

Australian High Court sets precedent for sacking dissenting academics

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The basic right of academics and other university workers in Australia to free speech, particularly to criticise or oppose government or management policies, is in increasing danger after the High Court last month upheld the sacking of a professor.

Despite media and trade union claims that the outcome represented a victory for academic freedom, the court effectively cleared the way for university employers to dismiss educators for breaching confidentiality rules when subjected to termination proceedings.

The ruling amounted to a classic Catch-22. On the one hand, the judges said James Cook University (JCU) wrongly charged Peter Ridd, a physicist and long-time head of the university's Marine Geophysical Laboratory, with discourteously criticising his colleagues' research on the Great Barrier Reef, accusing some of "grossly misusing" scientific data. The judges found that these statements alone did not justify his dismissal in 2018.

The High Court even paid lip service to free speech by quoting from John Stuart Mill's book *On Liberty*. The judges said a ban on "disrespectful and discourteous conduct" would amount to "intellectual pacification" and "the sacrifice of the entire moral courage of the human mind."

On the other hand, however, the court declared that Ridd's conduct in publicly criticising JCU for taking this disciplinary action against him violated the management's enterprise agreement with the university trade unions, which required secrecy regarding disciplinary matters.

In other words, if university staff members are unlawfully subjected to disciplinary proceedings for making critical public comments, they must remain silent! They must abide by management gags, and

cannot campaign among their fellow workers or the public against their victimisation, or else they can be sacked for breaching confidentiality.

National Tertiary Education Union (NTEU) general secretary Matthew McGowan declared the judgment was a vindication for the union's enterprise agreements (EAs), claiming they were "the only effective legal remedy to protect academic and intellectual freedom."

Nothing could be further from the truth. The court specifically relied on the fact that the NTEU's EA with the JCU management contained rules about only speaking publicly within "fields of competence" and only raising disagreements with JCU decisions "through applicable processes."

Thus the union helped impose the anti-democratic restrictions that allowed JCU to sack Ridd. While Ridd is a climate sceptic backed by the Murdoch media and right-wing organisations, the High Court's backing of his dismissal sets a chilling precedent that will be used more widely to intimidate, silence or, if that fails, dismiss academics.

Ridd was sacked for "serious misconduct," that included a Sky News interview in which he affirmed remarks that he had made in a book chapter arguing that the Great Barrier Reef was not in danger from climate change. JCU dismissed him, under the management's Code of Conduct, for failing to treat others "with respect and courtesy" in his public discussion of his research.

While the court said he was allowed to express those views, JCU was entitled to sack him because, in response to these charges laid against him, he sent emails saying he had offended "powerful organisations" and that "our whole university system pretends to value free debate, but in fact it crushes it." According to the judges, "these were not expressions of

opinion within an area of Dr Ridd's academic competence."

The court also ruled that JCU had lawfully sacked Ridd for suggesting that his supporters write to the university's vice chancellor. Ridd had disclosed "confidential matters" and made comments "critical of decisions or decision making processes of JCU" that "did not follow applicable processes for raising those concerns."

This points to a wider danger. NTEU enterprise agreements with other universities contain similar clauses and also define "serious misconduct"—for which staff can be sacked—in sweeping terms that ban public criticism of management.

The Western Sydney University academic staff agreement, for example, states that "serious misconduct" includes comments that risk damage to the "reputation, viability or profitability" of the university. That emphasis on profitability is in line with the NTEU's fundamental agreement with the intensifying transformation of universities into corporatised institutions servicing the needs of the financial elite, both in teaching and research.

Earlier this year, the Liberal-National government pushed through legislation requiring universities to implement a "Model Code" proposed by former Chief Justice Robert French that likewise eviscerates free speech. Among other things, the code restricts academic freedom to a person's "subject of study and research."

The code also bars views that might "humiliate or intimidate" anyone, and permits managements to impose "reasonable and proportionate regulation necessary to the discharge of the university's teaching and research activities."

Education Minister Alan Tudge last month welcomed a decision by the University Chancellors Council to adopt the code. Tudge said it was a "very significant step in the right direction" for universities.

Over the past 18 months, Tudge has spearheaded the government's exploitation of the COVID-19 pandemic to further starve the universities of funding and demand that they slash and restructure their courses and research to satisfy the requirements of big business and other employers.

The High Court's backing of Ridd's dismissal is likely to be used against criticism of these pro-business

policies, and increasing links to military research, being pursued by governments and university managements.

That is underscored by another recent ruling, by the Full Federal Court, on the University of Sydney's 2019 sacking of political economist Tim Anderson, primarily on the basis of allegations that his criticisms of US militarism and Israel's oppression of the Palestinian people were "offensive."

This August, the appellate court overturned a Federal Court judgment backing Anderson's dismissal but did not order his reinstatement. Instead, it sent the case back to the Federal Court to determine whether Anderson's conduct breached the NTEU's enterprise agreement with the management.

Anderson too was accused of breaching confidentiality orders barring him from even telling anyone that he was facing dismissal, and of failing to comply with "a lawful and reasonable direction" to delete some social media posts.

Academics internationally are facing similar attacks. The University of Bristol recently sacked political sociology Professor David Miller, alleging that his criticisms of US and Israeli militarism "did not meet the standards of behaviour we expect from our staff."

Last month, the University of Florida barred three professors from providing testimony in a voting rights case against the state.

Such moves are aimed at overturning basic democratic rights and intimidating dissent, under conditions in which university workers are facing unprecedented job destruction and pro-business transformation, while the NTEU and other unions oppose any industrial action to fight the offensive.



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