



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

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IN THE HIGH COURT OF AUSTRALIA  
BRISBANE REGISTRY

BETWEEN:

**PETER VINCENT RIDD**

Appellant

and

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**JAMES COOK UNIVERSITY**

Respondent

### RESPONDENT'S SUBMISSIONS

#### **Part I: Certification**

1. These submissions are in a form suitable for publication on the internet.

#### **Part II: Issues**

2. The primary issue raised in the appeal is the interaction between, and the proper interpretation of, cl 13 and 14 of the now superseded *James Cook University Enterprise Agreement 2013-2016* (the **Enterprise Agreement**)<sup>1</sup>. This issue raises the following essential questions:

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- (a) the content, extent and nature of the obligation, if any, imposed on the Respondent (**University**) in respect of “intellectual freedom” as contained in cl 14 of the Enterprise Agreement and any reciprocal “right” conferred upon “all staff” of the University including the Appellant (**Dr Ridd**);

- (b) to the extent that any “right” of “intellectual freedom” was conferred upon “all staff” of the University by cl 14 of the Enterprise Agreement, whether any such right came with a “responsibility to respect the rights of others” in addition to such staff not having the “right to harass, vilify, bully or intimidate those who disagree with the views”; and

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<sup>1</sup> See Appellant's Further Materials (AFM), p 6.

(c) whether, for the purposes of cl 13.3 of the Enterprise Agreement, the University's Code of Conduct (**Code of Conduct**)<sup>2</sup> detracted from clause 14 of the Enterprise Agreement.

3. The narrow point which Dr Ridd advances is that, *first*, cl 14 gave him a "right" to exercise "intellectual freedom" with the only fetter being that he could not harass, vilify, bully or intimidate, and, *second*, to the extent that he was exercising a "right" of intellectual freedom (which he alleges is what he was doing in respect of the conduct that was the subject of the adverse findings made against him by the University), he could not be disciplined for any breach of the Code of Conduct: AS [3]. Dr Ridd accepts that his conduct did, in fact, breach the Code of Conduct (i.e., his conduct was disrespectful, discourteous, not collegiate, breached the directions issued to him etc.), but relies upon cl 14 of the Enterprise Agreement as providing him with a form of immunity in respect of any such breach.

4. An unexplored premise in Dr Ridd's contentions is that in every single relevant respect, he was exercising a right of intellectual freedom. The majority of the Full Court rejected this premise (J<sup>3</sup>[125]-[137])). This raises a subsidiary issue identified in the second ground of appeal (CAB, p 244), but Dr Ridd does not identify this as an issue in the appeal in Part II of the AS and has advanced no contentions in support of this ground in Part VI of the AS. Indeed, the only reference to this issue is a bare assertion at AS [29] (in Part V) that the additional findings of the majority were in error. The University approaches the appeal on the basis that the primary issue between the parties is that relating to the proper interpretation and application of cll 13 and 14 of the Enterprise Agreement.

**Part III: Section 78B of the Judiciary Act 1903**

5. It is not necessary to give notice under s 78B of the *Judiciary Act 1903* (Cth).

**Part IV: Facts**

6. Dr Ridd was employed by the University as an academic. His academic qualifications are as a physicist and he was formerly the Head of Physics at the University from 2009 to 2016. Dr Ridd was, and is, not a marine biologist or climate scientist.

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<sup>2</sup> AFM, p 161.

<sup>3</sup> *James Cook University v Ridd* (2020) 382 ALR 8; [2020] FCAFC 123, CAB, p 134.

7. Commencing from approximately December 2015, Dr Ridd engaged in conduct which led to the University finding that he was acting in breach of directions issued to him including in relation to confidentiality, acting in breach of the Code of Conduct, issuing him with censures and, finally, terminating his employment (after he had been issued with a final censure). The facts relating to the disciplinary matters are set out at J[3]-[22] and the characterisation of those facts is set out at J[128]-[137]. The summary of these matters in AS [15]-[25] is incomplete and inaccurately characterises both Dr Ridd's conduct and the University's findings in relation to it.

