their outcome, or the cost of defending against them.⁶² Third, the channel sits inside a benchmarking regime, so each complaint is simultaneously a grievance and a data point in a national comparison that universities have institutional reasons to fear. Fourth, there is no independent adjudicator: officials expressly recommended against establishing new external redress channels, and the pathways beyond the university remain the Ombudsman, whose recommendations do not bind, judicial review, which is expensive and slow, and the Human Rights Review Tribunal for discrimination claims.⁶³

The asymmetry of this design should be stated plainly. Filing a complaint is close to free. Receiving one is not. Every complaint obliges the institution to run a procedure, generates a countable event for the annual report, and accumulates toward a benchmarked figure that will be read, by ministers and by the organisations that lobbied for this law, as a measure of institutional failure. An instrument with those properties rewards whoever can organise complaint volume, and it penalises the institution for the existence of grievance rather than for its substance. Officials understood the family this instrument belongs to: they modelled the complaint requirements on the Pastoral Care Code, a regime built to protect students from institutional neglect, and repurposed its form for a regime whose principal advocates are organisations outside the university.⁶⁴

10.2 *The stronger machine that was asked for*

The enacted procedure is the moderated residue of two more ambitious proposals in the record, and both tell us what the machinery is for. Minister Seymour's Annex 1 drafting proposed amending the Human Rights Act 1993 so that claims relating to breaches of an institution's code of practice could be made directly to the Human Rights Review Tribunal, alongside judicial review rights for any affected party over venue decisions and a funding condition enforced through the Tertiary Education Commission.⁶⁵ That is a litigation pipeline: a statutory cause of action, a tribunal with remedial powers, and a financial lever. The Free Speech Union's briefing paper proposed a statutory officer within the TEC or the Ministry of Education to set free speech expectations and oversee compliance, alongside changes to the Act's Te Tiriti provisions.⁶⁶ Officials declined both, this round. But the record is explicit that the door was left open. Officials recorded that Free Speech Union representatives "acknowledge these constraints and see strengthened oversight as something that could be progressed in subsequent legislation if needed." Minister Seymour's office asked that the Cabinet paper note that "an enforcement/penalties regime could be introduced in future if universities are not considered to be complying," and the Cabinet paper records that the Minister will monitor performance and consider whether additional oversight or enforcement mechanisms are required.⁶⁷ The complaints count is the trigger mechanism for that future. A regime that publishes rising complaint numbers year on year manufactures the evidence of non-compliance that the next legislative round will cite. The vacuum of evidence that could not be filled in 2024 will be filled by the machine itself.

10.3 *The infrastructure that awaits it*

This machinery does not arrive into empty social space. It arrives into a transnational infrastructure of complaint, audit and litigation that has been assembled around university speech over the past decade, and the released record documents the New Zealand nodes of that infrastructure at the table. The drafting lineage

runs from the United States through the United Kingdom to Wellington. The model statement clause in Minister Seymour's Annex 1 points to the Foundation for Individual Rights and Expression, whose model resolution packages the University of Chicago principles for legislative adoption.⁶⁸ The council-duty and security-cost clauses are adapted from the United Kingdom Higher Education (Freedom of Speech) Act 2023, an Act whose policy blueprint was published by the think tank Policy Exchange and championed by the United Kingdom Free Speech Union; that Act created a statutory tort, a Director for Freedom of Speech and Academic Freedom within the regulator, and a dedicated national complaints scheme. After the incoming Labour government paused the Act in July 2024, its main duties were commenced in amended form on 1 August 2025, with the tort slated for repeal.⁶⁹ The New Zealand Free Speech Union, formed in 2018 as the Free Speech Coalition in response to an Auckland Council venue cancellation and relaunched in 2021 as a registered union operating as the official sister organisation of the United Kingdom Free Speech Union founded by Toby Young, using the same name under licence, is the domestic operator of the same repertoire: surveys of academics whose results feed advocacy reports, casework and legal support for complainants, and sustained lobbying for statutory oversight, documented in this record as a briefing paper seeking a statutory enforcement officer and amendment of the Act's Te Tiriti provisions.⁷⁰ One thing should be said plainly about what this section does and does not claim. I am not asserting coordination: nothing in the released record shows these organisations acting in concert, and the analysis does not require it. What the record and the public sources establish is a shared repertoire, model texts and statutory templates that travel between jurisdictions, and documented access at the moments of decision. An infrastructure of that kind does not need a conspiracy to function, and reading it as one would both overstate the evidence and understate the problem, which is that the repertoire is available to anyone who picks it up. The New Zealand Initiative, whose report supplied the evidential case the Ministry itself found methodologically wanting, is the corporate-funded policy node of the same network, formed in 2012 from the merger of the New Zealand Business Roundtable and the New Zealand Institute and affiliated to the Atlas Network of market-liberal think tanks, an affiliation its executive director describes in the organisation's own publications; its access is documented in this record by a ministerial meeting scheduled the day after the Free Speech Union's, in the week the Bill went to the House.⁷¹

What this infrastructure does with complaints machinery is a matter of record in comparable jurisdictions. In the United States, the complaint-and-litigation form is industrialised: organisations solicit student complainants, file against bias-response and harassment procedures, and maintain public watchlists of academics whose teaching on race, gender and colonialism becomes the object of coordinated reporting campaigns.⁷² In the United Kingdom, the redesign of the revived scheme makes the intended complainant class explicit. The Office for Students complaints scheme that commenced on 1 September 2026 is open to staff, external speakers, applicants for academic posts and non-student members, while students are directed elsewhere, to the Office of the Independent Adjudicator. A national complaints channel built for speakers and staff, and not for the students exposed to the speech, is the same asymmetry that section 281B now installs in Aotearoa.⁷³ Aotearoa already has a domestic preview. In 2025 an ACT MP used social media to publicise and condemn the content of a University of Auckland law lecture on international law, an episode I have analysed elsewhere as the arrival of the imported watchlist playbook: the classroom utterance is captured, recontextualised, amplified through partisan channels, and converted into institutional pressure.⁷⁴ Under section 281B that same sequence now terminates in a statutory complaints procedure whose count is tabled in Parliament. The lecture becomes a complaint, the complaint becomes a number, the number becomes the case for the penalties regime the record has already drafted in outline.

