

FEDERAL CIRCUIT COURT OF AUSTRALIA

RIDD v JAMES COOK UNIVERSITY

[2019] FCCA 997

Catchwords:

INDUSTRIAL LAW –Enterprise Agreement – Code of Conduct – where Intellectual Freedom enshrined in Enterprise Agreement – where Code of Conduct inconsistent with Enterprise Agreement – primacy of Enterprise Agreement

Legislation:

Fair Work Act 2009 (Cth): s.50

James Cook University Act 1997 (Qld): s.5

Cases cited:

N/A

Applicant:	PETER VINCENT RIDD
Respondent:	JAMES COOK UNIVERSITY
File Number:	BRG 1148 of 2017
Judgment of:	Judge Vasta
Hearing dates:	26, 27 and 28 March 2019
Date of Last Submission:	28 March 2019
Delivered at:	Brisbane
Delivered on:	16 April 2019

REPRESENTATION

Counsel for the Applicant: Mr S. J Wood QC assisted by B. Jellis and B. Kidston

Solicitors for the Applicant: Mahoneys

Counsel for the Respondent: Mr C. J. Murdoch QC

Solicitors for the Respondent: Clayton Utz

ORDERS

- (1) The Court rules that the 17 findings made by the University, the two speech directions, the five confidentiality directions, the no satire direction, the censure and the final censure given by the University and the termination of employment of Professor Ridd by the University were all unlawful.
- (2) The issue of the making of declarations and penalty are adjourned to a date to be fixed.

**FEDERAL CIRCUIT COURT
OF AUSTRALIA
AT BRISBANE**

BRG 1148 of 2017

PETER VINCENT RIDD

Applicant

And

JAMES COOK UNIVERSITY

Respondent

REASONS FOR JUDGMENT

Introduction

1. Some have thought that this trial was about freedom of speech and intellectual freedom. Others have thought that this trial was about the manner in which academics should conduct themselves. Some observers may have thought that this trial was about the use of non-offensive words when promulgating scientific ideas. Media reports have considered that this trial was about silencing persons with controversial or unpopular views.
2. Though many of those issues were canvassed and discussed throughout the hearing of this matter, this trial was about none of the above. Rather, this trial was purely and simply about the proper construction of a clause in an Enterprise Agreement. Whilst the Court acknowledges that there may be consequences that touch upon these other issues because of the Court's construction of that clause, none of those consequences can play any part in the determination of the proper construction of that clause.
3. The clause in question is cl.14 of the *James Cook University Enterprise Agreement*. It is headed "*Intellectual Freedom*". It, and it alone, is the focus of this judgement.

4. Even though in this application, the Applicant is asking for the Court to make declarations that the Respondent breached the Enterprise Agreement and therefore contravened s.50 of the *Fair Work Act 2009* (Cth) (“the FW Act”), the parties have asked me to simply rule whether certain findings and directions were lawful.
5. If I find that they are lawful, that will be the end of the litigation. If I find that they are unlawful, I will give the parties the opportunity to make submissions about declarations and penalty.

The Concept of Intellectual Freedom

6. Intellectual freedom is also known as academic freedom. It is a concept that underpins universities and institutions devoted to higher learning. Obviously such institutions must have administrators that care for the governance and proper direction of the institution. However, the mission of these institutions must undoubtedly be the search for knowledge which leads to a quest for truth. In reality, intellectual freedom is the cornerstone of this core mission of all institutions of higher learning.
7. This is so because it allows ideas to conflict with each other; to battle and test each other. It is within this “battle” that the strengths and weaknesses of ideas are found out. In this process, there comes “learning”. And with learning comes discovery.
8. At its core, intellectual freedom mandates that academics should express their opinions openly and honestly, while inviting scrutiny and debate about those ideas. Unless opinions are expressed in this way, the growth and expression of ideas will be stifled and new realms of thinking will cease to be explored. That will lead to intellectual and social stagnation and a uniformity of thought which is an anathema to the concept of higher learning and social progress.
9. Intellectual freedom allows academics to challenge the status quo and encourage critical analysis. History tells of many people who did so.
10. During the last 160 years, arguably the two most prominent scientists/academics to challenge the status quo have been Charles Darwin and Albert Einstein. The ideas brought forth by both of these men were extremely controversial and offended several of their academic peers as well as many others in the greater society. That is

how it should be and without intellectual freedom, the world would have been denied the benefit of ground-breaking thought and intellectual risk taking of the sort that encourages innovation and other scholastic enquiries.

11. There is great power in intellectual freedom. But with great power there must also come great responsibility. There must, at times, be some degree of restraint so that there is no descent into anarchy. That is a fine balance and one that has challenged legal thinkers both past and present. And that, in turn, is why there is often an uneasy tension between those responsible for the administration of an institution of higher learning and those responsible for promulgating the ideas that give the institution their *raison d'être*.

James Cook University

12. James Cook University (“JCU”) was established by an Act of the Queensland Parliament. Section 5 of that *James Cook University Act 1997* reads as follows (with my underlining):

5 Functions of university

The university’s functions are—

(a) to provide education at university standard; and

(b) to provide facilities for study and research generally and, in particular, in subjects of special importance to the people of the tropics; and

(c) to encourage study and research generally and, in particular, in subjects of special importance to the people of the tropics; and

(d) to provide courses of study or instruction (at the levels of achievement the council considers appropriate) to meet the needs of the community; and

(e) to confer higher education awards; and

(ea) to disseminate knowledge and promote scholarship; and

(eb) to provide facilities and resources for the wellbeing of the university’s staff, students and other persons undertaking courses at the university; and

(f) to exploit commercially, for the university's benefit, a facility or resource of the university, including, for example, study, research or knowledge, or the practical application of study, research or knowledge, belonging to the university, whether alone or with someone else; and

(g) to perform other functions given to the university under this or another Act.

13. The functions of JCU as described, are really no different from any other institution of higher learning but for the fact that there is an emphasis on the “*special importance to the people of the tropics*”.
14. The relevant JCU Enterprise Agreement (“the EA”) came into existence in 2013; it was later ratified by the Fair Work Commission. The purpose of the EA was to establish the terms and conditions of employment for the staff of JCU. It is noted that the aim of the agreement was to facilitate a number of objectives; however, the only objective actually specified is that which provides “*a brighter future for the tropics, worldwide, through graduates and discoveries that make a difference*”.
15. The EA also envisages a joint consultative committee (“JCC”) being formed, charged with discussing workplace matters.
16. Relevantly for this matter, there are three key institutions that interact with JCU.
 - a) The Australian Research Council-Centre of Excellence for Coral Reef Studies (CoE) is headquartered at JCU. It is a partnership of JCU, Australian National University, University of Queensland, University of Western Australia, Australian Institute of Marine Science (AIMS) and Great Barrier Reef Marine Park Authority (GBRMPA). The CoE is a key stakeholder of JCU.
 - b) The Australian Institute of Marine Science (AIMS) is headquartered in Townsville and is also a key stakeholder of JCU.
 - c) GBRMPA is a Commonwealth authority established pursuant to an act of Parliament. It prepares an “Outlook Report” every five years and is described as the CoE’s most important end user in Australia.

Clause 14

17. It was essential that the concept of intellectual freedom be addressed in the EA. Clause 14 has sought to “codify” the concept. It reads:

14. INTELLECTUAL FREEDOM

14.1. JCU is committed to act in a manner consistent with the protection and promotion of intellectual freedom within the University and in accordance with JCU’s Code of Conduct.

14.2. Intellectual freedom includes the rights of staff to:

- *Pursue critical and open inquiry;*
- *Participate in public debate and express opinions about issues and ideas related to their respective fields of competence;*
- *Express opinions about the operations of JCU and higher education policy more generally;*
- *Be eligible to participate in established decision making structures and processes within JCU, subject to established selection procedures and criteria;*
- *Participate in professional and representative bodies, including unions and other representative bodies.*

14.3. All staff have the right to express unpopular or controversial views. However, this 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. These rights are linked to the responsibilities of staff to support JCU as a place of independent learning and thought where ideas may be put forward and opinion expressed freely.

14.4. JCU acknowledges the rights of staff to express disagreement with University decisions and with the processes used to make those decisions. Staff should seek to raise their concerns through applicable processes and give reasonable opportunity for such processes to be followed.

14.5. Staff, as leaders and role models to students and the wider community, must adhere to the highest standards of propriety

and truthfulness in scholarship, research and professional practice.

14.6. Staff members commenting publicly in a professional or expert capacity may identify themselves using their University appointment or qualifications, but must not represent their opinions as those of JCU. The University expects that staff will maintain professional standards when they intentionally associate themselves with its name in public statements and/or forums.

14.7. Staff who contribute to public debate as individuals and not in a professional or expert capacity, must not intentionally identify themselves in association with their University appointment.

18. As can be seen, the concept of “intellectual freedom” is not defined. Nonetheless, it is said to “include” certain rights which are then expressly detailed. This is an acknowledgement that the concept is much wider than any drafter or legislator could hope to encapsulate. An example of this is seen in the fact that the clause does not mention that opinions expressed must be honestly held. Yet, the concept itself can only have meaning if opinions espoused by academics are honestly held opinions.
19. The clause limits the right to intellectual freedom. As an example, it strictly proclaims that intellectual freedom does not give staff the right to harass, vilify, bully or intimidate those who disagree with their views.
20. It should be noted that a clause – such as cl.14 – is unique and would predominantly be found in enterprise agreements that affect workplaces that are institutes for higher learning.

The Code of Conduct

21. The Code of Conduct is not part of the EA. However, the EA envisages that there will be a Code of Conduct.
22. Clause 13 of the EA reads as follows:

13. CODE OF CONDUCT

The parties to this Agreement support the Code of Conduct as it establishes the standard by which staff and volunteers conduct

themselves towards others and perform their professional duties on behalf of JCU.

13.1. The parties agree that the Code of Conduct will only be changed following consultation with the JCC.

13.2. JCU is committed to achieving and maintaining the highest standards of ethical conduct and through the Code of Conduct will ensure that staff:

- *Seek excellence as a part of a learning community;*
- *Act with integrity;*
- *Behave with respect for others; and*
- *Embrace sustainability and social responsibility.*

13.3. The parties note that the Code of Conduct is not intended to detract from Clause 14, Intellectual Freedom.

23. The last subclause is instructive in that it particularly notes that the Code is not intended to detract from intellectual freedom; that is, the Code does not diminish or weaken intellectual freedom.
24. The actual Code of Conduct borrows “*four fundamental ethical principles*” to form the basis of the obligations in the Code. JCU then “*gave expression*” to those principles and developed the Code around four new principles that were “*to act to guide the actions of staff*”. These four principles (with my underlining) are:-

Principle 1: Seek excellence as part of a learning community

This principle aligns with the first ethical principle of the Act - 'integrity and impartiality', and the second ethical principle of the Act - 'promoting the public good'.

In our conduct, we will:

- *endeavour to achieve excellence in the performance of our work and strive for continuous improvement;*
- *seek discoveries that make a difference through research, reflection and innovation;*
- *actively engage in learning and in personal and professional development;*

- value academic freedom, and enquire, examine, criticise and challenge in the collegial and academic spirit of the search for knowledge, understanding and truth;
- *behave with intellectual honesty;*
- *undertake teaching and research in a responsible manner;*
- *encourage participation in professional external activities, provided that they are appropriate to our roles and they do not impinge upon our prescribed duties;*
- 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;
- *encourage collaboration across boundaries;*
- *comply with the ethical standards and legal obligations of our professions; and*
- *seek through our work to create a brighter future for the tropics.*

Principle 2: Act with integrity

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;*
- engage in genuine dialogue with other staff, students and stakeholders through transparent, open and honest communication and consultation;*
- ensure that ethical governance structures and systems are established and maintained;*
- behave in a way that upholds the integrity and good reputation of the University;*
- protect University resources, and take all possible care to use them in a proper manner;*
- take responsibility for our mistakes, work to rectify problems as soon as possible, and ensure that those who have admitted mistakes are treated with fairness and dignity;*
- not make improper use of our position, status, power or authority to gain, or seek to gain, a benefit or advantage for ourselves or any other person;*
- only accept gifts and benefits where these are not identified to influence our decision-making;*
- take reasonable steps to avoid, or disclose and manage, any conflict of interest (actual, potential or perceived) in the course of employment;*
- avoid placing ourselves in direct positions of responsibility relating to the employment or studies of a person, where we have, or have had, a close personal relationship with that person;*
- comply with any lawful and reasonable direction given by someone who has authority to give that direction;*
- make well-considered decisions, and provide reasons for these decisions where required, especially where they may have an adverse effect on people;*
- act within the limits of our authority;*
- adhere to proper records management practices and procedures, so that records are complete, up-to-date and capable of providing organisational accountability;*

•maintain the privacy, integrity and security of official and personal information and ensure the proper use of information systems;

•respond in good faith to those who seek access to non-personal information, provided this is not contrary to the public interest and does not betray commercial-in-confidence principles;

•disclose wrongdoing and protect those who make a disclosure;

•avoid any conduct, including alcohol or substance abuse or misuse, which would adversely affect our work performance; and

•comply with all relevant legislative and statutory requirements.