10 8. Dr Ridd did not challenge that his conduct breached the Code of Conduct, nor the disciplinary process engaged in by the University. It follows that there was, and is, no challenge to the University's findings that Dr Ridd, in fact, engaged in conduct variously described as being:

- (a) disrespectful and discourteous;
- (b) threatening and insubordinate;
- (c) failing to uphold the integrity and good reputation of the University;
- (d) denigrating the University, its employees, including the complainant, and stakeholders;
- (e) failing to comply with directions to maintain the confidentiality of certain information; and
- (f) failing to comply with multiple lawful and reasonable directions issued to him in accordance with the Enterprise Agreement.

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9. Dr Ridd's case (as pleaded and run below) was that in issuing him with "censures" in relation to his conduct, giving him directions regarding confidentiality during disciplinary processes and terminating his employment, the University breached cl 14 of the Enterprise Agreement and thereby contravened s 50 of the *Fair Work Act 2009* (Cth).

## **Part V: Argument**

### Proper interpretation of cl 14

30 10. The majority correctly found that the text of cl 14.1 of the Enterprise Agreement compels the conclusion that the University was "committed" to acting in a manner consistent with the "protection and promotion" of "intellectual freedom within the

University and in accordance with [its] Code of Conduct”: J[66]-[67], [81], [126]. Having regard to the text, the majority unsurprisingly, and correctly, concluded that the Code of Conduct was the “mechanism” by which the University had agreed to honour its commitment, and the scope and substance of the Code of Conduct was consistent with this promise: J[67] and [99].

11. Dr Ridd’s contentions variously assert that cl 14 confers “*a right to intellectual freedom*”: AS [2], [33]-[34], [39], [43]-[45]. However, Dr Ridd’s contentions do not articulate the source of the alleged “right” to “intellectual freedom” as contained in cl 14. An examination of the text of each of the subclauses does not support Dr Ridd’s contentions that they confer a “right” of “intellectual freedom” on staff of the University. Specifically:

10 (a) cl 14.1 states that the University is committed to acting in a manner consistent with the protection and promotion of “*intellectual freedom*” and in accordance with the Code of Conduct: J[67], [81], [99], [126];

(b) cl 14.2 is explanatory or definitional as to what “*intellectual freedom*” is said to include, specifically that it includes certain “*rights*” but this subclause itself does not confer any right upon employees and the language of the clause does not permit that conclusion: J[68]-[69];

20 (c) cl 14.3 does not refer to the expression “*intellectual freedom*” and instead recognises that “*All staff have the right to express unpopular or controversial views*” subject to a responsibility to “*respect the rights of others*” and not having the “*right to harass, vilify, bully or intimidate*” those with differing views: J[60];

(d) cl 14.4 acknowledges the “*right*” of staff to “*express disagreement with the University’s decisions and with the processes used to make those decisions*” and provides that staff should seek to raise those concerns through applicable processes and give reasonable opportunity for those processes to be followed: J[70]; and

30 (e) cll 14.5 to 14.7 impose obligations upon members of staff in respect of particular matters: J[71].

12. As is evident from these subclauses, the expression “intellectual freedom” appears only in cll 14.1 and 14.2 of the Enterprise Agreement. This begs the question as to the source of the alleged “right” to “intellectual freedom” within clause 14 that is

propounded by Dr Ridd. It appears (though it is not clear) that the “right” which Dr Ridd relies upon is said to be contained in cll 14.2, 14.3 and/ or 14.4. However, as noted above, the language and text of cl 14.2 does not support the contention as the clause is definitional or explanatory and does not impose any obligation upon the University. The subclause is clearly intended to be read together with cl 14.1. That conclusion is supported by the fact that (as noted above) the expression “*intellectual freedom*” appears only in cll 14.1 and 14.2. The plain text of cl 14.1, read together with cl 14.2, identifies the commitment, its extent and its limits.