10.4 *Who the machinery will find*

Complaint machineries do not distribute their effects evenly, and it would be an analytical failure to pretend otherwise. The subjects most exposed under this design are predictable from the record itself. They are the

academics whose teaching sits where the Free Speech Union's briefing paper aimed: Te Tiriti, colonisation, race, gender. They are the staff and students whose codes-of-conduct protections officials warned would be constrained by the unlawful-or-disruptive standard, since bullying, racism and harassment below the legal threshold "could constitute restrictions on freedom of expression" if the institution acts against them.⁷⁵ They are the student groups whose protest against an invited speaker can now be framed as the obstruction of a statutory expectation. And they are the university workers, disproportionately women, Māori, Pacific and migrant staff, who will absorb the procedural labour of every complaint, because complaint-handling is precisely the kind of unfunded compliance work the Treasury asked the Cabinet paper to confirm universities would absorb.⁷⁶ Meanwhile the harms the Human Rights Commission asked the regime to register, inciteful speech, damaged social cohesion, the empowerment of violence, have no channel of their own in this Act. There is a statutory procedure for the speaker who was not hosted. There is no statutory procedure for the community that the speech targeted. That asymmetry is the clearest single expression of whose freedom this law was built to serve.⁷⁷

II. STRUCTURE, CULTURE AND AGENCY IN THE ENACTED PROVISIONS

Reading section 281A(2) through the culture-centered approach clarifies what has been built.

At the level of structure, the Act reorganises the relationship between the Crown and the university. Before 2025, the university's speech norms were a matter of academic governance, negotiated through academic boards and senates, contested internally, and answerable to the critic and conscience role in section 268. After 2025, they are a matter of statutory compliance, answerable to a duty on council, a reporting line to the Minister for Universities, a parliamentary tabling, a benchmarked comparison against other institutions, a complaints ledger, and a reserve regulation-making power. The universities that resisted this on the record, on the grounds that it was duplicative given existing Bill of Rights protections, absorb the cost.⁷⁸ The Regulatory Impact Statement notes that eight universities employ approximately 22,500 staff, teach approximately 177,000 students, and received approximately \$1.445 billion in public funding for tuition subsidies in 2023. That is the scale of the institution now subject to an annual speech audit that nobody in the sector requested.⁷⁹

At the level of culture, the Act installs a particular meaning of freedom and makes it the only one that can be measured. Freedom becomes the absence of institutional restriction on individual expression. It does not become the presence of conditions under which people who have historically been excluded from the university can speak and be heard. Those two meanings of freedom are not compatible, and the Act chooses. The choice is visible in the treatment of the Otago consultation, where the panel heard extensively from groups who saw themselves as disproportionately affected by offensive speech, and the Ministry recorded that it had not had time to seek those perspectives out. It is visible in the Minister's response to the population implications section, which acknowledges the concern that the policy may cause harm to groups of staff or students and then states, without further analysis, that she does not agree.

At the level of agency, the Act narrows the room in which university communities can act, and it does so precisely in the register of expanding their freedom. A student association that campaigns to have a speaker's event moved now does so against a statutory expectation and toward a complaints ledger. A department that issues a collective statement on a matter of moral urgency now does so against a neutrality expectation that its council must report on. A union that files a collective grievance about a colleague being harassed by a legal but abusive campaign now works in a system where the only permitted limit on expression is unlawfulness or disruption to ordinary activities. Agency is not extinguished. It is made more expensive. That is how enclosure works, and it is why I have used the word.

12. A COUNTER-ARCHITECTURE

The Act is law and it will be complied with. The question for those of us inside these institutions is what we build in the space the Act leaves, and there is more of that space than the compliance framing suggests. Every university must write a statement. Nobody has specified how it is to be written, with whom, or on the basis of whose knowledge. The six factors set a floor for content. They set no ceiling on process, and process is where voice infrastructure is made.

From coalition bargain to statutory enclosure



A culture-centered counter-architecture

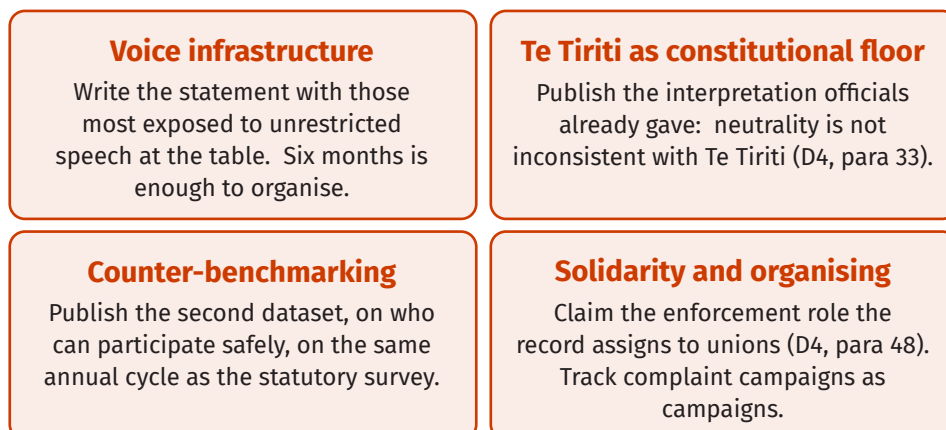


Figure 7: The pathway from coalition bargain to statutory enclosure, and a culture-centered counter-architecture.

The first pillar is voice infrastructure. A statement on freedom of expression that has been co-created with Māori and Pacific staff and students, with disabled students, with Muslim and Jewish student groups, with international students whose visa status makes protest costly, and with the general staff who will be at the door when a controversial event is held, is a different artefact from one drafted by a legal team against a statutory checklist. It will satisfy the six factors. It will also carry, in its preamble, its examples and its procedures, an account of the conditions under which speech becomes possible for people who do not currently enjoy them. The University of Otago spent five months on its statement and the record notes that its inclusive process mattered to buy-in. Six months is what the Act allows.⁸⁰ That is enough time to convene properly if the work starts as organising rather than as drafting.

The second pillar is Te Tiriti as the constitutional floor beneath the neutrality expectation, not a matter placed outside it. Officials stated on the record that they do not see institutional neutrality as being inconsistent with a commitment to Te Tiriti o Waitangi, and that the requirement on councils to acknowledge Te Tiriti relates to how they perform their functions as educational institutions. That statement is in the Cabinet-stage advice and it is the interpretive anchor councils should adopt and publish.⁸¹ Tikanga also offers something the Act does not: a developed framework for holding difficult, high-stakes disagreement while protecting the mana of the people and the kaupapa in the room, a point made in the commentary officials themselves cited.⁸² Universities that build their statements on that framework will produce better speech environments than those that copy the Chicago statement, and they will be doing what the Education and Training Act already asks of them.