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:

• 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;

• respect and celebrate diversity;

• act to ensure equity, fairness and natural justice is afforded to all;

• seek to resolve disputes in a fair and timely manner;

• strive to create an environment which provides a safe and healthy workplace for employees, students and members of the community;

• investigate any complaints that have been lodged against staff or students in a consistent, prompt, fair and timely manner;

• avoid and not accept behaviours which are unwelcome, discriminatory, intimidatory or abusive;

- *refrain from, and not accept vilification, bullying, harassment or sexual harassment;*
- *stand up for the rights of others;*
- *use all forms of JCU social media platforms belonging to or connected with the University, for example Facebook pages or Twitter, in a responsible and appropriate manner.*

Principle 4: Embrace sustainability and social responsibility

This principle aligns with the second ethical principle of the Act - 'promoting the public good' and the fourth ethical principle - 'accountability and transparency'.

In our conduct, we will:

Compliance with the Code of Conduct and associated Explanatory Statement

- *The University is committed to providing staff with access to education and training in relation to the requirements of this Code and the associated Explanatory Statement for the Code of Conduct.*
- *Where uncertain about the Code's application or interpretation, staff should consult with their Director/College Dean or higher authority if appropriate.*
- *Failure to comply with the Code may lead to disciplinary action, and in serious cases may lead to termination of employment and/or criminal prosecution.*

25. As can be seen, there are parts of the Code of Conduct that are a re-writing of parts of the Intellectual Freedom clause. It is the interplay between the Code of Conduct and cl.14 of the EA upon which the application before this Court revolves.

The Background

26. Professor Peter Ridd was the head of physics at JCU from 2009 until 2016. He managed the University's marine geophysical laboratory for 15 years. His qualifications are detailed in his affidavit and there has been no realistic challenge to those qualifications.

27. As far as the reporting structures at JCU went, Professor Ridd reported to his “*line supervisor*”, Professor Ronald White. Professor White reported to the Dean, Professor Marcus Lane. Professor Lane reported to the Head of the Division of Tropical Environments and Societies, Professor Gordon. Professor Gordon reported to be Senior Deputy Vice Chancellor, Professor Chris Cocklin. Professor Cocklin reported to the Vice Chancellor, Professor Sandra Harding.
28. As explained already, one of the associated entities with JCU is the CoE. That institution is headed by Professor Terry Hughes. Professor Hughes also reported to Professor Cocklin.
29. Professionally, Professor Ridd had been concerned with the quality of the scientific research that had been published about the state of health of the Great Barrier Reef. He had published a number of papers on the need for better quality assurance. In his opinion, the health of the Great Barrier Reef had been frequently misrepresented.

Relevant Chronology

30. On 16 December 2015, Professor Ridd sent an email to Peter Michael, a journalist with News Limited.
31. In effect, this email suggested that the reports regarding degradation of the Great Barrier Reef by sediment were not reliable. Overall, the email was critical about the methodology used and the conclusions made. The email even suggested questions that Mr Michael might wish to pursue with the organisations responsible for those reports.
32. Mr Michael, somewhat surprisingly, simply sent the whole email on to Professor Hughes and asked for his comments.
33. Professor Hughes wrote to Professor Cocklin making a complaint about the fact that Professor Ridd had written to Mr Michael. Professor Hughes characterised the email of Professor Ridd as one that was “*spun*” and claimed that it had attacked his integrity and that of the institutions generally.
34. The matter was investigated under the Code of Conduct and Professor Ridd was given a formal censure and a “*direction*” as to how he was to conduct himself in the future.

35. Professor Ridd then wrote an essay which was published in a book called "*Climate Change - The Facts 2017*". This essay questioned the conclusions about the degradation and damage to the Great Barrier Reef. As a result of this chapter, Professor Ridd was invited to appear on the television show "Jones and Co" which was broadcast on Sky News channel.
36. The interview occurred on 1 August 2017 at 8:44 PM. Professor Ridd answered questions from the host, Alan Jones, and the co-host, Peta Credlin.
37. A condensed summary of the interview was brought to the attention of Professor Hughes. He contacted both Professor Cocklin and Professor Harding complaining that Professor Ridd was "*trashing JCU's relationship with ARC, GBRMPA and AIMS again*".
38. On 24 August 2017, Professor Ridd was contacted by the HR manager for JCU who alleged that there was a *prima facie* case of serious misconduct committed by Professor Ridd. The HR manager directed that Professor Ridd maintain confidentiality.
39. Professor Ridd engaged solicitors to respond to the allegation.
40. There is a great deal of correspondence that issued back-and-forth.
41. JCU also went through all of the emails that Professor Ridd had sent from his university email to see if there were any other breaches of the Code of Conduct.
42. On 23 October 2017, JCU wrote to Professor Ridd further alleging that he had denigrated colleagues and failed to maintain confidentiality in a number of emails that he had written to various people.
43. On 20 November 2017, Professor Ridd launched these proceedings stemming out of the actions of JCU.
44. On 21 November 2017, JCU found that Professor Ridd had breached the Code of Conduct, had denigrated Professor Hughes, had denigrated the University and interfered with the disciplinary process and had breached confidentiality.

45. JCU gave Professor Ridd a final censure and again made a direction regarding confidentiality.
46. Notwithstanding the timing, there is no suggestion that JCU knew that Professor Ridd had launched these proceedings at the time the final censure was given.
47. On 22 November 2017, an article appeared in The Australian newspaper detailing the application that had been filed in this Court. Subsequent to this article, it became clear that Professor Ridd was not accepting of the final censure, nor the order to maintain confidentiality.
48. Professor Ridd started a “*Go Fund Me*” page to ask for donations for his legal expenses and wrote a “*flyer*” explaining what he saw as his predicament. He also published material from the disciplinary processes on a “WordPress” website. A number of media articles were also published where it was obvious that Professor Ridd had spoken to the journalist involved.
49. On 13 April 2018, JCU wrote to Professor Ridd and determined that nine further allegations of breaching confidentiality directions, breaching directions and breaching the Code of Conduct had been substantiated. The letter indicated that termination was appropriate but that the final decision would be made by the Vice-Chancellor.
50. On 2 May 2018, the Vice-Chancellor terminated Professor Ridd’s employment.
51. All in all, there have been 17 allegations of misconduct made against Professor Ridd.
52. Professor Ridd has asked the Court to determine whether or not those findings, and the directions regarding confidentiality et cetera, were unlawful.
53. JCU have submitted that all 17 findings, and the actions taken thereon, were justified.
54. In undertaking this task, it will, unfortunately, be necessary for the Court to reproduce quite a deal of material so as to put all of the matters in their proper context.

The First Finding

55. The email from Professor Ridd to Peter Michael was sent on 16 December 2015 at 9:19 AM. I reproduce it in full below with the concerning aspects underlined.

Subject: FW: Great barrier Reef pictorial deception

Dear Peter,

I wonder if you would be interested in some work we have done recently which indicates that GBRMPA is grossly misusing some scientific “data” to make the case that the Great barrier (sic) Reef is greatly damaged. It relates to the supposed decline of the Great Barrier Reef and some famous photographs of an inshore reef, one from the late 1800’s showing a beautiful reef and a more recent picture supposedly at the same location showing no reef at all. The conclusion is that this reef has been destroyed by sediment and nutrients coming from the land and is representative of many other inshore reefs. The pictures are found right across the internet and in many scientific documents. They are used extensively by conservation organisation.

The attachment document shows pictures we have just taken of the area where the supposedly dead reef is located – and the coral is brilliant. The document explains how these pictures have been misused and that there is a wider issue of lack of quality assurance of much of this “public good” science.

If it helps I can condense the document to something much more manageable (to op-ed length perhaps) but I thought I’d leave it quite long for the moment so that you can see the story in its entirety. I think the pictures tell the story by themselves, but the story would benefit greatly from a response from GBRMPA and people from the Canegrowers organisations (such as Peter Sheedy, Herbert Canegrowers, Ingham or the like)

Cheers

Peter

Professor of Physics, Peter Ridd

Marine Geophysics Laboratory

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ATTACHED DOCUMENT

It is interesting to consider the very famous photographs below (figure 1) which are plastered across the internet which supposedly shows an example of how the Great Barrier Reef (GBR) has been damaged. The photo on the left shows a reef in the late 19th century



Figure 1 Historic photo's near Bowen supposedly at the same location circa 1890 (left) and 1994 (right)

and the right photographs supposedly shows the same reef today. These photos are also found in the Great Barrier Reef Marine Park Authority's GBR Outlook Report 2014 which states that "Historical Photographs of inshore coral reefs have been especially powerful in illustrating changes over time, and that the change illustrated is typical of many inshore reefs" (see appendix B).

I have always been highly sceptical of these photographs as the commonly used reason to explain that this reef has been killed is due to increased sediment runoff since European settlement. My own work has shown that this explanation is virtually impossible especially for locations such as this. In addition it does not take account of the fact that these inshore reefs can change dramatically with time especially with the passage of cyclones which can temporarily obliterate them. Ten years after a cyclone they may have fully recovered.

The presentation of the photographs also gives us the impression that we know where the original 100 year old picture was taken. In fact we can only guess within a kilometre or two, and in this area it would not be unusual to find great coral in one spot and nothing a kilometre away (see appendix A). The selection of the position of where the modern photo was taken can thus decide what message we see. Finally, seeing dead reef does not necessarily mean that it

died recently. In fact there are literally hundreds of square kilometres of dead reef-flat on the GBR which was killed due to the slow sea level fall of about a meter that has occurred over the last 5000 years. This has left a lot of coral high and dry at low tide which kills the coral. It is easy to take a picture of a dead reef, but it does not mean it died recently.

A month or so ago I decided to see if there was good coral in the area that these pictures were taken so I asked a couple of my field technicians to take some photographs in the area with the same island backdrop as the two original pictures (figure 2 and 3). You will note that there is spectacular coral living there – at least in many spots within the area that the original photos were taken.



Figure 2: Black and white picture of corals near Bowen showing spectacular coral growth.



Figure 3: Colour picture of corals near Bowen showing spectacular growth.

The questionable pictures were originally published by David Wachenfeld and the paper describing them can be found here (http://www.gbrmpa.gov.au/__data/assets/pdf_file/0019/9802/gbrmpaws23.pdf) (go to page 142). It should be noted that in this paper David Wachenfeld cautions that

“from the results of the Historical Photographs Project so far, the number of locations that do not appear to have changed since the historical photographs were taken throws doubt on the proposition that the GBR is subject to broad scale decline, whatever the proposed cause.”

So the original author said these pictures should not be used to demonstrate damage to the GBR and yet they pop up all the time in important documents such as the official Great Barrier Reef Marine Park Authority 2014 GBR Outlook Report (see <http://www.gbrmpa.gov.au/cdn/2014/GBRMPAOutlook-Report-2014/index-33.html> see page 17 of the report or Appendix B),

In addition they are found in

(a) Reports from our most august scientific institution working on reefs such as the Australian Research Council Centre of Excellence for Coral Reef Studies 2012 annual report: See page 32

<http://www.coralcoe.org.au/wp-content/uploads/2013/04/Annual-Report-2012-Web.pdf> (see page 32)

(b) in the quality mainstream media e.g an ABC website

http://splash.abc.net.au/home?WT.tsrc=Email&WT.mc_id=Innovation_Innovation-Splash%7CSecondary_email%7C20150311#!/media/1542275/reef-of-life (go to 20 second mark on video.

(c) Or the web everywhere, for example

<http://kw.dailyflick.com/18-stunning-pictures-of-the-great-barrier-reef-that-prove-it-looks-as-good-as-it-did-50-years-ago/> (go to image 15), and

http://cmbc.ucsd.edu/Research/student_research/Earth_Altered/Transformed_Landscapes/vie w.php?p=Stoneisland1895

Of course this is a relatively trivial, although visually spectacular, example of some of the bad science on the GBR. I can send you a document (an ARC grant application in fact) which talks about other more fundamental problems if you like. However returning to

these pictures, they are actually a dramatic example of how scientific organisations are quite happy to spin a story for their own purposes, in this case to demonstrate that there is massive damage to the GBR. In fact any decent marine scientist or boat owner around Bowen, could have told you that there is lots of coral around Bowen and that it is spectacular. It was always a very unlikely proposition that this area had suddenly lost all its coral. GBRMPA, and the ARC Centre of Excellence should check their facts before they spin their story.