- 10 13. As to subclause 14.3, Dr Ridd’s contentions fail to articulate the source of the “right” to “*intellectual freedom*” that is said to be contained in that subclause. The subclause does not refer to “*intellectual freedom*”. Clause 14.4 similarly makes no reference to intellectual freedom. These clauses acknowledge certain rights, but they are subject to limitations. In circumstances where neither subclause 14.3 nor 14.4 refer to “*intellectual freedom*”, they are not the source of the alleged right asserted by Dr Ridd.
14. The majority correctly found that the proper interpretation of cl 14.1 is that it does not confer any general right upon academics to intellectual freedom, but recognises the University’s commitment to act in a manner consistent with intellectual freedom and in accordance with its Code of Conduct: J[67], [81], [99], [126].
- 20 15. The Code of Conduct was the mechanism or instrument by which, the University promised that it would commit to intellectual freedom: J[67] and [99]. It did precisely that. The Code of Conduct sets out principles of conduct, including the following:

**Principle 1: Seek excellence as part of a learning community**

...

In our conduct, we will:

...

- value academic freedom, and enquire, examine, criticise and challenge in the collegial and academic spirit of the search for knowledge, understanding and truth;

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...

- have the right to make public comment in a professional, expert or individual capacity, provided that we do not represent our opinions as those of the University unless authorised to do so;

- have the right to freedom of expression, provided that our speech is lawful and respects the rights of others;
- ...

16. It is evident that through the Code of Conduct, the University abided by its commitment to protect and promote intellectual freedom. This is further reinforced by the Explanatory Statement<sup>4</sup> to the Code of Conduct, which is to be read with the Code of Conduct. It provides as follows:

**Academic freedom**

10 Staff are free within their respective fields of competence to pursue academic endeavour in accord with appropriate standards of scholarly inquiry. Staff have an implicit right to inquire, to examine, to criticise and to challenge in the collegial and academic spirit of the search for knowledge and understanding.

17. The Explanatory Statement to the Code of Conduct also refers to “freedom of expression”. It states:

**Freedom of expression**

20 All staff, regardless of involvement in academic duties, have the right to freedom of expression. However, this comes with a responsibility to respect the rights and reputations of others. Academic or constructive criticism is encouraged, but staff must not engage in hate speech as this conflicts directly with the universal value of respect for individuals.

18. Each of these parts of the Code of Conduct and the Explanatory Statement reflect the essential content of cl 14, and are consistent with cll 14.1 and also the values and limits stated in cl 14.3 (including the express limitation that any right to express controversial and unpopular views comes with a responsibility to respect the rights of others). The majority correctly found that the Code of Conduct was the “mechanism” by which the University had agreed to honour its commitment: J[67], [99], [126]. No error is disclosed in this regard.

Limitations contained in cl 14 and respecting the rights of others

- 30 19. As submitted above, clauses 14.3 to 14.7 of the Enterprise Agreement acknowledge that “all staff” have certain rights, but these are subject to express limitations.
20. Clauses 14.3 to 14.7 further manifest the University’s commitment to the protection and promotion of intellectual freedom including because members of staff may

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<sup>4</sup> AFM, p 168.

10 pursue critical and open inquiry in their respective fields of competence and with appropriate standards of scholarly inquiry, participate in public debate, express opinions about the operations of the University, express controversial and unpopular views, but all are subject to limitations including a responsibility to respect the rights of others (cl 14.3), not having the right to harass, vilify, bully or intimidate (cl 14.3), raising concerns through applicable processes and giving reasonable opportunity for such processes to be followed (cl 14.4), being role models to students and the wider community, adhering to highest standards of propriety and truthfulness, research and professional practice (cl 14.5), not representing their opinions as those of the University (cl 14.6) and maintaining professional standards when intentionally associating themselves with the University in public statements and/or forums (cl 14.6).