The third pillar is counter-benchmarking. The Act will generate a national dataset on perceived freedom of expression. It will not generate a dataset on who can participate safely. Unions, student associations and research centres should build and publish the second one, using the same annual cycle, so that when the first league table appears there is a second table beside it. Ask what proportion of Māori and Pacific staff have had a complaint made about their teaching of colonisation. Ask how many disabled students avoided a campus event because of an access or safety concern. Ask how many staff have experienced a coordinated online campaign and what the institution did. Publish it. A metric answered only by another metric is a poor form of politics, and it is the form this settlement has chosen, so the counter-metric has to exist.

The fourth pillar is solidarity and organising, because the Act contains no enforcement layer for the people it affects. There is no independent regulator, no disputes body, no statutory officer. Complaints go to internal procedures, then to the Ombudsman, whose recommendations do not bind, or to judicial review, which is expensive and slow. The record itself assigns unions, including the Tertiary Education Union, a role in advocating for their members within this system.⁸³ That is an outsourcing of enforcement to organisations that appear once in a 14-month record. It is also an opening. The Tertiary Education Union, student associations and community organisations are now, by the government's own design, the mechanism through which this law will be held to account.

13. RECOMMENDATIONS

For Government and the Minister for Universities

Publish the delegated decisions made under the authority granted by SOU-24-MIN-0167, so that the policy choices taken between the Cabinet decision and introduction are as traceable as the parliamentary amendments that followed them. Since the Education and Workforce Committee removed the reference to university conduct codes from section 281A(2)(b) on the ground that a requirement of respect might limit discourse, state on the record how universities are now expected to reconcile the enacted expectations with their obligations under the Health and Safety at Work Act 2015 and the Pastoral Care Code. Commit publicly that the reserve regulation-making power will not be used to prescribe survey instruments without consultation with staff and student

representatives. Complete the Treaty clause review with Māori-led engagement and address, explicitly, the interaction between the neutrality expectation and universities' Tiriti obligations. Fund the compliance costs the Treasury asked to have transferred to universities, or accept that this is a real-terms cut delivered as a freedom.

For Universities and Councils

Treat the statement as an act of institutional self-definition rather than a compliance document, and build it with the communities most exposed to unrestricted speech at the drafting table rather than on a submission list. Publish the interpretation that Te Tiriti obligations directly concern the role and functions of the university, so that the neutrality expectation cannot be used to silence them. Keep codes of conduct, health and safety duties and the Pastoral Care Code in force and state their relationship to the statement in writing, since the enacted expectation no longer does. Design the section 281B procedure with a merit threshold, a vexatious-complaint pathway, protection and support for staff who are the subject of complaints, and published outcome categories, so that the annual report can record not only the number and nature of complaints but their disposition. Report with enough qualitative texture that the parliamentary record shows what actually happened, not only how many files were opened.

For the Tertiary Education Union and Student Associations

Claim the enforcement role the record assigns and resource it. Negotiate a role in the design of the survey instrument at every institution before the 2026 cycle, because whoever writes the questions writes the finding. Negotiate the complaints procedure itself as a matter of employment relations, since complaint-handling is work and complaint-receiving is a hazard. Build the counter-benchmark. Track and publish coordinated complaint campaigns as campaigns, so that 50 complaints generated by one mobilisation are legible as one event. Bring collective, rather than individual, complaints where a pattern of harassment follows a speaker event, so that the complaints count records structure rather than incidents.

For communities and civil society

The annual reports will be public and tabled in Parliament from 2027. Read them. A benchmarking regime built to discipline universities can be turned into a public evidence base about who is safe on campus, and community organisations are better placed than anyone to ask the questions the survey will not.

For researchers

The 2027 reporting cycle creates the first nationally comparable dataset on speech conditions in New Zealand universities, and the complaints ledger creates a running archive of how the machinery is used and by whom. Both should be studied critically, alongside a parallel programme of community-based work with the staff and students the policy record treated as a risk category rather than as interlocutors. CARE will contribute to both.

14. LIMITATIONS

Four limitations should be stated. First, the corpus is the released record and the released record is redacted. Annexes to several reports are withheld in full under section 9(2)(f)(iv), including the tracked-changes versions of the Cabinet paper and the Regulatory Impact Statement, and material has been removed under sections 9(2)(a), 9(2)(g)(i) and 9(2)(ba)(i). Passages that would speak directly to the exchanges between the two ministerial offices are among the withheld material. My analysis maps a record that the state has curated.

Second, dictionary-based coding trades depth for transparency and replicability. A pattern-matched theme is not the same as an interpretively coded theme, and the counts should be read as indices of textual emphasis

rather than as measurements of meaning. I have reproduced the full dictionary in Appendix A so that the coding decisions can be inspected and disputed, and I have named in section 3.2 the one place where the frame embeds a contestable judgement about what counts as an instance of a theme. The coding was carried out by a single analyst, and no intercoder reliability statistics are reported; a hand-coded subsample with agreement statistics would be the first addition required to convert this analysis into a peer-reviewed article. The qualitative claims in sections 9 to 12 rest on close reading and on quoted, cited material, not on the counts.

Third, four documents required optical character recognition, which introduces transcription error. Every quotation in the paper was machine-checked as a verbatim string match against the extracted corpus, and quotations from OCR-transcribed documents were additionally verified against the page images, as set out in the note on citation and verification that opens the endnotes. The drafting history of section 281A(2)(b), which an earlier draft of this paper could trace only as far as a discrepancy between the Cabinet-stage wording and the enacted text, has since been resolved against the parliamentary record and is reported in section 9.5 as what it turned out to be: an amendment recommended by select committee, with a stated reason.

Fourth, this is an analysis of a policy record rather than of implementation. What universities actually do with their statements, how the complaints machinery is used, and what the 2026 surveys find, are empirical questions for the coming two years. The statement on the use of artificial intelligence in the preparation of this paper appears as an endnote to section 3.3.

APPENDIX A: THEME DICTIONARY

Each theme was operationalised as the set of case-insensitive regular expressions listed below, applied to each coding segment. A segment is coded for a theme if any pattern matches at least once; the instance count records total matches.

Table A1. The coding dictionary as applied.

