



Judgment highlights primacy of deal's intellectual freedom clause

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James Cook University is fighting back against a Federal Circuit Court finding that it unlawfully sacked an academic who criticised prominent climate research, while the NTEU has welcomed a finding that the institution's [code of conduct](#) is "subordinate" to an intellectual freedom clause in its 2013 [agreement](#).

The court has found that James Cook University's decision to dismiss the former head of its physics department in May last year, along with 17 misconduct findings and multiple censures, confidentiality, speech and "no satire" directions were "all unlawful".

The dismissal followed findings by JCU that Professor Peter Ridd breached its code of conduct by denigrating the university and his colleagues and by failing to maintain confidentiality or behave "in a way that upholds the integrity and good reputation of the university".

Professor Ridd told a journalist in 2015 that "bad science" and misleading photos were circulating about the effect of climate change on the Great Barrier Reef and suggested that key stakeholder institutions interacting with JCU needed to "check their facts before they spin their story".

He alleged that the Australian Research Council Centre of Excellence for Coral Reef Studies and the Great Barrier Reef Marine Park Authority were likely to "wobble and squirm because they actually know that these pictures are likely to be telling a misleading story – and they will smell a trap".

Professor Ridd also claimed that there was "almost no quality assurance" for "public good science" and said in a Sky News interview that "we can no longer trust" scientific organisations like the Australian Institute of Marine and ARC Centre of Excellence for Coral Reef Studies.

When a newspaper reported in 2017 that Professor Ridd was facing disciplinary action, he told an email group of 30 teachers and academics that he "offended some powerful organisations who don't like being challenged, and rather than debate the case, they just resort to threats and complaints".

University failed to grasp "whole concept": Court

Intellectual freedom provisions under [clause 14](#) of JCU's 2013 agreement say "staff have the right to express unpopular or controversial views" but that it "comes with a responsibility to respect the rights of others and they do not have the right to harass, vilify, bully or intimidate those who disagree with their views".

The university's code of conduct, meanwhile, says the code is "not intended to detract" from the agreement's intellectual freedom provisions.

Judge Salvatore Vasta yesterday held that JCU, in dealing with Professor Ridd, made a "fundamental error" by assuming that its code of conduct took precedence over clause 14, which "pervades their conduct throughout the whole of their interaction".

Finding the university had "played the man and not the ball", the judge said that "incredibly, the university has not understood the whole concept of intellectual freedom".

"In the search for truth, it is an unfortunate consequence that some people may feel denigrated, offended, hurt or upset," Judge Vasta said, adding that it "may not always be possible to act collegiately when diametrically opposed views clash in the search for truth".

"Clause 14 means that it is the right of Professor Ridd to say what he has said in any manner that he likes so long as he does not contravene the sanctions embedded in cl.14," the judge said.

"That is at the heart of intellectual freedom" and it is "why intellectual freedom is so important", he continued.

The same freedom that "allows academics to express their opinions without fear of reprisals" allows "Charles Darwin to break free of the constraints of creationism" and "Albert Einstein to break free of the constraints of Newtonian physics".

"It allows the human race to question conventional wisdom in the never-ending search for knowledge and truth," he said.

Concluding that this, "at its core, is what higher learning is about", Judge Vasta said that "to suggest otherwise is to ignore why universities were created and why critically focussed academics remain central to all that university teaching claims to offer".

Holding that JCU contravened Professor Ridd's rights under clause 14 of the agreement and acted outside its power in seeking to discipline him for breaching its unlawful directions, Judge Vasta invited submissions on declarations and penalty.

No authority named in support of judge's position: JCU

JCU Provost Professor Chris Cocklin has hit out at the decision, saying in a detailed [statement](#) that the university is now "considering its options on this matter".

"Although the matter was about enterprise agreement interpretation, the judgment does not refer to any case law, nor any authority in Australia to support its position," Professor Cocklin says.

"We disagree with the judgment and we maintain we have not taken issue with Dr Ridd's nor any other employee's rights to academic freedom."

The university maintains that it did not sack or attempt to silence Professor Ridd over his "scientific views" and says his "academic freedom was not at issue while he was an employee".

"What was in issue, was how to he communicated about others, how he denigrated others and how he breached confidentiality which impacted not only on him, but on others," Professor Cocklin claims.

"The university determined that Dr Ridd engaged in serious misconduct, including denigrating the university and its employees and breaching confidentiality directions regarding the disciplinary processes.

"That conduct was a serious breach of the code of conduct and that is why the university dismissed him as an employee."

The NTEU has meanwhile welcomed the decision, with national vice president Andrew Bonnell telling Workplace Express that it reaffirms academics' "liberty" to rely on intellectual freedom clauses and "push back" against universities' attempts to control their public image by limiting public speech.

Bonnell says Professor Ridd's views "don't align with [the NTEU's] on climate change generally" but it believes it is crucial to "support his right to academic freedom".

The NTEU has similar clauses in all university agreements, but he says that one university recently tried to "pressure" it to remove the clause.

"This just confirms the importance of leaving these clauses in," Bonnell says.

While the NTEU says it assisted Professor Ridd during JCU's disciplinary process, it was not involved in his legal action, funded in part by the Institute of Public Affairs and about \$260,000 in donations raised via a [GoFundMe](#) crowdfunding campaign.

Stuart Wood QC represented Kidd in the Federal Circuit Court, while Chris Murdoch QC acted for the university.

[Ridd v James Cook University \[2019\] FCCA 997 \(16 April 2019\)](#)

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