21. Dr Ridd contends (see AS [65]) that the words “*a responsibility to respect the rights of others*” in cl 14.3 are limited by the words “*they do not have the right to harass, vilify, bully or intimidate those who disagree with their views*” such that a staff member’s “right” to intellectual freedom was only limited by conduct that did not harass, vilify, bully or intimidate. Such a construction must be rejected. It gives the words, “a responsibility to respect the rights of others” no work to do.
22. As the majority correctly found at J[134], cl 14.3 imposes an *additional* constraint that a staff member has a responsibility to respect the rights of others. On a plain reading of cl 14.3, those rights are not limited to the right not to be harassed, vilified, bullied or intimidated, but indeed include such other rights as may be encroached on by the expression of unpopular or controversial views, such as the right not to be defamed.
23. The inevitable conclusion that members of staff have “a responsibility to respect the rights of others” reinforces that there is no tension or conflict between cl 14 and cl 13 or the Code of Conduct. The Code of Conduct provides the manner in which the rights of others are to be respected. The Code of Conduct provides as follows:

**Principle 2: Act with integrity**

30 This principle aligns with the first ethical principle of the Act - 'integrity and impartiality', with the third ethical principle - 'commitment to the system of government', and with the fourth ethical principle - 'accountability and transparency'.

**In our conduct, we will:**

- behave honestly, impartially and with integrity;
- act with care and diligence;
- maintain appropriate confidentiality regarding University business;
- act in good faith in all of our undertakings;
- honour our promises, commitments and obligations to stakeholders;
- act with authenticity, sincerity and truthfulness;

...

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- behave in a way that upholds the integrity and good reputation of the University;

...

- comply with any lawful and reasonable direction given by someone who has authority to give that direction;

...

**Principle 3; Behave with respect for others**

This principle aligns with the first ethical principle of the Act - 'integrity and impartiality'.

In our conduct, we will:

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- treat fellow staff members, students and members of the public with honesty, respect and courtesy, and have regard for the dignity and needs of others;

24. Dr Ridd contends that the prohibitions contained in the Code of Conduct “*significantly burden*” the exercise of the “*clause 14 right*” and “*limit its scope*” because the Code of Conduct imposes limits that go beyond the narrow limitations contained in cl 14.3: AS [45]-[46]. These contentions proceed from two flawed premises. The first premise is that there is an identifiable and discernible “*clause 14 right*” which is said to have been burdened. For the reasons submitted above, this premise is unsound. The second erroneous premise is that Dr Ridd’s contention proceeds on the basis that the so-called “right” can only be burdened by the proscription in cl 14.3 that staff not harass, vilify, bully or intimidate. This

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second premise is erroneous as it does not account for the responsibility to treat others with respect.

25. Criticisms that the principles contained in the in the Code of Conduct are “categories of indeterminate reference” or of “variable judgment in interpretation and application”, or “couched in vague and imprecise language” (see AS [51]) may equally apply to any number of norms applicable in Australian workplaces through staff policies and codes of conduct (to behave appropriately or with respect to

others), but here they are consonant with the responsibility stipulated in cl 14.3 of the Enterprise Agreement to respect the rights of others. Further, as developed below, these standards are drawn in order to give effect to the University's statutory obligation under Queensland law to have a Code of Conduct. And, finally, it may be observed that, irrespective of the variability in the standards imposed by the Code of Conduct, there was no issue in the proceedings below that Dr Ridd's conduct breached the Code of Conduct. He had no difficulty in recognising and accepting (or, at least, not challenging the fact) that his conduct was disrespectful, discourteous, and not in the collegiate spirit.

10 Proper interpretation of cl 13.3

26. Clause 13.3 provides that, “[t]he parties note that the Code of Conduct is not intended to detract from Clause 14, Intellectual Freedom.” (emphasis added).

27. Clause 13.3 states the parties' intention. The word “detract” in its ordinary grammatical meaning and usage read in context meant that the University could not diminish its commitments as specified in cl 14. However, any evaluation of whether the Code of Conduct “detracts” from “Clause 14” must consider all of the text and context of the latter clause. Clause 13.3 is directed to the whole of clause 14, not to any individual subclause.