T1	Coalition agreement as originating warrant <i>Patterns: coalition agreement; National and ACT; National/Act; taxpayer funding must commit; alignment with government priorities; relation to government priorities</i>
T2	Acknowledged evidentiary vacuum <i>Patterns: limited (direct) evidence; no consistent data; anecdotal; do not have good information; methodological problems; not give us a good picture; self-select; response rate; lack of robust evidence; not aware of any concerns; do not have a strong awareness; highly contested and politicised; concerns are overblown</i>
T3	Procedural acceleration and foreclosed consultation <i>Patterns: no time for public consultation; not allow sufficient time; expedited; truncated; tight timeline; very limited time; without appropriate consultation; lack of consultation; have not consulted; not undertaken public consultation; targeted engagement; two-week period; timeframes; lodgement; ETAB 2; legislative vehicle; drafting instructions; deadline; deprioritise; jeopardise; by 10am; Select Committee</i>
T4	Te Tiriti deferral and the exclusion of Māori <i>Patterns: Te Tiriti; Treaty of Waitangi; Wānanga; rangatiratanga; tikanga; mātauranga; te reo; Te Puni Kōkiri; Te Arawhiti; Māori; CO(19)5; Treaty clause review; iwi</i>
T5	Institutional autonomy invoked <i>Patterns: institutional autonomy; self-regulating; independence; autonomous; section 267; section 268; critic and conscience; academic governance; academic board; academic senate; university council</i>
T6	Privileged advocacy evidence and stakeholder capture <i>Patterns: Free Speech Union; New Zealand Initiative; NZ Initiative; Heterodox; Chicago; thefire.org; FIRE; gold standard; briefing paper proposing; Kierstead; Seymour + office/drafting/suggested/feedback/indicated; suggested legislative drafting; Higher Education (Freedom of Speech) Act</i>
T7	Invited speakers, deplatforming and the platform duty <i>Patterns: invited speaker; visiting speaker; external speaker; deplatform; use of premises; venue; hire of; Don Brash; provide a platform; security costs; cancelled; disinvite</i>
T8	Institutional neutrality mandated <i>Patterns: institutional neutrality; not take public positions; take a stance; neutral position; Israel; Gaza; take an institutional position</i>
T9	Hierarchy of rights and Bill of Rights inconsistency <i>Patterns: BORA; Bill of Rights; section 14; s5 of the New Zealand Bill; demonstrably justified; competing rights; balance + rights; hierarchy of rights; primacy over other; inconsistent with BORA; Human Rights Act; Human Rights Commission; freedom from discrimination; justified limit; proportionality; international law; International Covenant</i>
T10	Discounting of harm to marginalised communities <i>Patterns: systemic discrimination; vulnerable group; marginalise; wellbeing; safety; health and safety; pastoral care; harassment; racism; hate speech; incite; transphobic; social cohesion; disabled; Whaikaha; de facto barriers; do not agree that the proposals will have a negative impact; population implications; chilling effect; bullying; intimidation; abusive</i>

T11 Audit infrastructure: benchmarking and reporting

Patterns: benchmark; standardised reporting; annual report; publicly report; surveying staff; monitored and compared; performance; disclosure; measured; comparable results; sample size; metrics

T12 Reserve coercive power held in abeyance

Patterns: regulation-making power; regulations; Order in Council; penalty; enforcement; statutory officer; withhold; funding condition; condition on funding; backstop; if necessary; in future if; reserve

T13 Compliance cost transferred to universities

Patterns: compliance cost; absorb; financial implication/pressure/difficulty; unfunded; regulatory burden; cost pressures; not been able to quantify or estimate; costs to universities; additional cost

T14 Terminological substitution and control of drafting

Patterns: freedom of expression near freedom of speech; statute book; interchangeable; Parliamentary Counsel; PCO; terminology; not a substantive policy change; consistency of language; Bill of Rights 1688

T15 Official dissent recorded and overridden

Patterns: we do not recommend; not recommended; do not see a clear case; we would favour maintaining the status quo; does not recommend proceeding; partially meets; we accept that; our view is that a more prescriptive; raised concerns; highlighted concerns; we strongly advise; did not think the approach; unconvinced; unintended consequences; quality assurance panel

T16 Foreign interference and national security framing

Patterns: foreign actor/interference/income; national security; state-backed; international student revenue; Department of the Prime Minister and Cabinet; DPMC

NOTES

1. A note on citation and verification. Claims about the policy process are anchored to the released record using the convention (Dn, METIS number, paragraph, page), where Dn refers to the document codes in Table 1 and page numbers refer to the pagination of the released PDF. The Cabinet paper and its Regulatory Impact Statement (together D9, proactively released on 4 February 2025 as a single package with minute SOU-24-MIN-0167) are cited by their own paragraph numbers; RIS page numbers follow the printed pagination of the Regulatory Impact Statement. The Ministry's summary of the enacted provisions (D13) is a web page and carries no pagination; web sources are cited by publisher and date, and statutes by section. Two verification passes were applied. Every quotation in this paper was machine-checked as a verbatim string match against the extracted corpus, and quotations from documents transcribed by optical character recognition were additionally checked by hand against the page images; one OCR error was corrected this way (the released page of D8 reads "transphobic" where the automated transcription had dropped a letter). Claims resting on sources outside the corpus — the parliamentary history in sections 9.1 and 9.5, the United Kingdom legislative trajectory, and the organisational lineages in section 10 — were verified against primary, parliamentary or self-published sources, which are cited in the notes.
2. Education and Training Act 2020, ss 281(1)(g), 281A, 281B, 306(h), as inserted by the Education and Training Amendment Act 2025 (assented November 2025); Ministry of Education, Academic freedom and freedom of expression provisions for universities, education.govt.nz (D13). Statements must be adopted within six months of commencement (Sch 1, pt 7, cl 128).
3. RIS (in D9), para 50, p. 16: "Ultimately, we do not see a clear case for legislative change to strengthen protections upon freedom of speech, given the limited availability of robust evidence on this issue and our uncertainty regarding risks and unintended consequences in this space"; and RIS executive summary, p. 2: "Given that we have not consulted on the problem or potential options, we would favour maintaining the status quo."
4. D3, ER 1337135, 10 Oct 2024, paras 15–18, p. 4: "We have limited direct evidence on the extent and impact of these problems in New Zealand"; the three sources of the New Zealand Initiative report "each have methodological problems and as such do not give us a good picture of whether they are representative of broader issues at universities." The same assessment is repeated in the RIS (in D9), paras 29 and 34, pp. 9–10.
5. D2, ER 1333715, 14 Aug 2024, para 9, p. 6: the faster vehicles "would only provide limited time for policy decisions and not allow for any consultation ahead of introduction. This will create risks to policy quality and may result in ineffective legislation or unintended consequences."
6. D2, ER 1333715, para 9, p. 6: "A lack of consultation about the policy prior to introduction also poses Te Tiriti risks around the Crown's obligations to consult on Māori interests"; D3, ER 1337135, para 53, p. 9: "in the absence of consultation we will not be able to meet Cabinet's expectations for consideration of Te Tiriti in policy making (as set out in CO(19)5)."
7. Coalition Agreement between the New Zealand National Party and ACT New Zealand, 24 November 2023. The sentence is reproduced under the heading "Alignment with Government priorities" in every document in the corpus, from D1 (BN 1333354, 2 Aug 2024) through D12 (Report 1343210, 24 Mar 2025), and is quoted in the Cabinet paper (D9), para 2.
8. D3, ER 1337135, para 15, p. 4; restated in the RIS (in D9), para 29, p. 9.
9. RIS (in D9), para 50, p. 16. The RIS also states: "The Minister has indicated that she intends to progress with Option Four" (para 53, p. 16), the option officials had ranked below their own preferred Option Three (para 51, p. 16).
10. D8, ER 1340649, 3 Dec 2024, para 10, p. 4: the panel "assessed the RIS as partially meeting the quality assurance criteria because of the time constraints imposed on consultation and analysis." The Cabinet paper itself records that the panel "considers that it partially meets the assessment criteria" (D9, para 34).
11. SOU-24-MIN-0167, 11 Dec 2024, confirmed by Cabinet 16 Dec 2024 (CAB-24-MIN-0499, cited in D12, para 2, p. 2); D10, ER 1341067, 12 Dec 2024, paras 1–2, p. 1. The minute's attendance list records Hon David Seymour as present at the Social Outcomes Committee decision of 11 December 2024.
12. Dutta, M. J. (2008). *Communicating health: A culture-centered approach*. Polity; Dutta, M. J. (2011). *Communicating social change: Structure, culture, and agency*. Routledge; Dutta, M. J. (2020). *Communication, culture and social change: Meaning, co-option and resistance*. Palgrave Macmillan.
13. Dutta, M. J. (in press). The communicative inversions of academic freedom. *Journal of International and Intercultural Communication*; National Communication Association Task Force on Academic Freedom and Tenure (2025), final report (M. J. Dutta, chair); CARE White Paper Series (2026), *The communicative inversions of academic freedom in Aotearoa New Zealand: The Free Speech Union, the imported culture war, and a culture-centered framework for defending the public university*.
14. Ministry of Education, Freedom of expression in universities, issue-specific information release, education.govt.nz; Ministry of Education, Academic freedom and freedom of expression provisions for universities, education.govt.nz. The Cabinet paper package (D9) was proactively released on 4 February 2025.