Most importantly this raises the question of what quality assurance processes are in place for much of this “public good science”. My view is that there is almost no quality assurance. This is a huge problem. I can send you a short document on this issue in relation to the GBR.

If you would like to do a story on this issue you would be welcome to use the photographs that we have taken. In addition I think it would be worthwhile asking the Head of GBRMPA and also the Head of the ARC Centre of Excellence the following.

(a) How much confidence that they have in the veracity of the original photographs?

(b) Would they expect that if you as a journalist went to this site, would you see good coral?

(c) How sure are they that the sequence of pictures in their reports are in fact taken in the same location

(d) Given that the original author cautioned against using these pictures to demonstrate “broad scale decline” of the GBR, why did their organisations use them to do exactly that?

My guess is that they will both wiggle and squirm because they actually know that these pictures are likely to be telling a misleading story - and they will smell a trap. If they wiggle and squirm then the next two questions must be

(e) If you are not sure about these pictures, why have they been included in your reports?

And finally and most importantly

(f) What quality assurance procedures do you have in place to make sure that your science is likely to be correct?

They will talk about peer review but this is insufficient QA as this often only involves a quick read of the work by a couple of people who may well be ones friends. (I can send you more information on this as well if you are interested.)

Prof Peter Ridd

JCU

Appendix A

The 1890 picture was published in a book by Saville-Kent, see

<http://www.biodiversitylibrary.org/item/40631#page/108/mode/1p>

It is Plate IX.

Referring to the supposed Stone Island picture the original book does not say it is on Stone Island. It says, “The scene of this illustration is in close vicinity to that of the Madrepore islet that forms the subject of Plate V, No 1.” So what does Saville Kent say about plate V. “This exceedingly picturesque reef-view is typical of the coral growth that predominates over a large area in the vicinity of Stone Island.

So we can say that the image (Plate IX) is in the vicinity of a large area in the vicinity of Stone Island. – not very precise. We certainly cannot be sure it is even on Stone Island.

Appendix B

Excerpt from Great Barrier Reef Marine park Authority GBR Outlook Report 2014 showing historic

photographs and implying they show decline of the GBR (see figure caption)

2.2.2 Shifting baselines

When looking at the Great Barrier Reef today, people tend to compare it with their own previous experiences. However, what is considered natural gradually shifts as changes in the environment accumulate — a 'shifting baseline'. Such shifts are particularly an issue in marine environments where the technology to study the ecosystem has been developed only recently. In fact, much marine research has been conducted in ecosystems that are already degraded to some extent, and there is little understanding of how these ecosystems operated in the absence of human activity.¹⁵

On the Great Barrier Reef, most scientific research and monitoring began in the 1970s and 1980s, but there is increasing evidence of significant changes in the Reef well before then, some stretching back over the past 200 years. The lack of such long-term scientific data across a number of habitats and groups of species presents a significant challenge for assessing the true condition and trend of the ecosystem, including the risk of using a shifted baseline to make the assessment. For example, the first systematic surveys of subtidal reefs in the late 1960s began after an outbreak of crown-of-thorns starfish had affected coral reef habitats along much of the Great Barrier Reef.¹⁶ Understanding the significance of recent declines in coral reefs^{17,18} depends critically on the context of those past declines.

Evidence for shifted baselines in the Great Barrier Reef has come from older people who remember how conditions were different¹⁹ or from observations recorded in images such as those of Stone Island near Bowen²⁰ (Figure 2.2), journals and ships' logs. Traditional Owners and many older people in the broader community²¹ consider that fish stocks and other marine resources have declined from the very considerable early bounty that was available on the Reef. Subsequent surveys suggest coral trout stocks on studied reefs were markedly depleted before widespread monitoring began.²¹

2.3 Current condition and trends of habitats to support species

The Great Barrier Reef ecosystem consists of a wide variety of habitats from mangroves and seagrass meadows to coral reefs and open waters (Figure 2.3). Even within each of these habitats there is substantial variation, depending on a complex interplay of ecological factors. Variations of habitats across the continental shelf and beyond — from inshore, shallow water habitats to deep, offshore ocean habitats — are more pronounced than those along the length of the Reef.²² The overall condition of the Region's biodiversity depends on maintaining the condition of all its habitats and the interconnections between them. Habitats for the conservation of biodiversity are one of the four criteria on which the Reef's world heritage listing is based.²³

2.3.1 Islands

The Great Barrier Reef ecosystem includes approximately 1050 islands, comprising coral cays, continental islands and mangrove islands. Of these, 70 Commonwealth islands are part of the Region, with the remainder under Queensland Government jurisdiction. The diversity of islands and the habitats they provide are attributes that contribute to the Reef's outstanding universal value.²⁴



Figure 2.2 Inshore coral reefs over time, Stone Island, offshore Bowen
Historical photographs of inshore coral reefs have been especially powerful in illustrating changes over time. The changes in the fringing reefs at Stone Island are typical of many inshore reefs. They largely took place before monitoring programs began — illustrating that modern assessments of the condition of coral reefs are likely to be based on an already shifted baseline. (2012 photograph © The University of Queensland, courtesy of Tara Clark)

56. The journalist forwarded the email to Professor Hughes on 17 December 2015 at 3:46 PM. The journalist said that he was supplying the whole email to give Professor Hughes some context. He asked whether the Marine Park Authority had been deliberately misleading in the use of “*before and after shots*”, whether Professor Hughes was aware of the remarkable bounce back in coral regrowth at the site and whether the

Marine Park Authority accepted that the use of “*those images inaccurately portrays widespread damage to the Great Barrier Reef*”. He asked for a response.

57. Professor Hughes did not respond but forwarded the email (which included the whole of the email from Professor Ridd) to Professor Cocklin at 5:43 PM later that day (17 December 2015). He wrote as follows (with my underlining):-

Hi Chris ,

Peter Ridd has written to the Courier Mail to spin a story that attacks the integrity of me, our CoE and GBRMPA. I would like to make a formal complaint.

Cheers, Terry

58. As earlier detailed, this complaint was investigated. As a result, on 29 April 2016, Professor Cocklin wrote to Professor Ridd in the following terms (with my underlining):

Dear Professor Ridd,

Formal Censure

I refer to the allegations of misconduct provided to you on 12 April 2016, and your response to the allegations emailed to Director, Human Resources on 14 April 2016.

After careful consideration of all relevant evidence, as well as information provided by you in response to the allegations, I am satisfied that you have breached JCU's Code of Conduct and that 'Misconduct' (as defined by the JCU Enterprise Agreement 2013-2016) has occurred without reasonable excuse.

In particular, it has been found that:

- Your actions breached Principle 1 of the Code of Conduct and its requirements to act in a collegial way and in the academic spirit illustrated by the use of the terms:*

"...GBRMPA and the ARC Centre of Excellence should check their facts before they spin their story"

"My guess is that they will both wiggle and squirm because they actually know that these pictures are likely

to be telling a misleading story - and they will smell a trap."

- You breached Principle 1 of the Code of Conduct by going to the media in your professional capacity in a way that was not collegial and did not respect the rights of others or uphold professional standards. This includes using the language above in an external environment.*
- You breached Principle 1 of the Code of Conduct by not displaying responsibility in respecting the reputations of other colleagues. Your actions were seen to be directed at individuals, and named their position titles calling into question their professional and/or academic integrity.*
- These actions also breached Principle 2 of the Code of Conduct, which did not uphold the integrity and good reputation of the University.*

As a result, I am issuing you with a formal censure. Should there be a further breach during your employment at James Cook University, it could lead to further disciplinary action which could amount to serious misconduct.

In future it is an expectation that in maintaining your right to make public comment in a professional, expert or individual capacity in an academic field in which you are recognised, it must be in a collegial manner that upholds the University and individuals respect. If you are unclear about these obligations or require any additional support please seek the advice of your Dean before expressing view in a similar way in future.

You are reminded that JCU has an Employee Assistance Program offering a free and confidential counselling service on 1300 360 364.

Yours sincerely

PROFESSOR CHRIS COCKLIN

SENIOR DEPUTY-VICE-CHANCELLOR

cc. Professor Marcus Lane, Dean, Science and Engineering

59. It is clear that Professor Cocklin framed his findings in terms of breaches of the Code of Conduct.

Discussion

60. The email sent to the journalist has to be read in context. The reports from GBRMPA, the Wachenfeld paper and even the excerpt from the 1893 Saville-Kent book need to be taken into consideration when looking at what Professor Ridd has written.
61. In my view, Professor Ridd is clearly demonstrating that he has an honest opinion that there has not been critical analysis undertaken before drastic conclusions have been made regarding the health of the Great Barrier Reef. It is a logical argument that points out the flaws in the reports that have emanated from the Marine Park Authority and the Centre of Excellence.
62. Those reports have used photographs to illustrate what they claim is the degradation of the reef. By using photographs taken in the 1880s, 1990s and the present day, it is argued that the degradation is plain. What Professor Ridd is pointing out is that the photographs must be able to show the exact area over time.
63. With regard to the “*Outlook Report*”, the photographs depicting the 1880s and the 1990s emanate from the Wachenfeld paper in 1994. There is a footnote in the text of the Outlook Report that credits the photographs and conclusions to the Wachenfeld paper.
64. Notably, the Outlook Report does not mention the conclusion reached by that paper. Further, that paper does not go back to the original source of the 1880s photograph (the 1893 Saville-Kent book) to also explain the limitations of the photograph.
65. What Professor Ridd is postulating is that the photographs cannot truly be said to be photographs of the same area over time. Further, even if they were somehow able to be correlated to the same area over time, they do not provide sufficient evidence to conclude that any degradation is as a result of man-made causes.
66. While the argument proffered by Professor Ridd seems compelling, I have no idea whether it is correct or not. But that is not the point.
67. Professor Ridd is pursuing a critical issue and is calling for an open enquiry. He is participating in public debate and he is expressing

opinions about issues and ideas related to his field of competence. In this respect, he is exercising his right to intellectual freedom and specifically those rights as given to him by cl.14.2 of the EA.

68. JCU found that Professor Ridd has breached the Code of Conduct. In particular, it was found that by talking of the institutions needing to “*check their facts before they spin this story*” and speaking of persons that would “*both wiggle and squirm*” when asked questions, Professor Ridd was not acting in a collegial way and in the academic spirit.
69. It was submitted to me that use of the word “*spin*” was particularly insulting because an academic, such as Professor Hughes, simply presents the facts and does not try to put a particular slant upon those facts.
70. I do note that when Professor Hughes made his complaint to Professor Cocklin, he accused Professor Ridd of writing to the media “*to spin a story*”. The fact that there were no repercussions upon Professor Hughes for using such a term might seem to betray the true motivation of JCU. But that is only a side observation which does not assist in my consideration of the actions of Professor Ridd.
71. JCU also found that Professor Ridd’s actions in going to the media was not collegial and did not respect the rights of others. JCU do not say exactly how this was not collegial or how the rights of others were not respected.
72. JCU also found that Professor Ridd did not display responsibility in respecting his colleagues’ reputations. JCU found that Professor Ridd’s actions were directed at individuals which called into question their professional and academic integrity.
73. Professor Ridd was obviously expressing unpopular or controversial views. These views did not accord with those of Professor Hughes and did not accord with the reports published by the Marine Park Authority or the Centre of Excellence.
74. Despite this, cl.14.3 gives Professor Ridd the right to express those views (so long as he has respected the right of others and has not harassed, vilified, bullied or intimidated those who have disagreed with his view). Professor Ridd has done exactly that. JCU have impliedly

admitted that he exercised his rights because they have never claimed that he has breached cl.14.3.

75. JCU also found that Professor Ridd breached the Code of Conduct by not upholding the integrity and good reputation of the University. Again JCU did not explain how the integrity and good reputation of the University has not been upheld.
76. What Professor Ridd did was point out anomalies in the methodology and conclusions made by Professor Hughes and others. He invited the journalist to ask questions of Professor Hughes and others so that debate could ensue and the public be able to discern the truth for themselves.
77. It would seem to me that this is exactly what a university should be encouraging and, relevantly, why cl.14.3 actually exists.
78. With respect to the first finding, I am of the view that Professor Ridd acted in accordance with his rights under cl.14.