20 28. Dr Ridd contends that, by reason of cl 13.3, the Code of Conduct cannot diminish, weaken, lessen, takeaway or subtract from the “right that an employee otherwise has by operation of clause 14”: AS [44]. Yet, as submitted above, Dr Ridd's contentions do not articulate the source or content of the alleged “right”. Nor do they properly engage with the limitations and responsibilities contained within cl 14, and cl 14 in the context of the whole of the Enterprise Agreement, including cl 54. Thus, Dr Ridd's contention that the “Code's prohibitions significantly burden the exercise of the clause 14 right and limit its scope” presumes an erroneous starting point for the evaluative analysis as to whether there is any diminution in the University's commitments as contained in cl 14. As the majority stated at J[78], the result would be different if the Code of Conduct proscribed any of the matters in cl 30 14.2. This should not be read as comprising the only way in which the Code of Conduct might detract from cl 14. The comment is therefore not a decisive error: cf AS [48]-[49].

29. Contrary to Dr Ridd's contentions, there is no “collision” that arises between cl 13 and 14 by reason of the majority's conclusions: cf AS [42]-[49]. Clause 13.3 must

be read in its proper context, including by reference to cl 14, and especially its industrial and statutory context and purpose: *WorkPac Pty Ltd v Skene* (2018) 264 FCR 536 at [197]. The premise underlying Dr Ridd's contention is that there is an inconsistency between cl 14 and the Code of Conduct. As submitted above, the correct starting point for the analysis is to recognise (as the majority did) that cl 14.1 does no more than record that the University would, through the mechanism of the Code of Conduct, protect and promote intellectual freedom. As the majority correctly stated at J[79], cl 13.3 is an "interpretive provision which assists in the proper construction of cl 14". The Code of Conduct was a document which gave effect to the promises and commitments in cl 14. It follows that cl 13 and the Code of Conduct was neither insubordinate to cl 14 nor inconsistent with it, as the majority correctly found: J[82].

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30. Dr Ridd contends that there is a conflict between cl 14 and the Code of Conduct at any time that a staff member exercises "intellectual freedom" and at the same time breaches the Code of Conduct: AS [46]. It is contended that if the staff member can be disciplined in such a case, then the Code of Conduct has detracted from the "right": AS [47]. As submitted above, these contentions proceed on the flawed premise as to the nature and content of the asserted "right" said to be found in cl 14 and ignore the express limitations contained in that clause including in cl 14.3. There is no reason why one academic cannot make a complaint that a colleague has engaged in fraud or bad research; such complaints may be raised within the framework and structure of cl 14 and the Code of Conduct and other policies applicable at the University (as to the making of complaints and serious allegations), or outlined in academic articles and research (subject to the usual and accepted disciplinary practices and publication guidelines for making such serious allegations). To do so by way of backgrounding a journalist (including by knowingly providing confidential information to a journalist), or by appearing on a television show, denigrating a complainant etc., are a different thing altogether.

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31. Dr Ridd further contends that the majority's construction "disturbs the detail" of the text in cl 14 of the Enterprise Agreement, where the right is expressed as being subject to specified obligations, but is not expressed as being subject to obligations in the Code of Conduct: see AS [50]-[52]. However, as submitted above, this argument ignores the text of cl 14 and otherwise does not identify in what specific ways the Code of Conduct detracts from the alleged "right" in cl 14.