15. For example, the annotation against Option G of Annex 1 to D4, p. 11, is partially legible on the page image; D5, ER 1339458, para 15, p. 3, restates it: "You also indicated that Option G should require universities to err towards freedom of speech."
16. Education and Training Amendment Bill (No 2) 2025 (140–1, 140–2 and 140–3), legislation.govt.nz; Education and Workforce Committee commentary, 11 September 2025, selectcommittees.parliament.nz; Ministry of Justice, Consistency with the New Zealand Bill of Rights Act 1990: Education and Training Amendment Bill (No 2), 20 March 2025, justice.govt.nz.
17. The relevant pattern is "do not agree that the proposals will have a negative impact" (Appendix A, T10), matching Cabinet paper (D9), para 36. On the analytic principle, that dismissal is a mode of engagement with harm rather than its absence, see Ahmed, S. (2021). *Complaint!* Duke University Press, on institutional non-performativity.
18. Statement on the use of large language models. A large language model (Anthropic's Claude) was used in the preparation of this white paper, under the author's direction and supervision, for the following tasks: text extraction and optical character recognition of the released PDFs, including rasterisation of scanned pages; implementation of the coding dictionary as regular-expression patterns; computation of prevalence counts, Jaccard and NPMI association matrices, hierarchical clustering and network centrality statistics; an automated verbatim-match check of every quotation against the extracted corpus and the location of each quotation's page in the source PDF; rendering of Figures 1 to 7 from the computed values; and editorial assistance in drafting and revising prose. The model was not used to generate evidence, to decide what the record means, or to supply citations: the corpus was assembled by the author from the Ministry of Education's proactive releases, the coding frame and its theoretical architecture are the author's, every quotation and page reference was checked by the author against the page images of the source documents, and every external source in these notes was verified against the publisher's own record. No reference or DOI in this paper was produced by a language model. The interpretation, the argument, the recommendations and any remaining errors are the author's alone.
19. D2, ER 1333715, paras 9–10, p. 6, and Table one, pp. 5–6. The report was signed by the Minister on 17 August 2024. The recommendation to prefer ETAB 3 (para 7, p. 6: "we continue to recommend progressing this change via ETAB 3") was not taken; D3, para 2, p. 2, records that the Minister "would like to prioritise this change for inclusion in ETAB 2, which would require Cabinet policy decisions before the end of 2024 and would not provide sufficient time for consultation ahead of Cabinet policy decisions."
20. D5, ER 1339458, para 12, p. 3: "A prescriptive requirement that does not allow competing rights to be considered in assessing any limitation on freedom of speech rights, may be assessed as inconsistent with BORA"; the same warning is recorded from agency consultation in D8, Table 1 (Ministry of Justice row), p. 3, and in the RIS (in D9), para 53(a), p. 16.
21. For the officials' usage: D2, para 5, p. 4 (funding-condition option rejected as inconsistent with ss 266–267 of the Education and Training Act 2020); D5, para 10, p. 3 ("A shift to a more rules-based approach would suggest a low-trust model for regulating universities, which is inconsistent with the broader legislative framework"). For the ministerial usage: Cabinet paper (D9), para 5: "The requirement seeks to strike a balance between maintaining the institutional autonomy of universities and providing assurance that they will adopt a stance that aligns with their statutory roles and responsibilities and public expectations."
22. D10, ER 1341067, paras 8–9, p. 2: "There is a risk that the universities will either not be able to agree on a standardised approach, or that the universities propose an approach that does not meet your expectations. To mitigate this risk, we suggest that you should have a statutory power to make regulations"; D12, Report 1343210, para 10, p. 2: "ETAB 2 is drafted to include the reserve regulation-making power, but if the universities propose a satisfactory standardised approach, this power would not need to be used." The power is modelled on the school-board reporting regulation power (D10, para 10, p. 2).
23. D11, Report 1343743, dated 28 Feb 2025 with a deadline of 3 Mar 2025 and signed 3 Mar 2025; the report states, p. 1: "We consider this change would not be a substantive policy change (as freedom of speech and freedom of expression were used interchangeably in policy advice)," locates the authority in the Cabinet delegation to decide "any other outstanding issues of detail that arise during the drafting process" (SOU-24-MIN-0167, recommendation 7), and recommends discussion, p. 1, with "the leader of the ACT party, the Hon David Seymour" because "it is a change to the name of the policy in the coalition agreement."
24. D1, BN 1333354, 2 Aug 2024, Purpose, p. 1: "We understand that Hon Seymour's office has asked for a high-level timeline for this work"; recommendation (a), p. 2, is to "forward this briefing note to Hon Seymour's office." (The face of the released document is dated "2 August 2023," evidently a typographical error: the Ministry's release page lists the briefing as 2 August 2024 and its annex timeline runs forward from August 2024.) The acceleration likewise ran through his office: D2, para 3, p. 4, responds to a request "about other legislative vehicles to progress this work more quickly."
25. D3, ER 1337135, para 4, p. 2. The full drafting is reproduced as Annex 1 to that report, at pp. 13–14 of the release.
26. D3, Annex 1, p. 13, under the heading "Duties of councils": "Introduce new duties on tertiary institutions to protect freedom of expression and academic freedom. The following could be adopted from the Higher Education (Freedom of Speech) Act 2023," followed by clauses adapted from that Act, including the duty to "secure freedom of expression within the law" for staff, members, students and visiting speakers, and the prohibition on requiring speakers to bear security costs "apart from in