The First Speech Direction

79. At the end of the letter that gave Professor Ridd the formal censure, Professor Cocklin “directs” Professor Ridd that his right to make public comment must be expressed in a collegial manner that upholds the University and respects individuals. JCU submitted that this is a lawful direction because it is directing Professor Ridd to act in accordance with the Code of Conduct.
80. It is clear that cl.14.3 allows Professor Ridd to make public comment so long as it does not harass, vilify, bully or intimidate those who disagree with his views.

The Second Finding

81. On 1 August 2017, Professor Ridd appeared on Sky News during the Alan Jones report known as “*Jones and Co*”. The following exchange took place (with my underlining):

***ALAN JONES:** Yes, well look from Dr Marohasy to Professor Ridd from this remarkable book 'Climate Change the facts 2017'. You can get this book by the way, there is a website ipa.org.au,*

ipa.org.au but look I'm sorry this is more of the same. The first chapter in the book is simply titled

'The extraordinary resilience of Great Barrier Reef corals and problems with policy science by Professor Peter Ridd'

Professor Ridd is the professor of physics at James Cook University with particular interest in coastal oceanography including, human impacts on coral reefs. He's published over 100 papers in international science journals, his chapter ends in a way that the global warming alarmists wouldn't like, when he talks about the lack of quality assurance in science and he quotes:

'The editor of the of the land set, one of medicines most important journals which states and I quote:

'the case against science is straight forward, much of the scientific literature perhaps half, may simply be untrue'.

Editorial says – science has taken a turn toward darkness.'

Well nowhere is that darkness more evident than in what Professor Peter Ridd tells us about the Great Barrier Reef and he joins us from Townsville.

Peter Ridd, good evening and thank you for your time

PETER RIDD: *Good evening.*

ALAN JONES: *Look to the problem that you're seeking to address, that and that the public can identify with, we're presented every other day on television with these white skeletons of bleached coral. And as you say in your chapter, they make graphic and compelling images to demonstrate the perils of climate change but there is nothing wrong with the coral.*

PETER RIDD: *Nah, No there isn't. I mean that, its, you can certainly have these events where a whole lot dies, it's a bit like a bushfire. But then over the next 5 or 10 years you see it all recover.*

So for example – 6 or 7 years ago, we had a big cyclone that wiped out almost all the coral in the southern part of the Great Barrier Reef and yet now it's almost totally grown back. So we've now got 3 times as much coral in the southern Great Barrier Reef as we what we had before.

But in the meantime, the northern part has died off because of the bleaching, but that will come back again in a few years' time. That fact is that the corals of the Great Barrier Reef almost all of them, species actually also live in New Guinea and in Indonesia where it's much hotter and in fact they grow faster there.

So we shouldn't really be too worried about the effects of increasing temperatures on the Great Barrier Reef.

ALAN JONES: *It's frightening, you say that the point about bleaching and you make this point – is that corals, your words:*

'That undergo bleaching in 1 year will then be relatively unsusceptible to similar high temperatures in the following years.'

You say the bleaching forces the coral to take on board a better adapted strain of symbionts, which is a component that, we won't go into, all of that. But in other words these things regenerate is what you're saying?

PETER RIDD: *No.*

That's right, they've probably more than almost any other ecosystem in the world, corals have the ability to adapt to changing temperatures.

They need to do this because when a coral spawns its spawn may drift hundreds or even a thousand kilometres away into an area which might be hotter or colder.

So they have to be able to deal with massive temperature changes even if there was no climate change.

This is different to things like trees which will drop their seeds in exactly the same place so the offspring from a tree will be in the same climate as the parent. That is not necessarily true of a coral.

ALAN JONES: *But you see Peta was talking.*

Peta you were talking earlier about the amount of money that is wasted on this global warming thing.

The government in Canberra believe all this rubbish that the bleaching is destroying the coral, the Great Barrier Reef's at high risk, high danger and so we've got a tip in a billion dollars.

PETA CREDLIN: *Well there was also a big push by the United Nations and the Professor will know this well and Australia pushed*

very hard and a lot of advocacy to make sure that the reef was not listed as endangered and there was a lot of money committed there from the state Queensland government but also the Commonwealth.

But to be honest, I never heard anything about this level of detail Professor.

PETER RIDD: *No and you see the basic problem is that we can no longer trust the scientific organisations like the Australian Institute of Marine Science even things like the ARC Centre of Excellence for Coral Reef Studies.*

A lot of this stuff is coming out, the science is coming not properly checked, tested or replicated and this is a great shame because we really need to be able to trust our scientific institutions.

And the fact is, I do not think we can anymore.

ALAN JONES: *Absolutely, do...*

PETA CREDLIN: *Can you just explain that to me.*

I'm interested, why, why can't we trust them, tell me why, what is it, you are a scientist and James Cook is highly regarded as a university up there in the North.

What is it that you are saying, shows that there is a discrepancy one scientist observing another scientist.

PETER RIDD: *Well because you never hear about when the coral grows back. You always hear this one side. So for instance – we're told that the sediment from all the farms is killing the reef.*

PETA CREDLIN: *Yes.*

PETER RIDD: *You know it's killing half the reef.*

PETA CREDLIN: *Yes*

PETER RIDD: *Or whatever it's done.*

In actual fact, there's hundred times more sediment that cycles naturally through the bottom of the reef, than comes down all the rivers combined.

So sediment is an absolutely negligible threat to the reef and yet, we're gonna spend potentially billions of dollars trying to fix a problem that's not there.

ALAN JONES: *That's right, it's frightening.*

PETER RIDD: *Now this is again an example of – yeah we are just not quality checking the sites.*

Now interestingly, if you look at the biomedical sciences area where they've done these replication studies – they're finding that they're wrong.

The important science is wrong around half the time.

Now I would ask you the question:

If that is the problem in the biomedical area, and this is now very well recognised, shouldn't we now start to check some of this environmental science where in addition to the normal problems that we have with poor quality, we also potentially have scientist with an ideological vent?

ALAN JONES: *But see Professor Ridd, the guts of it is isn't that these people depend on their livelihood, they depend on the government for their livelihood. Government funding. So I said before – he who pays the piper calls the tune, they'll keep telling the government what they want to hear.*

What the public need to know is what you wrote in your chapter when you said –

'Bleaching is one of the corals defence mechanisms and should be regarded as a strategy for survival rather than a death sentence, generally it stops them dying.

Most corals that bleach, fully recover.'

PETER RIDD: *Well, it...*

That's right it generally will often stop them dying, so they have to get rid of these symbionts, they turn white and often they will recover.

Um we shouldn't necessarily think of it as a death sentence.

Um going back to a point that you were making about the scientists, you know – he who calls the piper pays, that, a, calls... [chuckle]

He who pays the piper calls the tune, that's possibly a bit harsh. I think that most of the scientists who are pushing out this stuff, they genuinely believe that there are problems with the reef. I just don't

think that they are very objective about the science they do. I think their emotionally attached to their subject, and...

ALAN JONES: *But isn't science...*

PETER RIDD: You know you can't blame them, the reef is a beautiful thing.

ALAN JONES: *Isn't a scientist supposed to have, always a degree of scepticism?*

So he's checking and checking and rechecking, rather than presenting stuff as empirical proof?

PETA CREDLIN: *Or decent peer review, that's the other thing.*

PETER RIDD: *Yes. I.. Oh - well let's talk about peer review.*

Peer review, a lot of people in the community think is when you know – when maybe a dozen or 20 scientists check some important bit of science and they pour over it for months and months on end and they replicate the experiments and they do a really good job on it.

Forget that.

Peer review is when the science is given to maybe 2 people who check it, maybe for a morning, maybe for a couple of hours...

PETA CREDLIN: *Wow*

PETER RIDD: *Just to make sure it reads and makes a little of sense. That is all that peer review is. So when you hear a scientist say – it's been peer reviewed, you should laugh quite frankly because it's not proper quality assurance.*

PETA CREDLIN: *That's extraordinary. I mean....*

ALAN JONES: *Yeah.*

PETA CREDLIN: *... that's just like a sub editor checking someone's writing, that's not a...*

ALAN JONES: *Absolutely.*

PETER RIDD: *Yep.*

ALAN JONES: *Absolutely. Just a...*

PETER RIDD: *That, it...*

ALAN JONES: *Sorry.*

PETER RIDD: *It's not much more than that. Not much more than that.*

ALAN JONES: *But just so that the thesis that you have established in this excellent chapter that opens this wonderful book. You say, that the reef and I quote-*

'Quietly grows and waits for the beginning of the next cycle of death and regrowth.'

PETER RIDD: *Yes. That's exactly what happens – so it crashes and then it comes back over a period of half a decade to a decade or so and it waits for the scientists to then do the same stories and push it all around the world again*

ALAN JONES: *[chuckles] All over again.*

PETER RIDD: *But the reef has yet again lost half, half its coral. And I just wonder, this has been going on for close to 50 years, how many more years will it take for us to cotton-on to the fact that you can no longer trust this stuff, unfortunately.*

ALAN JONES: *Good on ya...*

PETA CREDLIN: *There are just...*

ALAN JONES: *Good on you, great to talk...*

PETA CREDLIN: *Just a quick question before you go Peter, uh Professor Ridd.*

Um I'm just... I'm curious having put this out there, are you receiving ahhh...

ALAN JONES: *Yes.*

PETA CREDLIN: *Criticism from your other peers...*

ALAN JONES: *Peers. Yeah.*

PETA CREDLIN: *Of the scientific community?*

ALAN JONES: *Yes. [chuckles].*

PETER RIDD: *Yes. Yes, I certainly am but they, but um, interestingly they will never debate. I've often tried you know...*

ALAN JONES: *That's it.*

PETER RIDD: *Let's have a debate of a couple of hours...*

ALAN JONES: *I know.*

PETER RIDD: *...and thrash this out. But they never will.*

ALAN JONES: *No not at all.*

PETER RIDD: *Never will.*

ALAN JONES: *Which is the reason you quoted the land set and I just repeat in his chapter it quotes the land set about science -*

'the case against science is straight forward, much of the scientific literature perhaps half, may simply be untrue.'

Great to talk to you Professor Ridd keep at it, keep at it, we'll get there in the end.

PETER RIDD: *Thanks very much.*

ALAN JONES: *Been wonderful.*

From James Cook University, can you believe that.

Astonishing.

PETA CREDLIN: *Great work, yeah.*

ALAN JONES: *Hey?*

PETA CREDLIN: *This IPA book is really going to change the debate I think and it doesn't surprise me that it sold out within hours.*

It doesn't surprise me that the next round of the printing is already sold out. So, anyone who wants to understand this debate has gotta read this reports.

ALAN JONES: *But no one in Canberra will be reading it.*

PETA CREDLIN: *Well I think the public need to force them to.*

ALAN JONES: *Oh no, the bureaucrats will keep informing them.*

Just before we go...

82. In a letter dated 21 November 2017, JCU found that Professor Ridd had violated the Code of Conduct in that interview with Alan Jones. The relevant parts of the letter are reproduced below:

Code of conduct

The University does not accept that academic freedom justifies your criticism of key stakeholders of the University in circumstances where you communicated such criticism in a manner that is inconsistent with your obligations under the Code of Conduct, including to criticise "in the collegial and academic spirit of the search for knowledge, understanding and truth" and "treat fellow staff members, students and members of the public with honesty, respect and courtesy". As outlined in the Further Allegations Letter, academic freedom under the Enterprise Agreement is expressed to be in accordance with the Code of Conduct.

The University is not satisfied that it is "in the collegial and academic spirit of the search for knowledge, understanding and truth" or respectful and courteous to:

(a) comment to the effect that we can "no longer trust" scientific research published by the Australian Institute of Marine Science (AIMS) and ARC Centre of Excellence for Coral Reef Studies (ARC Centre); or

(b) and are matters which I am able to form a view as the Senior Deputy Vice Chancellor make comments that imply, insinuate and suggest that scientists who work for AIMS and the ARC Centre are "emotionally attached" to the reef and their scientific research is "not objective",

irrespective of whether you genuinely believe these comments to be true or made these comments in a calm manner.

The assertion in your Further Response that the University is attempting to "silence criticism" is grossly inconsistent with the Further Allegations Letter, which makes it clear that the University is not concerned that you have expressed a scientific view that is different to the view of the University or its stakeholders, rather, the University is concerned that you have expressed your views in a manner that is inconsistent with the professional standards expected by the University and reflected in the Code of Conduct.