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32. It is also important to note the statutory context relating to the Code of Conduct. As noted by the majority, the Code of Conduct draws upon statutory obligations applicable to the University by virtue of the *Public Sector Ethics Act 1994* (Qld) (PSE Act): see J[51]ff. The University has a statutory obligation to implement and maintain a Code of Conduct consistent with the principles set out in the PSE Act: see ss 5, 10 and 13 of the PSE Act. The Code of Conduct is founded on the four “ethics values” that apply to the University and its employees pursuant to the PSE Act (see ss 6 to 9 of the PSE Act). The Code of Conduct outlines four principles that align with the “ethics values” and explain what is expected of staff in their conduct to meet their obligations. Whatever complaint is now raised about the indeterminacy of the standards contained in the Code of Conduct, it is to be remembered that they are drawn from the “ethics values” that the University was required to have in place. In the proceedings before the Full Court, Dr Ridd did not raise any argument that there was an inconsistency between the Enterprise Agreement and the PSE Act: J[51].
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33. The Code of Conduct, properly understood, does not impede the exercise of academic freedom, or intellectual freedom.

History and statutory context

34. Contrary to Dr Ridd’s contentions, the majority paid proper regard to the historical context and purpose of intellectual freedom rights: cf AS [53]-[57].
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35. Dr Ridd’s contentions at AS [35]-[37] and [55]-[56] rely upon a range of secondary and other materials (including the *Higher Education Support Act 2003* (Cth) and constitutional cases from other jurisdictions) to imply a particular conception of “academic freedom” into cl 14. However, clause 14 does not deal with “academic freedom”; it deals with “intellectual freedom” and encompasses all staff covered by the Enterprise Agreement which includes both academic and non-academic staff.
36. Further, Dr Ridd’s contentions assume that there is some historically accepted “right” to academic freedom in Australian universities and an agreed definition for industrial purposes: J[90]-[97]. Academic freedom in Australian universities has been described as a “quite limited doctrine, hedged about with qualifications.”<sup>5</sup> There is said to be “little room for controversy” that academic freedom does not
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<sup>5</sup> Senate Standing Committee on Education, Employment and Workplace Relations, Parliament of Australia, *Allegations of academic bias in universities and schools* (Report, December 2008) 6 [1.20].

extend to unlawful speech, including breaches of confidence imposed by law or contract,<sup>6</sup> conduct that would found a common law offence including defamation, or breaches of statute (such as bullying, discrimination, harassment or vilification).<sup>7</sup> Thus, the publication of comments by academics is not unbounded and comments by one academic that denigrate another academic's competence can expose the academic to liability in defamation.<sup>8</sup> It is no answer to a claim in defamation to say that the utterer was exercising academic or intellectual freedom. Academic freedom is not synonymous with free speech.

- 10 37. The idea that academic freedom confers independence of all constraint or responsibility,<sup>9</sup> or that it is otherwise absolute or unqualified,<sup>10</sup> has been rejected. Academic freedom exists to further the objectives of the university to discover and disseminate knowledge. It carries obligations. There is a requirement of professional responsibility in the intra and extra mural speech of academics. In speech, as in all other forms of academic behaviour, academics are subject to the prevailing misconduct rules at that institution.<sup>11</sup> That extends to the academic operating within the rules and ethics of their profession and their area of discipline, ensuring their work is properly researched, and to disclose that they are not speaking for their employer when voicing a personal opinion.<sup>12</sup>
- 20 38. Putting to one side a generalised examination of academic freedom in the tertiary sector, here the context is important. The content of the so-called "right" varies from institution to institution and depends on the context in which it is recognised: J[95]-[97]. Here, the concept of intellectual freedom has been inserted into an enterprise agreement unique to the University which is the product of industrial bargaining between these parties. In an industrial context, the recognition of a "right" to "academic freedom" and its limitations depends on the particular text of the enterprise agreements in question, which, in turn, reflects the compromises reached between industrial parties: J[95]. As the majority pointed out at J[95], a

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<sup>6</sup> French, 124.

<sup>7</sup> See the discussion commencing at [9.1] in French, 102.

<sup>8</sup> See, e.g., *Rindos v Hardwick* [1994] WASC 178 where the offending comments were found to be defamatory. Unlike the *Defamation Act 2013* (UK), s 6, the National Uniform Defamation Law does not contain an express privilege for academic or scientific statements made in peer reviewed and published journals and a defendant would need to establish a defence of qualified privileged or honest opinion.