exceptional circumstances.” Cf. Higher Education (Freedom of Speech) Act 2023 (UK), ss 1–4.

27. D3, Annex 1, p. 14, under the heading “Statement on freedom of expression”: “Include in a schedule the Model Freedom of Expression Resolution Based on University of Chicago Statement: <https://www.thefire.org/research-learn/model-freedom-expression-resolution-based-university-chicago-statement>.”
28. D3, Annex 1, p. 14, headings “Code of practice a condition of funding,” “Complaints” (“Amend the Human Rights Act 1993 to establish that the Human Rights Review Tribunal may hear claims relating to breaches of institution’s code of practice. Claims relating to breaches may be made directly to the Human Rights Review Tribunal”), and “No unreasonable restriction on access to venues” (“Apply the Protection of Freedom of Expression Bill to tertiary institutions”).
29. D5, ER 1339458, 7 Nov 2024, para 5, p. 2. Para 18, p. 4, adds: “We understand that Minister Seymour’s key concern is about preventing speakers from being ‘deplatformed’ at New Zealand universities. His office has highlighted some potential requirements drawn from recent legislation in the United Kingdom.”
30. D7, ER 1340196, 22 Nov 2024, para 13, p. 3. Paras 16–17, p. 3, record that “Minister Seymour’s office ... would like the legislation to require universities to provide consistent surveying and reporting on freedom of speech so that it can be benchmarked across universities.”
31. Compare D3, Annex 1, pp. 13–14, and D7, paras 13–17, p. 3, with Education and Training Act 2020, ss 281A(2)(e)–(f), 281B, 306(h), and the regulation-making power described in D10, paras 9–10, p. 2, and D12, para 10, p. 2.
32. D3, ER 1337135, para 17(b), p. 4: “The validity of this survey has been criticised due to its self-selection bias and very small response rate (3.1% of those surveyed).” The same characterisation is repeated in the RIS (in D9), para 31(b), p. 9.
33. D4, ER 1338586, 4 Nov 2024, para 7, p. 2. The Minister had specifically directed officials to “engage with the Free Speech Union on the proposals before providing you with further advice” (D4, para 5, p. 2).
34. D4, para 13, p. 3: the FSU “generally advocated for a more expansive set of amendments ... but acknowledged that this may not be possible in the timeframes available and indicated that they would support more targeted changes”; D4, para 46, p. 7: officials recorded that Free Speech Union representatives “acknowledge these constraints and see strengthened oversight as something that could be progressed in subsequent legislation if needed.”
35. D3, paras 37 (p. 7) and 53 (p. 9); RIS (in D9), para 2(b), p. 4: “imposing these obligations on Wānanga would be particularly problematic from a Te Tiriti perspective, constraining their rangatiratanga”; D8, Table 1, p. 3: Te Puni Kōkiri “agreed with concerns raised in the RIS,” including “that a clear case for the need to strengthen protections for free speech has not been made.”
36. D12, Report 1343210, 24 Mar 2025, para 20, p. 4, citing METIS 1344772 and METIS 1344774. The OCR transcription of D12 renders the second organisation as “the New Zealand Institute”; the New Zealand Initiative is the successor organisation formed in 2012 from the merger of the New Zealand Business Roundtable and the New Zealand Institute, and is the organisation whose report is discussed throughout the corpus (D3, paras 16–18).
37. D5, ER 1339458, para 17, p. 3: the prescriptive option “would seem to limit universities’ ability to respond to incidents of bullying or intimidation that does not cross the legal threshold into prohibited speech. University codes of conduct typically prohibit harassment and racism, which can result in disciplinary consequences ... These sorts of restrictions could constitute restrictions on freedom of expression, but ones that may meet the ‘demonstrably justifiable’ test in BORA.”
38. For the agency positions summarised here, see D8, ER 1340649, Table 1, pp. 3–4: MoJ, p. 3 (prescriptive requirement “may be assessed as inconsistent with BORA”); HRC, p. 4 (“its concerns are not centred on speech that is shocking or offensive, but rather speech that is inciteful, harmful, damages social cohesion and/or leads to safety concerns including by empowering others to commit acts of violence”); Te Puni Kōkiri, p. 3 (“a clear case for the need to strengthen protections for free speech has not been made”); Whaikaha, p. 4 (“proposals may negatively impact disabled people’s participation in tertiary education, wellbeing and feeling of safety”).
39. Education and Training Act 2020, s 281A(1)–(2) (D13).
40. Cabinet paper (D9), paras 5 and 18; repeated in D12, p. 2.
41. Education and Training Act 2020, ss 267–268. D12, footnote 1, p. 3, confirms the point from inside the process: “The statement relates only to freedom of expression. The provisions for academic freedom are already set out in section 267 of the Education and Training Act 2020.”
42. Ministry of Justice, Consistency with the New Zealand Bill of Rights Act 1990: Education and Training Amendment Bill (No 2), 20 March 2025, at [20]–[21], justice.govt.nz; quoted and analysed in New Zealand Law Society Te Kāhui Ture o Aotearoa, Submission on the Education and Training Amendment Bill (No 2), June 2025, and in New Zealand Council for Civil Liberties, Submission on the Education and Training Amendment Bill (No 2) (2025), nzcccl.org.nz.
43. New Zealand Law Society, Submission on the Education and Training Amendment Bill (No 2), June 2025, at [2.4], lawsociety.org.nz.