After review of the Further Response, I am not satisfied that the conduct outlined in the Further Allegations Letter is excused

including the conduct which further denigrates AIMS and ARC Centre as was clearly outlined to you given the joint venture and partnership relationships with these entities, of which you were aware, and had previously collaborated on, as a University employee. As a result, the University does not accept, that your conduct is consistent with the Code of Conduct, as it had and has the capacity to damage the reputation of AIMS and ARC Centre and therefore the relationship of the University with these bodies and by association the reputation of the University.

83. It was argued, by JCU, that Professor Hughes and others who had authored the “*maligned*” material, would be insulted that their honesty had been called into question. Such an insult was inconsistent with the professional standards that the University expected and that the Code of Conduct mandated.
84. It has been submitted to me that what Professor Ridd said in the interview was extremely insulting to Professor Hughes and others who have produced the reports. Indeed, during the course of the trial, there was discussion about the terms “*trustworthy*” and “*reliable*”.
85. The way that lawyers use the word “*trust*” is that it connotes both honesty and reliability. The thinking is that if a person cannot be trusted, it is a guide to that person’s honesty; because the honesty is doubtful, the reliability therefore won’t exist.
86. Judges and juries often are asked to consider whether testimony is both “*honest*” and “*reliable*”. It is trite to say that an honest witness may not be a reliable witness whereas a dishonest witness could never be a reliable witness.
87. Therefore, one must have a look at the words used by Professor Ridd in context. Professor Ridd was at pains to explain to Alan Jones that the scientists who were espousing the opinions that the reef was in danger, were doing so honestly.
88. It is also instructive to hear what Professor Ridd said when he gave evidence before me.
89. It is clear to me that Professor Ridd saw no real difference between the use of the words “*trust*” and “*reliability*”. When he explained what he

meant by the word “trust”, it was clear to me that he was talking about the concept of reliability and was not including the concept of honesty.

90. While Professor Hughes and others may feel aggrieved, it seems to me that Professor Ridd was not calling into question their honesty. That is also made clear by the fact that Professor Ridd spoke of the “*emotional attachment*” to the reef as being an explanation as to why the proper processes had not been carried out.
91. Professor Ridd was also criticised for suggesting that the scientists were “*emotionally attached*”. This was simply the opinion of Professor Ridd and it was an explanation given by him as to why suggestions of deliberate dishonesty by the other scientists were not correct.
92. I find that Professor Ridd, in saying what he said in this interview, was properly exercising his rights pursuant to cl.14 of the EA.
93. Although not strictly relevant to the case at hand, I do note that the interview in question came about because Professor Ridd wrote an essay that was collected in a book. That essay is one of the annexures to the affidavit of Professor Ridd. In that essay, Professor Ridd is quite critical of Professor Hughes for his claim that coral bleaching was a new phenomenon. Professor Ridd also talks of climate change and bleaching as the latest in a long list of spurious claims about the Reef.
94. Upon reading this essay, one could objectively conclude that it is more “insulting” to Professor Hughes and the other scientists than anything that was said in the interview with Alan Jones. And yet, despite the fact that the University had clearly read the essay, there were no allegations that the writing of this essay was a breach of the Code of Conduct.

The First Confidentiality Direction

95. In the letter of 24 August 2017, Professor Ridd was notified that JCU considered that his actions were a *prima facie* case of misconduct. He was told “*as per clause 54.1.5 the confidentiality for all parties in the management of this process is highly important, and I trust that you will consider your obligations professionally*”. Why confidentiality is so highly important is not explained further.

96. This direction purportedly stems from a subclause in the EA (cl.54.1.5) which reads as follows:

54.1.5 The confidentiality of all parties involved in the management of Misconduct and Serious Misconduct processes will be respected and all information gathered and recorded will remain confidential, subject to JCU's obligations:

a) to discharge its responsibilities under an Act or University policy;

b) for a proceeding in a court or tribunal; or

c) unless the person to whom the confidential information relates, consents in writing to the disclosure of the information or record; or if no consent is obtainable and such disclosure is unlikely to harm the interests of the person affected; or

d) unless the information is already in the public domain.

97. I will discuss this subclause later in these reasons.

The Third Finding

98. On 23 August 2017 at 1.53PM, Professor Ridd received an email from a colleague, Fernando Pinheiro Andutta, in the following terms:

From: Fernando Pinheiro Andutta

Sent: Wednesday, 23 August 2017 1:53 PM

To: Ridd, Peter

Subject: maybe not stirring the pot for a moment

Hi Peter,

I wonder if maybe you could avoid stirring the pot for a little bit (just for a few weeks or ~ 3 months ish).

I - We might need to avoid your strike 3 at JCU, because the CRC will try to tag Wikiletters in the media as a "red team" engine. I have no doubt they will try to do that. They will try to do whatever they can to relate WL as a sceptical way against Climate Change researchers. However, we do know that that is not true. Therefore, we need to be extremely cautious and strategic to keep pushing this engine.

2-1 really believe pretty soon we might have the support from the Wikipedia community to sort the database remarks. The researchers might be a bit reluctant at the beginning to sort this database. However, once Wikipedians have sorted most of this database, then researchers would then realise that WL provides an unique marking opportunity for their own work.

3 -I am surrounding people that are relatively close to Researchgate's CEO, and Wikipedia's CEO, because we might get Wikipedia to initially approach us, and then Researchgate come asap.

Do you think JCU will be okay after your second strike, and they may ask you to avoid a third one?

Cheers,

F.

99. At 3:06 PM, Professor Ridd replied in these terms (with my underlining):

Hi Fernando,

I see what you mean. If I am kicked out of JCU it will reflect badly on Wikiletters.

But maybe it will work the other way around - Wikileaks is an outcast organisation and it is famous because of it. There is a saying in English "all publicity is good publicity, even bad publicity". I am not sure I go along with that but there is an element of truth in it. Zero publicity is the real enemy.

In any case I am not sure I have any influence on the outcome. I will find out more details tomorrow, and in fact technically I will then be no longer able to comment on it to anybody until it is resolved one way or another. I think it will most likely end up badly for me.

Perhaps, we then need to get my name off everything on wikiletters.

P

100. The University found that the underlined portion represented a denigration of the University to an external party.

101. The University found that the Code of Conduct – in particular, the requirement to “*behave in a way that upholds integrity and good reputation of the University*” –had been breached.
102. The University also found that emails been sent from the University email account had to be sent in accordance with the ICT policy, which in turn mandates that staff members must comply with the Code of Conduct in sending emails.
103. It may be seen as somewhat petty for the University to conclude that the words “*I am not sure I have any influence on the outcome*” denigrates the University. Mr Andutta had asked whether Professor Ridd thought that the current imbroglio may simply result in a “*second strike*” which would then mean that Professor Ridd had to avoid a “*third strike*”.
104. The reply from Professor Ridd concentrated on the repercussions for “wikiletters” if he were terminated as opposed to whether he simply had a “second strike”. The maligned words are simply the summary of how Professor Ridd viewed his situation.
105. Clause 14.4 of the EA acknowledges that there is a right to express disagreement with university decisions and with the processes used to make those decisions. Whilst the sub-clause further states that staff should seek a particular way to address their concerns, the subclause does not mandate this as the only response allowable.
106. All Professor Ridd has done, in writing the maligned words, is to express his disagreement (or even frustration) with the processes being undertaken by the University.
107. I find that Professor Ridd, in writing the words that he did, was exercising the rights he had pursuant to cl.14.4.
108. I further find that Professor Ridd was also exercising the right to express opinions about the operations of JCU pursuant to cl.14.2.

The Second Confidentiality Direction

109. Given the stern nature of the direction in the letter of 24 August 2017, Professor Ridd wrote to the HR department seeking clarification.

110. Professor Ridd pointed out that it did not seem that he was “*allowed to talk to anybody about these allegations, or even the existence of the allegations-not even to my wife*”.
111. In the reply of 27 August 2017, Professor Ridd was told that he “*should not discuss any aspect of the serious misconduct process whilst it is ongoing-except with an appropriate representative*” and further that “*you are expected to maintain your confidentiality obligations to the University*”.
112. That reply indicates that JCU were of the view that Professor Ridd owed confidentiality obligations to the University.
113. I will talk about this aspect later on in these reasons.
114. By virtue of this reply, the University were prohibiting Professor Ridd from talking to his wife about these matters.

The Fourth Finding

115. Professor Ridd had been part of a group of approximately 30 teachers and academics who had been part of a “push” to have Queensland return to common state-wide exams for maths and science in secondary schools. Those 30 persons were part of an email group that kept in touch with each other.
116. An article appeared in *The Australian* newspaper on 26 August 2017. That article detailed the fact that Professor Ridd was facing disciplinary proceedings and could potentially be dismissed.
117. On 27 August 2017 at 9:13 PM, one of the group wrote to the rest of the group attaching the article from *The Australian*.
118. At 10:43 PM, another member of the group wrote to the whole group in these terms:

On 27 Aug 2017, at 10:43 pm, Tempe Harvey wrote:

Thanks Maureen,

This is the first I heard of this!

Is there anything we can do to help Peter?

Kind regards,

Tempe Harvey

119. At 6:06 AM the next morning, 28 August 2017, the first member of group replied to the whole group in these terms:

Hi Tempe- all I can think of is writing letters to the Editor of The Australian,

Although there are MANY on-line comments supporting Peter, there aren't any in the actual paper.

That is probably because there is so much going on: same sex marriage, statues e.t.c.!!!

Maureen

120. At 9:04 AM on 28 August 2017, Professor Ridd replied to the whole group in these terms (with my underlining):

Thanks everybody,

Actually if anything a letter to my VC would be the most useful. This is the same old thing although I have been told by JCU not to talk to anybody about it. I am interpreting this instruction to mean that I cannot talk about the details as it is in the public domain that there has been a complaint. As usual, I have offended some powerful organisations who don't like being challenged, and rather than debate the case, they just resort to threats and complaints. Just like the good old QSA etc.

All I am arguing is that before we spend a few billion saving the reef, we should check the science that underpins our decisions. Presently we only use peer review which is little more than a quick read by 2 unknown people. They never get the data to check for other interpretations, and experiments are almost never repeated by other workers. There is no guarantee that the review is even genuinely antagonistic. In other areas of science where checks are done, they regularly find that 50% of the original findings are wrong. The attached book chapter explains some of this.

My VC's address is

vc@jcu.edu.au

thanks

Peter

121. The University found that Professor Ridd had breached the Code of Conduct, in writing the underlined portion of the email, because he expressed his view in a manner that was inconsistent with the professional standards expected by the University. Again, it was said that Professor Ridd had not behaved “*in a way that upholds the integrity and good reputation of the University*”.
122. Similarly, the University found that, in sending an email that contained the underlined words, Professor Ridd had breached the ICT policy of the University.
123. In many ways, what Professor Ridd wrote could be considered true. JCU have, in effect, admitted that Professor Ridd “offended” organisations associated with the University (GBRMPA, CoE and AIMS) and the University itself. In Professor Ridd’s world, these organisations would be seen as being “powerful”.
124. Professor Ridd has noted that these organisations have not put anything forward to rebut any of the criticisms he has made. Instead, complaints have been made ostensibly about the manner in which he has challenged those organisations.
125. Again, whilst it is not part of the matters that I have to decide, it would seem that, rather than disciplining Professor Ridd, the better option would have been to provide evidence that would illustrate the errors in what he has said. If it had been shown that what Professor Ridd had been saying was demonstrably wrong, that would have been the greatest rebuke of all.
126. When Professor Ridd wrote the maligned words, he was responding to the concern of the group. The writers of the emails sent to the group wanted to know what they could do to help Professor Ridd. He is simply explaining, from his viewpoint, the situation in which he finds himself.
127. It is correct that even a true word could damage the integrity and good reputation of the University. However, what Professor Ridd is doing is expressing his disagreement with the processes of the University.

128. In writing these maligned words, I find that Professor Ridd is exercising his rights pursuant to cl.14.4.
129. I also find that Professor Ridd was also exercising the rights he had to express opinions about the operations of JCU pursuant to cl.14.2.

The Fifth Finding

130. In that same email, Professor Ridd writes these words – “*Actually if anything a letter to my VC would be the most useful*”. This can be seen as an answer to one of the group who had suggested writing letters of support to the editor of *The Australian*.
131. The University has found that Professor Ridd breached the confidentiality directions that had been given on 24 August and 27 August. The University considered that Professor Ridd had solicited the email group to send a letter of support to the Vice Chancellor. The University considered that this conduct was designed to interfere with the disciplinary process and was a direct breach of confidentiality.
132. It has been submitted by the University in these proceedings, that because there is a disciplinary proceeding on foot, the actions of Professor Ridd was seeking to have other people become involved in that process. Rather than allowing the process to run its course, the University consider that the attempt to involve others in it has breached confidentiality.
133. This submission is made despite the fact that the newspaper report, upon which the group is commenting, says that Professor Ridd “is understood to be under investigation”.
134. Whilst a finding that the words written by Professor Ridd breached confidentiality would seem to be totally bereft of logic, this is not the matter with which I have to grapple. Whether this finding is a lawful finding depends upon the lawfulness of the confidentiality directions itself and not whether the finding actually makes any sense. I will speak of this later in the Reasons.