<sup>9</sup> French, 115 citing E E Brown, *Academic Freedom* (1900) Educational Review New York 209–31 reproduced in the Series, *Scholar Select* 224.

<sup>10</sup> Jim Jackson, 'When can speech lead to dismissal in a University' (2004) 9(2) *Southern Cross University Law Review* 1, 17.

<sup>11</sup> Jackson, 17.

<sup>12</sup> See the discussion at Jackson, 18, for these and further examples.

review of various enterprise agreements conducted by the Hon Robert S French AC in *Independent Review of Freedom of Speech in Australian Higher Education Providers* (March 2019) disclosed that “greater or lesser degrees of [academic] freedom are to be found across the university sector, no doubt as a consequence of the relative weight the parties have given to such freedom in the course of the industrial bargaining process”.

39. Dr Ridd’s contentions appeal to an idealised and normative (if perhaps problematic) standard of unrestrained academic speech that is far removed from the reality of applying orthodox principles of construction to the interpretation of an enterprise agreement. The idea that intellectual freedom confers independence of all constraint or responsibility has been rejected, and it remains the case that intellectual freedom is subject to the prevailing misconduct rules at each separate institution.
40. In light of the detailed consideration of the history and purpose of intellectual freedom rights by the majority, the error contended for by Dr Ridd is not made out. Ultimately, the construction of cl 14 (and its relationship with cl 13) must be construed by reference to the bargain reached between these parties as contained in the now superseded Enterprise Agreement that applied to the University and its employees only. It was not open to the Full Court to give the Enterprise Agreement some other meaning by reference to ulterior principles and notions of “academic freedom” or “intellectual freedom”.

Responses to Dr Ridd’s other contentions

41. Dr Ridd raises three arguments as to “other textual matters”. Specifically:
- (a) **First**, to make the intellectual freedom right subject to the obligations in the Code of Conduct, as the majority did, is to significantly change the scope of the right as otherwise described in cll 14.2-14.7: see AS [60]-[61];
  - (b) **Second**, cl 14.1 of the Enterprise Agreement is not directed to “staff”, but rather to “JCU”: see AS [62]; and
  - (c) **Third**, even assuming that cl 14.1 recognises an “an implicit commitment on the part of the University to require all staff to comply with the Code of Conduct as part of their employment relationship”, it does not follow that employees are required to comply with the Code of Conduct where it detracts from the cl 14 right: see AS [63]-[64].

42. These submissions must also be rejected.
43. **First**, cl 14, properly construed, is directed at the University. The only provision of cl 14 which imposes an obligation is cl 14.1. In circumstances where the University can only, on the proper construction of the clause, be said to act in breach of cl 14.1 – being the clause setting out the extent of the University’s obligation, the terms of cl 14.1 then provide for the scope within which the entire clause is to be read. It must follow, therefore, that the “scope” of the so-called rights contained in cl 14 are to be read with and subject to the Code of Conduct. As the majority found, the commitment of the University in cl 14.1 of the Enterprise Agreement to promote intellectual freedom in accordance with the Code of Conduct finds scope and substance in the Code of Conduct, which is consistent with the promise: J[99].
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44. **Second**, the fact that cl 14.1 is directed to and addressed to the University supports the construction preferred by the majority. For the University to act “in accordance with” the Code of Conduct, the University must enforce the Code of Conduct.
45. **Third**, it follows from the above that, in order to for the University to enforce the Code of Conduct, it must hold staff to the standard of the Code of Conduct and take appropriate disciplinary action for any breaches, in accordance with the Enterprise Agreement. Whilst it is correct to observe that cl 14 does not, in and of itself, contain a requirement for a staff member to comply with the Code of Conduct, cll 8 and 13 of the Enterprise Agreement, as well as the Code of Conduct itself, do impose such obligations.
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46. No error is disclosed in the majority’s reasoning or ultimate findings.