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44. D3, ER 1337135, paras 15–18, p. 4, citing J. Kierstead, *Unpopular Opinions: Academic Freedom in New Zealand*, The New Zealand Initiative (2023), nzinitiative.org.nz. Para 17(a), p. 4: the Heterodox survey “does not reveal the source of this reluctance, although the authors speculate”; likewise RIS (in D9), para 31(a), p. 9.
45. D3, para 27, p. 6, summarising R. French, *Report of the Independent Review of Freedom of Speech in Australian Higher Education Providers* (2019). For completeness: the same passage records that the review nonetheless “found sufficient reason to be concerned about adverse impact on public perception and the risk of a chilling effect on the exercise of freedom of speech” and recommended a voluntary Model Code (RIS, in D9, para 35(c), p. 10); the finding quoted in the text is reported here without eliding that qualification.
46. D5, para 19.4, p. 4: “The new United Kingdom Government has halted commencement of most of the provisions of the new legislation, and appears likely to repeal it”; RIS (in D9), para 35(b), p. 10: the UK Labour Government “stopped the commencement of the 2023 amendments citing concerns about the potential impact on vulnerable groups and costs on universities”; see also D3, Annex 3, and House of Commons Library, *Freedom of speech in universities*, Research Briefing CBP-9143. The pause was announced on 26 July 2024. Following a January 2025 statement, the Act’s main duties were commenced on 1 August 2025 by the Higher Education (Freedom of Speech) Act 2023 (Commencement No. 3) Regulations 2025 (SI 2025/528), while the statutory tort is slated for repeal and the Office for Students complaints scheme was redesigned and commenced on 1 September 2026 (Department for Education, *The future of the Higher Education (Freedom of Speech) Act 2023*, CP 1340, June 2025). Section 10.3 returns to this trajectory.
47. D4, ER 1338586, paras 5–7, p. 2; RIS (in D9), para 30, p. 9: “We undertook a two-week period of targeted engagement to inform our understanding of the policy problem. This involved in-person meetings with leadership representatives from two universities and with the Free Speech Union. We also received written feedback from leadership within three other universities.”
48. RIS (in D9), para 53(c), p. 16.
49. RIS (in D9), paras 23–24, p. 8: “the development panel received significant engagement from groups who perceive themselves as being disproportionately impacted by speech that is deemed offensive or immoral, namely population groups who experience systemic discrimination. We have not had time to seek out the perspectives of these groups within university communities to engage further on this issue.”
50. Cabinet paper (D9), Table 1, p. 4, rationale for the fourth general expectation: “Mandates institutional neutrality, addressing the risk that institutions taking a position on issues creates an atmosphere where academics and students who hold contrary views feel unable to express them freely.”
51. D4, ER 1338586, para 32, p. 5.
52. D4, paras 33–34, p. 5: “We do not see institutional neutrality as being inconsistent with a commitment to Te Tiriti o Waitangi ... We would not recommend that any changes to universities’ obligations in relation to Te Tiriti o Waitangi should be progressed through this legislation, noting that the Tiriti provisions of the Education and Training Act will be reviewed through the Treaty clause review being led by the Ministry of Justice.”
53. Education and Training Act 2020, s 281A(2)(e)–(f) (D13).
54. D3, ER 1337135, para 48, p. 9.
55. D8, ER 1340649, Table 1, Human Rights Commission rows, pp. 3–4.
56. Cabinet paper (D9), Table 1, second general expectation, p. 4, and RIS, para 49(b), p. 13; D10, Annex 1, draft letter to Universities New Zealand, second bullet, p. 6; D11, restatement of the agreed expectations, p. 3. For the Bill as introduced: Education and Training Amendment Bill (No 2) 2025 (140–1), cl 12, new s 281A(2)(b), introduced 7 April 2025, legislation.govt.nz.
57. Universities New Zealand – Te Pōkai Tara, *Submission on Freedom of Expression* (2025), universitiesnz.ac.nz: “Section 281A(2) (b) notes that the exercise of freedom of expression must be respectful and consistent with any statute made by the university. Subsection 2(e) provides that a university may limit expression by staff and students which is unlawful or disrupts its ordinary activities. It is not currently clear whether these restrictions apply consistently across different forms of speech.” The New Zealand Law Society submission of June 2025 quotes the same paragraph (b) wording in full.
58. Education and Workforce Committee, *Education and Training Amendment Bill (No 2) (140–2)*, commentary, reported 11 September 2025, selectcommittees.parliament.nz: paragraph (b) as introduced would have required the statement to reflect that ideas be discussed “in a respectful manner consistent with any statute made by the university”; “We consider that a ‘respectful manner’ could be a subjective assessment, and that this could limit contentious but legitimate discourse. We therefore recommend amending paragraph (b) to remove references to matters being discussed ‘in a respectful manner consistent with any statute [sic] made by the university.’” The Bill passed its second reading on 15 October 2025, was reported from the committee of the whole House on 4 November 2025 (140–3) with paragraph (b) in its shortened form, and s 281(1)(g) was inserted on 19 November 2025 by s 12 of the Education and Training Amendment Act 2025 (2025 No 65).