The Sixth Finding

135. On 31 August 2017 at 10:36 AM, Professor Ridd received the following email from one of his students, Sanna Persson. It reads as follows:

Hi Peter,

Hope this isn't too personal, but there are more than a few of us seriously upset about this.

<http://www.theaustralian.com.au/higher-education/fears-uni-mav-sack-marine-scientist-over-comments-onreef-health/news-story/5d70061c8df6015abfcb07552de461df> (The same newspaper article)

Are they really going to fire you for this? It's absolutely, outrageously ridiculous! Is there anyone we can email/talk to, protesting this?

Kind regards,

Sanna Persson

136. Professor Ridd replied at 10:17 AM on 1 September 2017 in these terms (with my underlining):

Dear Sanna,

I greatly appreciate your concern. I have been in a lot of hot-water .for many years on these matters and it may be approaching the end game now - it is hard to tell for sure. It is a long story and I am not allowed to discuss the latest problem. Needless to say I have certainly offended some sensitive but powerful and ruthless egos.

You must not believe all you read about me on the web - I am sure you would know that anyway. I am not taking bribes from the coal industry to do their bidding as is often suggested. I simply think that a large proportion of the work that supposedly shows massive damage to the GBR is wrong, and that there is a systemic quality assurance problem with science in general. The latter is hardly a controversial point considering all the revelations in Science and Nature in recent years about the "replication crisis".

I must say that the views of my students concern me more than the views of many of the Marine Biology academics on this matter, so if you are wondering about my scientific position I'd be happy to

chat further to any of you. I attach a brief statement which I have cobbled together which may be of interest. I have also got plenty of papers and reports about all of this, but you will doubtless be too overwhelmed by assignments at the moment to have any time to read them

Kind regards

Peter

137. Ms Persson replied the same day at 12:24 PM in these terms:

Hi Peter,

I can assure you, no one that I have been talking to believes that you are taking any bribes from anyone. We all think you are one of the (if not THE) best lecturer we have had at JCU.

We are angered because 1) we are always told to always think critically, but when a professor does it, all hell breaks loose. 2) DO think critically, just not about the data surrounding the reef... and 3) we have already lost Kevin Parnell whom we also admired and now (maybe) you. Meanwhile, a certain chemistry professor that has sexually harassed a girl in lecture (with ca 500 witnesses) is still employed.

Additionally, I know at least two more staff at JCU that has the same view as you on the quality of peer reviewed papers. We are even taught to read and critic these papers in some classes.

May I forward this email to the other students I have been talking with?

Kind regards,

Sanna Persson

138. Professor Ridd replied later that day:

Thanks Sanna. Yes send that to anybody you like.

P

139. The University found that Professor Ridd had breached the Code of Conduct in writing the underlined words in the email exchange. As with the third and fourth finding, the University found that Professor Ridd had expressed his views in a manner inconsistent with the professional

standards expected by the University and reflected in the Code of Conduct. Further, Professor Ridd had not behaved in a way that “*upholds the integrity and good reputation of the University*”.

140. The University has submitted that such phraseology was simply meant to be insulting. To say that the persons offended had egos that were both sensitive yet powerful and ruthless was denigrating of those persons.
141. One has to read what has been said in its context. In this context, in writing the maligned words, I find that Professor Ridd was exercising his rights pursuant to cl.14.2 (express opinions about the operations of JCU) and cl.14.4 (express disagreement with the processes used to make decisions).

The Seventh Finding

142. At 2:10 PM on 1 September 2017, Professor Ridd received an email from another student, Sunae Kim, in these terms:

Hi Peter,

I heard of the news from Sanna the other day. Read the recent article, a thread and emails Sanna has sent and received from you, your statement, and a couple of abstracts of your papers (I couldn't find a paper "The extraordinary resilience of Great Barrier Reef Corals, and Problems with Policy science" 2017 though).

I am extremely upset about how JCU treats some of the good lecturers / scientists that have voices! Why can't a scientist throw a question and doubt? Isn't questioning all part of being scientific and answering those questions what science does? This isn't the first time the uni has disappointed me and other students. We need more scientists like you, not stuck ups or ones that do and write what they are told to! One of the world's best research institutions supposed-to-be doesn't look like it's proving its name unfortunately. Very sad.

I hope they don't fire you for being honest and not bias. Or does the uni deserve you really? I do hope you stay on and continue on what is right and to be speculated. I have always doubted how the world thinks GBR is going to die. I think a lot of researches done only see what they like to see (then reanalyses on bias data sets later on get discovered like your coral calcification paper did).

Do you know when you will get to know the outcome of uni's decision? Are you at uni on Monday morning? If so, can I come say hi? Hope you are doing well otherwise. You have a lot of students' and looks like a lot of citizens' back.

Kind regards,

Sunae Kim

Master of Science / Fisheries Biology and Management

JCU Student Representative (science, 2016-2017)

JCU Student Mentor (science, 2017)

James Cook University, Townsville, QLD 4811

143. Professor Ridd replied at 3:28 PM that same day in these terms (with my underlining):

Hi Sunae,

Your sentiment is greatly appreciated.

I should say that despite what is happening now, JCU is not worse than other universities - in fact I always say that it is a bit special because I have lasted much longer than I would have done if I was at UQ. In my view our whole university system pretends to value free debate, but in fact it crushes it whenever the "wrong" ideas are spoken. They are truly an Orwellian in nature.

Attached is the reference. It is more of an article for an intelligent lay reader than a scientific paper, but I would be interested in your response, negative or positive. It puts an alternative interpretation to the bleaching events. I have a far longer document that looks at many papers that I think are problematic and a further paper which is well and truly stuck in the review process which talks about the general QA problem. It is devilishly hard to get some of this stuff published. It took almost 4 years to get my calcification correction paper published and only after rejection from 3 Journals.

I'll be around on Monday and would be happy to chat.

Kind regards

P

144. The University found that, in writing the underlined words, Professor Ridd had engaged in conduct that was contrary to the Code of Conduct in the same manner as the Third, Fourth and Sixth Finding.
145. The words are clearly prefaced with the words “in my view”.
146. Professor Ridd, by using those words, is giving his opinion as to what was the current state of play with respect to his own position. Given that there had been no reference at all by the JCU to his rights pursuant to cl.14, it is not unusual that Professor Ridd might have the opinion that he has expressed.
147. It is clear that Professor Ridd was expressing his disagreement used to make decisions at the University and also expressing his opinions about the operations of JCU.
148. I again find that Professor Ridd was exercising his right pursuant to cl.14.2 and cl.14.4 of the EA.

The Eighth Finding

149. On 30 August 2017 at 1:53 PM, Professor Ridd received an email from Clair Stark. Ms Stark was a student.
150. Ms Stark was now studying at ADFA in Canberra and wrote to Professor Ridd in these words:

Hi Peter,

I'm writing an abstract to attend the Australian Meteorological and Oceanographic Society conference in Sydney next year, and bloody terry hughes is a keynote speaker! Can't escape him ☺

It's freezing down here but settling in well.

Hope everything is going well in Townsville

Clair

151. At 8:49 AM on 31 August 2017, Professor Ridd replied in these words (with my underlining):

Hi Clair,

You wonder why he is there. It is not like he has any clue about the weather. He will give the normal doom science about the GBR. If I had the energy I'd come to the conference and explain why a bit of global warming would make the reef grow faster and better. You may not have seen the attached chapter I wrote recently on this matter.

Good luck in Canberra, at least it will soon warm up.

P

152. At 9:06 AM, Ms Stark replied as follows:

Hi Peter,

That's what I am confused about. Why is a coral reef scientist at a meteorology and oceanography conference?! Thanks for the article it will be good to have as much information as possible, I might ask him some questions re warming isn't harmful for corals and that bleaching is not a new phenomenon. Where is the chapter going to be published? Hopefully the more physicists at a conference the less hype they will believe.

I met Hua yesterday and briefly sat in on a coastal workshop he was hosting.

Clair

153. The University found that the maligned words were a denigration of Professor Hughes and, as such, that Professor Ridd had breached the Code of Conduct. The University also found that Professor Ridd communicated about his colleague in a disrespectful manner.

154. The University submits that these words are nothing more than an insult directed at Professor Hughes. The submission is that such words could have nothing to do with exercising intellectual freedom.

155. Again, what is written must be read in context. Professor Ridd was answering a query from a student as to why Professor Hughes would be at a meteorological and oceanographic conference when neither discipline is within the field of expertise of Professor Hughes.

156. Professor Ridd has given his opinion, albeit in a pejorative way, about the qualifications of Professor Hughes to talk at such a conference. It was an expression of opinion about issues and ideas related to Professor

Ridd's field of competence. In context, Professor Ridd then speaks of his wish to rebut what Professor Hughes would say at the conference. Clause 14.2 allows him to express this opinion.

157. Whilst it may be a pejorative comment and may even be denigrating of Professor Hughes, it was not harassing, vilifying, bullying or intimidating.
158. I also find that Professor Ridd was exercising his rights pursuant to cl.14.2 when he wrote the maligned words.

The Third Confidentiality Direction

159. On 19 September 2017, the University wrote to Professor Ridd explaining that the University was of the view that, in effect, there was a *prima facie* case of misconduct committed by Professor Ridd.
160. The relevant correspondence also contained the following paragraphs under the heading "Ongoing directions":

Ongoing directions

As outlined in my letter of 7 September 2017, these matters are confidential. I confirm that you are directed to keep the details of the allegations, and all matters relating thereto (including, but not limited to, the formal censure you received on 29 April 2016), strictly confidential.

You must not disclose or discuss these matters with the media or in any other public forum, including social media.

You are, however, allowed to discuss these matters with your immediate family, a support person, your union, professional advisor(s), or JCU's Employee Assistance Provider – provided you can assure yourself that they will maintain the same confidentiality as you.

It is very important that you comply with this direction. Failure to observe this direction may result in disciplinary action being taken against you in relation to the breach.

Final Censure

161. On 21 November 2017, the University wrote to Professor Ridd notifying him of the findings that it had made and giving him a final censure.

162. The Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth findings were submitted by the University as justifying a final censure. It was submitted that the findings were not interdependent upon each other to justify the final censure, but instead acted as circumstances, which when taken together, justified the final censure.
163. The University submitted that all of this behaviour demonstrated repeated denigration of the University, insubordination, interference with the disciplinary process, denigration of colleagues, non-compliance with Code of Conduct and a lack of respect for confidentiality. It was submitted that even if one or two of the findings were not, in hindsight, justified, it did not lessen the justification of the final censure.
164. At the end of that letter the University gave Professor Ridd three further directions.

Second Speech Direction

165. In the letter, JCU said that *“moving forward, it is the University’s expectations that you will act consistently with the Code of Conduct, including refraining from criticising other persons or organisations in a manner that is inconsistent with the collegial and academic spirit of the search for knowledge, understanding and truth”*.

Fourth Confidentiality Direction

166. In the letter, JCU said that *“moving forward, it is the University’s expectations that you will keep all matters relating to the disciplinary process and this censure strictly confidential”*.
167. Further, the University said that they *“confirm that the disciplinary process and all matters relating thereto (including but not limited to this censure), remain strictly confidential and that you are directed not to discuss or disclose these matters to any person including the media or in any public forum. However, this does not prevent you from providing a copy of this letter to your solicitors or to your immediate family, provided that you can assure yourself that they will maintain the same confidentiality as you”*.

No Satire Direction

168. In the letter, JCU said that “*moving forward, it is the University’s expectations that you will not make any comment or engage in any conduct that directly or indirectly trivialises, that arises or parodies the University taking disciplinary action against you*”.

Fifth Confidentiality Direction

169. As previously detailed, Professor Ridd had already commenced proceedings in this Court and did not accept the final censure. On 8 February 2018, JCU wrote to Professor Ridd claiming that they had concerns about breaches of the confidentiality directions.
170. In particular, the University was concerned about comments published on a “*Go Fund Me*” website, on a WordPress website, in the media and on a “flyer”. The University also had concerns regarding statements that they alleged were untrue, misleading and/or have the potential to damage the University’s reputation.
171. The University also detailed concerns about an email sent by Professor Ridd that was allegedly “*threatening and disrespectful*” to the Dean. The University also said that it had a concern regarding a conflict-of-interest.
172. The University detailed that they were then about to undertake a “process” about these concerns. The following confidentiality directions were then given:

Confidentiality Directions

In accordance with the Enterprise Agreement, including clause 54.1.5, this process is to remain confidential. This matter affects not only yourself and the University, but also other persons, including your colleagues, who are identified. In order to maintain the integrity of this process, the University directs you to maintain the confidentiality of this matter.