Disposition

47. At AS [67], Dr Ridd asserts that, in the event the Court finds that Dr Ridd’s construction of cll 13 and 14 is correct, and that the majority erred, then it follows that the Full Court’s orders must be set aside. That submission ignores the “alternative ground” upon which the majority upheld the appeal below: J[125]-[137]. Importantly, the majority found that:
- (a) the primary judge erred in holding that, in each case the subject of the findings by the University, Dr Ridd had been exercising a right under cl 14, which right could be breached by the University in bringing disciplinary proceedings or issuing directions: J[130];
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- (b) the University did not discipline Dr Ridd because he expressed his views: J[133];
- (c) some of the elements of Dr Ridd’s conduct are unable to be characterised as an exercise of intellectual freedom in the sense described in cl 14, being no more than expressions of personal opinion and frustration, and general criticism of the University or the university sector more broadly: J[135];
- (d) Dr Ridd’s conduct subsequent to the Final Censure, and on which his termination was grounded<sup>13</sup>, had nothing to do with the exercise of intellectual freedom pursuant to cl 14: J[136]; and
- 10 (e) the primary judge erred in holding that each of the “Confidentiality Directions” issued by the University was an infringement of Dr Ridd’s future exercise of intellectual freedom and so contravened cl 14 of the Enterprise Agreement: J[137].

48. Dr Ridd does not challenge, beyond a bare assertion at AS [29], these findings by the majority. Accordingly, even if Dr Ridd succeeds on his first ground of appeal, the orders of the Full Court ought to remain undisturbed as there has been no proper or considered challenge to the alternative ground of appeal on which the University succeeded.

49. Further, it is to be observed that in the Notice of Appeal, Dr Ridd does not  
20 challenge any of the findings made by the majority as to the proper construction of cl 54.1.5 of the Enterprise Agreement, the University’s right at common law to have issued confidentiality directions to Dr Ridd and the lawfulness and reasonableness of those directions: J[105]-[117]. Dr Ridd’s repeated breaches of these directions (including in the face of express instructions not to do so) were amongst the reasons for the termination of his employment and would have justified termination on those grounds alone – indeed, only one finding of serious misconduct would have sufficed: cf AS [66]. Although Dr Ridd does not challenge any of these findings, he contends that if he succeeds on his construction, the conclusion reached by the majority as to these matters “fall away”: see AS [69].  
30 Why this is so is not explained other than by reference to an alleged “Kafkaesque scenario”: AS [69]. As there is no challenge to the majority’s construction of cl 54.1.5 of the Enterprise Agreement, it must follow that this Court is to proceed on

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<sup>13</sup> See Final Censure, AFM, p 183 and Notice of termination, AFM, p 191.

the basis that this clause of the Agreement required the subject matter of the disciplinary processes of the University to be kept confidential. That obligation is not inconsistent with the exercise of the alleged “right” to “intellectual freedom” propounded by Dr Ridd. It is not necessary to decide this matter as it does not arise in the appeal. It also does not follow that if Dr Ridd succeeds on the proper construction of cl 14 that the primary judge’s orders are to be restored.

**Part VII: Time estimate**

50. It is estimated that one and a half hours will be required for the presentation of the oral argument of the respondent.

10 Dated: 13 May 2021



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The respondent is represented by Clayton Utz.

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**ANNEXURE**

**List of the particular constitutional provisions, statutes and statutory instruments referred to in the submissions**

<b>Title</b>	<b>Provisions/sections</b>	<b>Date</b>
<i>Fair Work Act 2009 (Cth)</i>	Section 50	Current
<i>Public Sector Ethics Act 1994 (Qld)</i>	Sections 5, 6 to 9, 10 and 13	Current
<i>Higher Education Support Act 2003 (Cth)</i>	Section 2-1 and Subdivision 19-G	Current
<i>National Uniform Defamation Law</i>		Current
<i>Defamation Act 2013 (UK)</i>	Section 6	Current