59. Education and Training Act 2020, s 306(h) (D13); D10, Annex 1, p. 7: "Cabinet has agreed that reporting should include the results of regular surveying of staff and students, and should be sufficiently consistent to allow universities' performance on these issues to be compared and benchmarked over time"; D12, Annex 1 (Reti letter to UNZ), p. 7, specifying "approaches to sample size and selection, and what questions would be asked."
60. D10, paras 8–10, p. 2; D12, paras 10 and 14, pp. 2 and 4.
61. D8, ER 1340649, para 6(a), p. 2, and Table 1, Treasury row, p. 3: the Treasury "suggested that the paper could be more explicit that financial implications arising from compliance [sic] will be absorbed by universities"; Cabinet paper (D9), para 31: "universities will need to absorb the additional compliance costs within their existing funding."
62. Education and Training Act 2020, ss 281B and 306(h) (D13); D12, paras 12.2–12.3, p. 3.
63. D5, ER 1339458, paras 28–29, p. 5: "We do not recommend establishing new external redress channels through this legislation ... the legislation could instead set requirements for universities in relation to staff and student freedom of speech complaints (similar to existing requirements in the Pastoral Care Code of Practice)"; D4, para 48, p. 7, and RIS (in D9), para 62, p. 18 (Ombudsman, judicial review, Human Rights Commission dispute resolution, Human Rights Review Tribunal); RIS, para 15, p. 6 (judicial review "expensive and time-consuming"; Ombudsman recommendations "not binding").
64. D5, para 29, p. 5; the Pastoral Care model reappears in the RIS (in D9), paras 63 and 77, pp. 18 and 25. On complaint as an institutional technology whose effects depend on who is positioned to use it, see Ahmed, S. (2021). Complaint! Duke University Press — an ethnography showing how complaints about racism and harassment are absorbed and buried by institutional procedure while procedure itself disciplines the complainant; the 2025 regime inverts the visibility, making complaint counts public precisely where the complainant class is organised.
65. D3, Annex 1, p. 14, headings "Complaints," "No unreasonable restriction on access to venues," and "Code of practice a condition of funding."
66. D4, para 7, p. 2. Officials' assessment at para 46, p. 7: the proposal "would be a significant departure from the existing role of either agency, would raise significant institutional autonomy concerns and would require additional funding."
67. D4, para 46, p. 7; D7, paras 13 and 18–22, pp. 3–4; Cabinet paper (D9), para 26, and SOU-24-MIN-0167, recommendation 3. D7, paras 20–21, p. 4, records the Minister asking why penalties could not be tied to TEC-administered funding, and officials' explanation of why they advised against it.
68. D3, Annex 1, p. 14 (thefire.org URL). FIRE publishes model campus speech legislation for state-level adoption in the United States and litigates campus speech cases; the model resolution referenced in Annex 1 is part of that legislative toolkit.
69. D3, Annex 1, p. 13; Higher Education (Freedom of Speech) Act 2023 (UK); Policy Exchange (2019), Academic Freedom in the UK (proposing the statutory duty, the regulator's free-speech champion and the complaints and tort architecture subsequently enacted); House of Commons Library, Freedom of speech in universities, CBP-9143 (pause announced 26 July 2024); Department for Education press release, "Government reaffirms commitment to Free Speech in universities," January 2025; Higher Education (Freedom of Speech) Act 2023 (Commencement No. 3) Regulations 2025 (SI 2025/528), commencing the main duties on 1 August 2025; Department for Education, The future of the Higher Education (Freedom of Speech) Act 2023, CP 1340, June 2025.
70. On the lineage: B. Edwards, "Free Speech Union," The Integrity Institute / Democracy Project organisational profile (2025): the NZ FSU "is an official sister organisation to the original UK Free Speech Union. It uses the same name and intellectual property under licence from the UK group"; formed as the Free Speech Coalition in 2018, registered as a trade union on 11 March 2021. The joint transnational positioning is self-published: "Launch of a coalition across the English-speaking world to defend free speech," fsu.nz, presented by Jonathan Ayling (Chief Executive, NZ FSU) and Toby Young (Founder, FSU UK). The 2018 Free Speech Coalition and the Massey University Don Brash cancellation cited in the RIS (D9) belong to the same episode cycle. On the briefing paper: D4, para 7; on the FSU survey as the evidential core of the New Zealand Initiative report: D3, para 17(b). I have mapped the FSU's framing repertoire and its position within the broader movement in CARE White Paper Series (2026), The communicative inversions of academic freedom in Aotearoa New Zealand, and in Dutta (in press), Journal of International and Intercultural Communication.
71. D3, paras 16–18; D12, para 20 (METIS 1344772, 1344774). On the Atlas affiliation, in the Initiative's own words: "when the Initiative started in 2012 and Atlas asked if we wanted to be affiliated, we felt honoured to join this network" (O. Hartwich, "An Atlantic task," nzinitiative.org.nz, February 2024). See also ABC News, "How Atlas Network amassed a global network of free market think tanks and reached into Australia and New Zealand," 24 April 2025, identifying the Initiative and the Taxpayers' Union as the Atlas Network's New Zealand partners.
72. Representative documentation: Speech First, Inc. v. Fenves, 979 F.3d 319 (5th Cir. 2020), and Speech First, Inc. v. Cartwright, 32 F.4th 1110 (11th Cir. 2022), two of the organisation's serial First Amendment challenges to university bias-response procedures; Turning Point USA's Professor Watchlist, launched in November 2016, which maintains a public list of academics it accuses of advancing radical agendas, with listing documented to precede coordinated harassment. The NCA Task Force on Academic Freedom and Tenure final report (2025) reviews this repertoire and its effects on academic labour.

73. Secretary of State for Education, statement to the House of Commons, Hansard, 20 April 2026 (commencement regulations bringing the OfS complaints scheme into force on 1 September 2026, “in time for the start of the new academic year, and at which point the OfS will have published its complaints scheme rules”); Office for Students, Changes to regulation: the amended scheme will “be open to staff and visiting speakers, not students,” with OfS discretion over which complaints to consider; House of Commons Library, CBP-9143: student complaints are directed to the Office of the Independent Adjudicator for Higher Education.
74. Parmar–Dunworth episode, 2025–2026; analysed in M. J. Dutta, CARE public scholarship on the targeting of classroom teaching (2026). The generic sequence — capture, recontextualisation, amplification, institutional complaint — is the operating loop of the watchlist form.
75. D5, para 17, p. 3; D4, para 32, p. 5.
76. D8, Table 1, Treasury row, p. 3; Cabinet paper (D9), para 31. On the gendered and racialised distribution of institutional complaint labour, Ahmed (2021).
77. D8, Table 1, Human Rights Commission rows, p. 4, including the warning “that this policy has the opposite effect than its intended purpose. While it may enable the free expression of some, it may have a negative impact on others’ ability to engage in discussion and debate if they have concerns around their safety and security for example.”
78. D4, para 11, p. 3: “The University of Auckland argued that a new legislative obligation seems duplicative and unnecessary, given that New Zealand’s existing legal framework includes provisions and protections for freedom of expression. This perspective was generally shared by the other universities we discussed this issue with, and similar concerns were raised by the Human Rights Commission.” The RIS reports the same position without naming the university (in D9, para 54, p. 17).
79. RIS (in D9), para 3, p. 4.
80. D7, para 11, p. 3: “the University of Otago’s policy was developed over the course of 5 months”; D4, para 6, p. 2: both Otago and Victoria highlighted “the importance of an inclusive approach to addressing these issues in building buy-in from staff and students.” Sch 1, pt 7, cl 128 (D13): six months, expressly “to give universities time to engage with their staff, students and communities.”
81. D4, para 33, p. 5.
82. D3, para 54 and footnote 3, p. 9, citing C. Jones, “Tikanga Māori and the rights and obligations of free speech,” E-Tangata.
83. D4, para 48, p. 7: “Unions such as the Tertiary Education Union and the Free Speech Union would also have a role in advocating for their members”; likewise RIS (in D9), para 62, p. 18. The Cabinet paper itself expects it: “I also expect that staff and student unions will robustly represent their members on these issues” (D9, para 27).

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