As such, you are directed to keep all matters relating to this disciplinary process strictly confidential, including the existence of the disciplinary process, details of the allegations, this letter, your response and any further correspondence between yourself and the University in relation to this matter.

Accordingly, you must not discuss or disclose these matters to:

(a) any staff member, other than myself, without my prior approval;

(b) any person external to the University, except for your immediate family, a support person, your solicitor, or the University's Employee Assistance Provider - provided that you can assure yourself that they will maintain the same confidentiality as you; and

(c) the media or in any other public forum.

It is very important that you comply with this direction. Failure to do so may result in disciplinary action being taken against you in relation to the breach.

If you have any questions in relation to this confidentiality direction, please contact me immediately.

The Ninth Finding

173. The University found that Professor Ridd had disclosed documents filed in his Federal Circuit Court claim to *The Australian*. The information disclosed became the basis for the article written on 22 November 2017.
174. The University found that this was a breach of the four confidentiality directions that had been previously given. In these proceedings, Professor Ridd did not contest that he had given the documents to a journalist.

The Tenth Finding

175. The University found that Professor Ridd published documents relating to the two disciplinary processes on his WordPress website.
176. The University found that this was not only a breach of the confidentiality directions but had the consequence of republishing the denigrating comments about Professor Hughes.
177. Professor Ridd, in these proceedings, did not contest that he had published those items on his website.

The Eleventh Finding

178. The University found that Professor Ridd had deliberately and repeatedly breached the confidentiality directions given to him by the University.
179. There were three particulars given for this finding.
180. The first particular was that Professor Ridd had provided another professor, Professor Marsh, with a folder of confidential documents relating to the disciplinary processes. Professor Marsh returned the folder without looking at any of the documents. It is difficult to see how a finding could be made as to what was contained in the folder when no one has actually seen the contents.
181. The second particular was that Professor Ridd had disclosed confidential information to the author of an article in the Cairns News. Professor Ridd admitted that he had spoken to the author of the article and told him about the disciplinary process.
182. The third particular was that Professor Ridd had caused a “flyer” to be distributed on the University campus. That flyer disclosed the outcome of the 2017 disciplinary process. It also disclosed that Professor Ridd had no intention of complying with the final censure. Professor Ridd admitted that he had authored that flyer and was responsible for its distribution.

The Twelfth Finding

183. The University found that Professor Ridd promoted discussion and perpetrated the view, both within and external to the University, that the University took disciplinary action against him because he had a different scientific view to the University or its stakeholders.
184. The finding was that there was no proper basis for making the comments, the comments damaged or had the potential to damage the reputation of the University and the actions of Professor Ridd were in deliberate disregard of his obligations to the University.
185. There were five particulars of this finding.
186. Firstly, on the “*Go Fund Me*” website, Professor Ridd wrote:

- *my name is Peter Ridd and I am a professor of physics at James Cook University and I'm facing serious repercussions for supporting scientific integrity*
- *I have now been issued a final censure by James Cook University to talking about quality assurance in science and told to remain silent*

187. Secondly, in comments published on the WordPress website, Professor Ridd wrote:

- *In a similar case in 2016, JCU had already found him guilty of academic misconduct and censured him. In that case he had exposed a very famous piece of science, which claimed massive damage to ensure reefs, to be wrong and questioned the quality assurance systems used in GBR science*
- *Ridd's intention is to fight this matter to a final decision in Court because he believes academics should not be prevented from publicly questioning another scientists' work, or the trustworthiness of work from institutions, especially where there is public impact as a result of the work*

188. Thirdly, in an article published in *The Australian*, the following words were attributed to Professor Ridd:

- Professor Ridd said in correspondence to the Australian he hoped Court action would “*draw attention to the quality assurance problems in science and the obligation of universities in general to genuinely foster debate, argument and the clash of ideas*”
- “*I think it is right to challenge our sites institutions about whether their work is reliable and trustworthy,*” he said.

189. Fourthly, in another article published in *The Australian*, the following words were attributed to Professor Ridd:

- “*This is as much a case about free speech as it is about quality of science,*” he said.

190. Fifthly, in comments contained in the flyer:

- *[Ridd] got into trouble after making a comment on TV saying that [he] did not believe that the science coming from two of our science organisations was trustworthy and was given a final censure and told to remain quiet about the matter.*
191. The University noted that these comments had not been redacted, removed from the Internet or otherwise retracted from publication. This meant that they were still available for any person anywhere in the world to see.
 192. Overall, the University claimed that the nature of the 2016 and 2017 disciplinary processes were deliberately misrepresented by Professor Ridd.
 193. The University also noted that Professor Ridd was readily identifiable as an employee of the University in all of the relevant publications.
 194. The University also noted that Professor Ridd had not sought to address any concerns he had about the disciplinary process through the appropriate channels at the University; instead he chose to make comments that were sensationalist and which denigrated the University.
 195. There could be much debate about whether or not the statements made by Professor Ridd were true or not. What isn't in the contest is that the statements were statements that Professor Ridd genuinely believed to be true.
 196. Professor Ridd was expressing an opinion about the operations of JCU. He was also expressing disagreement with the decisions of the University and with the processes used to make those decisions.
 197. Professor Ridd was not harassing, vilifying, bullying or intimidating anyone.
 198. I find, that in making these comments, Professor Ridd was exercising his rights pursuant to cl.14.2 and cl.14.4 of the EA.

The Thirteenth Finding

199. The University found that Professor Ridd had made or published comments to the effect that he was denied procedural fairness in the 2017 disciplinary process.

200. The University found that there was no proper basis for making those comments, the comments had damaged the reputation of the University and that they were in deliberate disregard of the obligations owed by Professor Ridd to the University.

201. There were three particulars to this finding.

202. Firstly, in an article in *The Australian* in February 2018, Professor Ridd is attributed as saying:

- *I am very keen that the trawling of emails to dig up more dirt becomes known*

203. Secondly, on the WordPress website, the following comments were published:

- *Ridd was prepared to the apparently inevitable outcome that he would be fired especially as JCU's senior administration are effectively the accuser, jury and judge on the matter*
- *JCU used its surveillance powers to read all of Ridd's email correspondence and used information gained to allege 25 new misconduct allegations - mostly because Ridd refused to be silent about the existence of JCU's allegations*
- *Perhaps due to indications that JCU's case would fail if challenged in Court, and because JCU was annoyed that he had not kept quiet, in October 2017 JCU hit Ridd with a new 128 page document listing details of 25 further allegations of misconduct*
- *Perhaps unintentionally, JCU's actions have engendered an atmosphere of fear and intimidation*
- *It is reasonable that JCU be able to read emails in cases where illegal activity may be suspected, but in this case it surveillance powers were used in an attempt to bolster a weak academic misconduct case. It also had the effect of being intimidating in the extreme to Ridd and his family which may have been intentional.*

204. Thirdly, in the flyer, the following comment was made:

- *JCU also use some quite intimidating techniques including reading all his emails in order to find a further 25 examples of what they called misconduct. They were particularly unhappy he would not remain silent.*
205. The University found that there was no justification for complaint on behalf of Professor Ridd because the University was entitled to carry out a search of the emails. This was especially so given that the University acted upon matters raised by Professor Ridd when he first responded to the allegations made about his appearance on Sky News channel.
206. The University also said that when Professor Ridd had told his Dean that he should be looked upon as “poisonous fruit”, that such comment justified the actions of the University.
207. The University may have determined that there was no cause for complaint. But that does not mean that Professor Ridd could not complain. Even though the University was of the opinion that there was no substance in the complaint, it is clear that Professor Ridd honestly held the views that he espoused.
208. To that end, I find that Professor Ridd was exercising his right pursuant to cl.14.2 and cl.14.4, to express his opinion about the decisions and processes of JCU.

The Fourteenth Finding

209. The University found an email that Professor Ridd had sent to a student, Ross Marchant. The email attached a copy of the article that had been written in The Australian. The email had written in the subject line the words “*for your amusement*”.
210. The University found that Professor Ridd was indirectly communicating to a student that the 2017 disciplinary process was “amusing”. This action was contrary to the “no satire direction” given at the time of the final censure which outlined that Professor Ridd was not to directly or indirectly trivialise, satirise or parody the University taking disciplinary action against him.
211. Whilst this finding is incredibly trifling, it is a finding that is properly made if the direction given in the final censure letter is a lawful direction.

The Fifteenth Finding

212. The University found that Professor Ridd published comments regarding the 2017 disciplinary process that were untrue, misleading and/or not full and frank. The University found that Professor Ridd failed to act with honesty and integrity in doing so.
213. The particulars of this finding are that there were two comments published on the WordPress website:
- *JCU also instructed Ridd not to talk to anybody about the existence of their allegations, all the details of the allegations. When Ridd asked if he could mention them to his wife, he was not given permission.*
 - *Even emails to [his] wife were deemed to be further misconduct.*
214. The attitude towards this litigation by the University can be encapsulated by the manner in which it has made submissions in relation to this finding.
215. It is absolutely clear on the evidence before this Court that what Professor Ridd has said in this regard is absolutely true.
216. On 24 August 2017, he was told that he could not mention anything to do with the disciplinary process to anyone who was not a support person. When he queried whether he could talk to his wife about the matter, he was told in an email on 27 August 2017, that he could not.
217. Professor Ridd's statement, that when he asked if he could mention them to his wife, he was not given permission, is the truth. It was not until 19 September 2017, that the University deigned to allow him to talk to his wife about these matters.
218. Whilst none of this makes any difference at all to my ultimate decision, the actions of the University in this respect are, quite frankly, appalling. They have had no regard for the anguish that Professor Ridd felt between 24 August 2017 and 19 September 2017. There has not even been an apology for what can only be seen as extremely callous behaviour. This is inexcusable.

219. Instead, Professor Ridd is accused of being misleading and untruthful because, even though the University eventually allowed him to talk to his wife, he did not mention this when he made statements on his WordPress website.
220. The hypocrisy is breathtaking. On one hand, the University is finding that Professor Ridd has breached the Code of Conduct in that he has made public a number of items to do with the disciplinary process. On the other hand, he is accused of breaching the Code of Conduct in that he has not referred to all of that material when he has made this particular statement.
221. The irony is even more spectacular when one considers that, in his original email to the journalist in 2016, Professor Ridd took the institutions to task for being misleading regarding the use of photographs. It seems the University found no problem with the use of those photographs because there was a footnote that led to the Wachenfeld article.
222. And yet when Professor Ridd pointed out that there was a hyperlink to all of the 2017 disciplinary process material (which would include the 19 September 2017 letter and the subsequent final censure), he is found guilty of a Code of Conduct violation for being misleading. One could be forgiven for thinking that the university was more concerned with the splinter in the eye of Professor Ridd whilst ignoring the plank in their own.
223. The University still sought to justify this finding on the basis of a breach of the Code of Conduct. I disagree.
224. Professor Ridd was expressing his opinion about the operations of JCU and expressing disagreement with decisions of JCU.
225. I find that Professor Ridd was exercising his rights pursuant to cl.14.2 and cl.14.4 of the EA when he made these comments.

The Sixteenth Finding

226. On 28 November 2017 at 7:31 PM, the Dean, Professor Marcus Lane, wrote to Professor Ridd in the following terms:

Dear Peter

In relation to your upcoming presentation at the Sydney Institute, I am prepared to approve your attendance on the same basis we have previously discussed.

Given the character of your talk, and the fact that media will be in attendance, I ask that you fully appreciate your obligations to the University, i.e. that you uphold the integrity and reputation of the University, comply with the Code of Conduct, and comply with the confidentiality directions that have been given to you.

As you have been given a final censure by reason of your conduct and comments, which include denigration of the University, its staff and key partners, if you were to make comments, or engage in conduct contrary to the Code of Conduct, including in responses to questions put to you, the University will view this as a deliberate breach of the Code and/or the confidentiality directions given to you.

It is important that the confidential and personal matters that have been addressed with you are not part of any dialogue.

I hope this is clear. If it is not, please call me.

I trust you have a safe and productive visit.

