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High Court lends weight to academic freedom despite Peter Ridd losing appeal against dismissal

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The High Court has upheld the decision of James Cook University to terminate the employment of controversial physicist Professor Peter Ridd. The court ruled on Wednesday that a clause in the JCU enterprise agreement protecting “intellectual freedom” did not prohibit Ridd’s dismissal for breaching the university’s code of conduct. However, the judgment did give new legal weight to academic freedom.

The court found the university had breached the clause on intellectual freedom when it first censured Ridd for statements made to journalists that were highly critical of colleagues’ work on climate change and the health of the Great Barrier Reef. The court held that, as these statements were within his areas of academic expertise and were honestly held, they were protected from disciplinary action even if not respectful or courteous (as the JCU code of conduct for staff required).

Times Higher Education 

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Dissident professor Peter Ridd’s unsuccessful High

Court challenge against his sacking will nevertheless reinforce legal protections of academic freedom, according to constitutional lawyer George Williams.
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The decision is based on the particular terms of the JCU enterprise agreement. However, most Australian universities have similar clauses in their enterprise agreement.

Similarly, in a judgment in August this year, the Full Court of the Federal Court of Australia found the Sydney University enterprise agreement provided enforceable protection of intellectual freedom. This matter, involving controversial political economist Tim Anderson, has been sent for a new trial.

Read more: Court gives legal weight to academics' right to intellectual freedom, but it's not the final word

Why is academic freedom important?

Academics employed at Australian universities provide expert commentary on a range of complex issues. Academic freedom ensures that appropriately qualified and trained experts are able to assist the public and government in making informed decisions. As universities are places for the discovery and dissemination of knowledge, open and robust debate by academics is central to the search for truth and social progress.

In 2019, a former chief justice of the High Court, Robert French, conducted an independent review of academic freedom at Australian universities. The report highlighted that all Australian universities have policies that may inhibit academics from commenting publicly on issues within their areas of expertise.

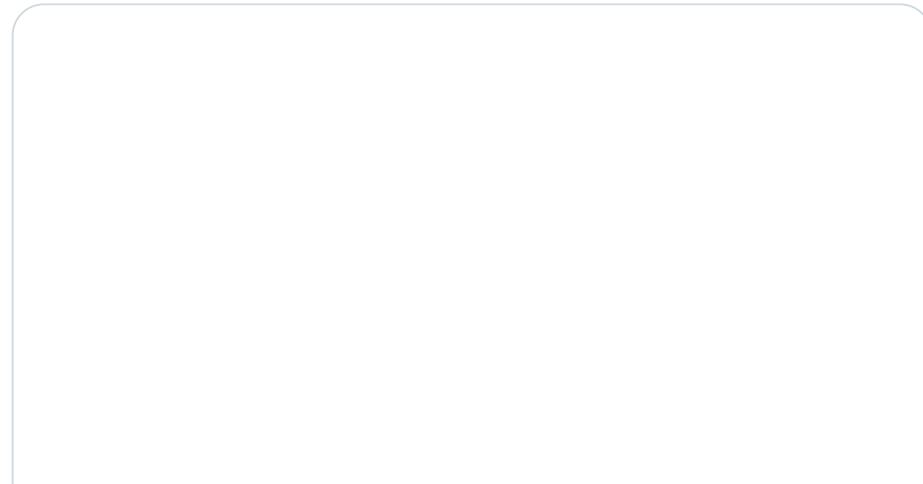
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John Anderson AO
@JohnAndersonAO



As the High Court today found against Dr Peter Ridd in his battle over academic freedom with

James Cook University, it is encouraging to see that all Australian universities have now adopted the Morrison government free speech codes.



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Universities unanimous on free speech code

Every university in the country has now adopted a robust framework to protect freedom of speech among academics, ...

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In particular, university codes of conduct typically require staff to act “respectfully” and “courteously” towards other staff. Breaches of these codes may lead ultimately to termination – as in the cases of Ridd and Anderson. Therefore, a university’s powers as employer may conflict with the freedom of academics to speak publicly on relevant topics.

Decision hinged on response to censure

JCU took disciplinary action against Ridd, and ultimately terminated his employment, based on a range of conduct. Ridd argued that the intellectual freedom clause protected all his conduct.

The High Court agreed some of Ridd’s conduct was protected, as it was within the terms of the clause. For example, in a media interview, Ridd criticised the research of other JCU academics. This conduct was protected, as it was within his areas of expertise.

Significantly, the court said Ridd did not need to express his opinions respectfully or courteously, because intellectual freedom is subject only to constraints referred to in the clause.

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However, Ridd's conduct in publicly criticising JCU for taking disciplinary action against him was not protected. This conduct was contrary to another term of the enterprise agreement which required confidentiality regarding disciplinary matters.

The court held that JCU's termination of Ridd's employment was based on conduct that the intellectual freedom clause did not protect, as it was unrelated to any matter within his academic expertise.

A mixed outcome for academic freedom

Although the High Court upheld Ridd's termination, it interpreted the intellectual freedom clause more generously than the full court of the Federal Court when it upheld an appeal by JCU against a judge's finding that Ridd was wrongfully dismissed. The full court held that none of Ridd's conduct was protected by the clause.

However, the High Court's decision was not as generous as the judge in the initial trial in the Federal Court. The judge held that all of Ridd's conduct was protected and awarded him over A\$1 million in compensation.

The High Court's decision indicates that clauses protecting intellectual freedom may override staff codes of conduct. However, this depends on the wording of the clauses and the defined scope and exceptions to intellectual freedom.

The court emphasised the importance of intellectual freedom, describing it as a "defining feature of universities". This suggests courts will take a generous approach to interpreting such clauses in the future.

The decision also suggests that requirements to act "respectfully" and "courteously", which are found in many university codes of conduct, will not limit the exercise of intellectual freedom.

The court referred to intellectual freedom as having a "long-standing core meaning" that is inconsistent with such limitations. The judgment quoted from John Stuart Mill's famous defence of free speech in stating:

Whilst a prohibition upon disrespectful and discourteous conduct in intellectual expression might be a "convenient plan for having peace in the intellectual world", the "price paid for this sort of intellectual pacification, is the sacrifice of the entire moral courage of the human mind.