Sincerely,

Marcus

227. At 9:26 PM that same evening, Professor Ridd replied in the following terms (with my underlining):

Dear Marcus, (and Ron and whoever),

I will of course do everything you ask of me. Regarding the confidentiality direction, I presume that you realise that almost all the information about the case is already in the public domain because of the legal proceedings that I have started against JCU. The genie is out of the bottle, and neither you nor I can put it back. Fortunately for you, these offensive emails telling me what I can say and what I can't say are not in the public domain, as they obviously do not live up to public expectations of decent behaviour.

I will make a prediction that this situation will shortly go from bad to worse for JCU as the full disgusting behaviour is eventually

revealed to the public (by others). I on the other hand - what have I to lose?

I think you should consider your actions in all this and which side you want to be remembered as being part of. So far it does not look encouraging but I live in hope. I have a lot of support at JCU, and they are wondering what your hand in all this is? I have given you the benefit of the doubt but I am starting to wonder. It is not too late to do the right thing. Let's meet and I can make some suggestions. Why not also invite the college academic group leaders as well.

kind regards

Peter

228. The University found that this email was written in a manner that was threatening, insubordinate, disrespectful and contrary to the Code of Conduct. The University pointed to the salutation, the language and the fact that when asked to make submissions as to why there should not be a finding of misconduct in relation to this email, there was no contrition; merely a concession that it could have been worded better.
229. As I remarked during the course of the trial, it may be that Professor Lane was simply trying to give a friendly warning to Professor Ridd considering everything that it happened. As the Dean, Professor Lane would have been obliged to reiterate the position of the University, whether he agreed with it or not.
230. The reply by Professor Ridd is certainly disrespectful. I presume that the salutation is a “dig” at the University because Professor Ridd feels that someone else, other than the addressees, will be reading his emails given what has gone before.
231. I regard what Professor Ridd has written as having come out of a sense of frustration at the manner in which he has been treated by the University. However, this is simply Professor Ridd expressing his opinions at the decisions and processes of JCU as well as their operations.
232. Even though the text is disrespectful, curt and discourteous, it is not harassing, vilifying, bullying or intimidating as those terms are used in cl.14.3.

233. I note that the letter to Professor Ridd of 13 April 2018, uses the word “intimidating” to describe this email. There was no attempt by Counsel for the University to label the email as “intimidating” so as to enliven the limitation in cl.14.3. Having read the email a number of times, I do not find that this email could be objectively intimidating – especially when one notes the invitation at the conclusion of the email.
234. I find that Professor Ridd was exercising his rights pursuant to cl.14.2 and cl.14.4 when he wrote the email to the Dean.

The Seventeenth Finding

235. This is an extremely peculiar finding by the University. The University has found that Professor Ridd preferred his own interests, and those of the Institute of Public Affairs (“the IPA”), above the interests of the University. The University found that this was in breach of the obligations under the Code of Conduct to “*take reasonable steps to avoid, or disclose and manage, any conflict of interest (actual, potential or perceived) in the course of employment*”.
236. During the course of the trial, I repeatedly asked Counsel for the University to tell me what the conflict of interest actually was. Try as he might, Counsel was unable to do so. Yet he would not concede that this finding was not justified.
237. As I said during the course of the trial, I could understand if there was an allegation that Professor Ridd declined to fulfil his duties to the University and instead went off on a frolic for the IPA. I could also understand if there was a demonstrable conflict between the University and the IPA and Professor Ridd put the IPA above the University.
238. But there are no allegations of this sort.
239. The fact that the University would not concede that this finding was unjustified, yet made no submissions to allow me to even consider how the finding was justified, is symptomatic of the way in which they have conducted this litigation.

Interpretation of the EA

240. I have had regard to the submissions of both Counsel and the many authorities to which they referred me.
241. The University has claimed that this Court can find no comfort in authorities in the United States that deal with the concept of intellectual freedom. This is so because Australia has no underlying constitutional right to freedom of speech as expressed in the First Amendment to the United States Constitution.
242. The University submits that to describe “intellectual freedom” as a “fundamental right” has no basis in authority. The University submits that the way in which cl.14 of the EA must be interpreted is only by having reference to the words themselves; and that the exercise of intellectual freedom must be done in accordance with the Code of Conduct.
243. It seems to me that such an approach is far too narrow. One wonders why the clause finds itself in the EA at all if the approach the University is submitting is correct.
244. There is very little that is said in cl.14 that does not have a corollary in the Code of Conduct. As was pointed out earlier, parts of the Code of Conduct read as though they are an attempt to rewrite the Intellectual Freedom clause.
245. The question then becomes “*if the University is correct, why is there a clause in the EA devoted to intellectual freedom?*” It would seem that the whole of cl.14 is redundant if it is the Code of Conduct that determines how any academic or intellectual freedom is to be exercised.
246. As discussed earlier in these reasons, the concept of intellectual freedom is not recent and is extremely important as it helps to define the mission of any university. Whilst it may not be a “*fundamental right*”, it is nonetheless the cornerstone upon which the University exists. If the cornerstone is removed, the building tumbles.
247. The EA is made at the enterprise level and provides terms and conditions for the employees to whom it applies. The fact that there is a clause

devoted to intellectual freedom in the EA is an illustration of how fundamental the concept is to employees of a university.

248. It must be remembered that an Enterprise Agreement is a formal agreement that must be ratified by the FWC and cannot be changed unless the FWC gives its imprimatur. Therefore, it is the document that is the basis from which other JCU documents gain their power.
249. The University submits that the right to exercise intellectual freedom provided by cl.14 is subject to the other terms of the EA, which must be read together with cl.14, as part of the context of the clause. This includes cl.13 (which talks of the Code of Conduct), cl.8 (which defines misconduct and serious misconduct) and cl.54 (which prescribes the steps to be taken by the University to address allegations of misconduct or serious misconduct).
250. To do requires one to limit the concept of intellectual freedom and make it subservient to clauses that relate to behaviour.
251. The wording of cl.14 does not show that there is any such limitation on its power or applicability.
252. Whilst cl.14.1 speaks of the commitment of JCU to act in accordance with the Code of Conduct, it does not, in that clause, bind anyone other than the university itself with the Code of Conduct.
253. The clause puts its own limitations on intellectual freedom. The clause speaks of a “*responsibility to respect the rights of others*”. As referred to earlier in these reasons, there is no right to harass, vilify, bully or intimidate those who disagree with the views espoused.
254. The clause links the rights to intellectual freedom to the responsibilities of staff to support the University as a place of independent learning and thought where ideas may be put forward an opinion expressed freely. The clause speaks of what staff should do and what they must do.
255. When the clause already has sufficient limitations on the right to intellectual freedom, it seems incongruous to then impose other limitations that have not been expressly identified.

256. If the clause is truly meant to be subject to compliance with the Code of Conduct, such a limitation would have been spelt out in the clause itself.

The Interplay between the EA and the Code of Conduct

257. As noted earlier, the Code of Conduct is not part of the EA. Clause 13 of the EA simply notes the existence of a Code of Conduct. It also notes that the Code of Conduct can be changed after “consultation” with the joint consultative committee.
258. It seems incongruous that a document that can be changed by JCU, admittedly after consultation (whatever that means), can override a clause in an EA which can only be changed by the Fair Work Commission.
259. The fallacy of the argument is highlighted when cl.13.3 (that the Code of Conduct is not intended to detract from intellectual freedom) is also taken into account.
260. The University have made the extraordinary submission that cl.14.1 is not a statement as to the commitment of JCU, but a direction that intellectual freedom, permitted by cl.14, would be exercised in accordance with the Code of Conduct.
261. The words “*JCU is committed to act in a manner consistent with the protection and promotion of intellectual freedom within the University and in accordance with JCU’s Code of Conduct*” are plain. It is an expression of the commitment of JCU and of nobody else. To put any other interpretation on those words is simply absurd.
262. The University also make the submission that “*read together, cl.13 and cl.14 have the effect that doing that which is expressly permitted by cl.14 will not constitute a breach of the Code of Conduct. However a staff member can still breach the Code of Conduct if he or she exercises “intellectual freedom” in a manner which goes beyond that expressly permitted by cl.14 in that it involves a breach of the Code of Conduct.*”
263. That submission is saying that if there is a breach of the Code of Conduct then that means that the exercise of intellectual freedom has gone beyond that which is permitted under cl.14. With the greatest of respect to the University, that submission is around the wrong way.

264. If a person were exercising “intellectual freedom” which went beyond what was permitted in cl.14, then *ipso facto*, they would not be exercising intellectual freedom under cl.14. Whether there is a breach of the Code of Conduct is totally irrelevant. Unless the person complies with all of the sanctions in cl.14, then they cannot have the protection of that clause.
265. However, if a person were objectively to breach the Code of Conduct but the action was one that was done in the proper exercise of the rights under cl.14, then there could be no breach of the Code of Conduct. That is because the Code of Conduct cannot detract from cl.14.

Confidentiality

266. The University have submitted that the directions given to Professor Ridd (the two “speech” directions, the five “confidentiality” directions and the “no satire” direction) are lawful directions.
267. Clause 54 of the EA deals with misconduct/serious misconduct. Clause 54.1 speaks of the general principles:

54.MISCONDUCT / SERIOUS MISCONDUCT

54.1. General Principles

54.1.1 The principles of procedural fairness and natural justice will be applied to all Misconduct and Serious Misconduct processes outlined in this clause.

54.1.2 Matters involving underperformance are not considered Misconduct and are dealt with separately under Clause 42, Managing Underperformance.

54.1.3 Staff may choose to be represented in all/any meetings or discussions under this Clause 54 as provided for in Clause 11, Staff Support and Representation.

54.1.4 In the event of allegations of Serious Misconduct, the parties acknowledge that JCU may have an obligation to refer the conduct to the Crime and Misconduct Commission. The parties acknowledge that such referral may impact on the timeframes and ability for JCU to respond and investigate matters under this clause.

54.1.5 The confidentiality of all parties involved in the management of Misconduct and Serious Misconduct processes will be respected and all information gathered and recorded will remain confidential, subject to JCU's obligations:

a) to discharge its responsibilities under an Act or University policy;

b) for a proceeding in a court or tribunal; or

c) unless the person to whom the confidential information relates, consents in writing to the disclosure of the information or record; or if no consent is obtainable and such disclosure is unlikely to harm the interests of the person affected; or

d) unless the information is already in the public domain.

268. As referred to earlier, cl.54.1.5 is said by the University to justify the directions that have been given.
269. It is clear from the way in which this whole subclause is written, that it is for the benefit and protection of the employee.
270. Subclause 54.1.5 lets the employee know that if they are involved in a misconduct process, their confidentiality will be respected. It also lets the employee know that all information will remain confidential subject to the obligations of the University to do four things.
271. As I said during the trial, this sub-subclause is written in a peculiar manner. The word “or” is present at the end of exception (b) and exception (c) but is not present at the end of exception (a). Those exceptions are predicated as being “*subject to JCU's obligations*”. But only exception (a) seems to relate to the obligations of JCU.
272. The other three exceptions do not fit well with the predication of being “*subject to JCU's obligations*”. Still, it allows a person involved in the process to know that the information gathered will remain confidential unless it has to be disclosed because of a law or a university policy, or for a legal proceeding, or if the information is already in the public domain.

273. Exception (c) speaks of the person to whom the confidential information relates, consenting to its disclosure. But if no consent is obtainable, the information can still be disclosed if it is unlikely to harm the interests of the person affected. It is unclear who makes that decision as to whether the disclosure is likely or unlikely to harm those interests.
274. In any event, the wording of this sub-subclause and the context in which it is placed, make it clear that the clause is there for the protection of the staff member involved in the process so that the staff member knows what the parameters are and how the information will be dealt with.
275. There are many good reasons why there should be confidentiality in relation to disciplinary processes. As was submitted by the University, it can protect the personal information of third parties involved in disciplinary proceedings, such as complainants. It encourages disclosure during the disciplinary process knowing that there is confidentiality. Most of all, it ensures that an employer can complete their investigations without the risk of details been disclosed before the employer has been able to consider the evidence.
276. But that is not how cl.54.1.5 has been written. It has been written for the protection of the staff member. It speaks of the obligations of JCU; it does not speak about the obligations of any other person. It speaks of the exceptions to confidentiality that would allow JCU to disclose the information gathered.
277. If it were the case that a staff member had confidentiality obligations, the clause would have been written to reflect that, which reinforces the conclusion that cl.54.1.5 did not mandate confidentiality obligations on a staff member.
278. All that sub- subclause said is that the confidentiality of all parties would be respected. There is nothing in that phraseology that infers that there are obligations regarding confidentiality. The only items deemed to remain confidential are all the information gathered and recorded, presumably in the misconduct process.
279. The directions given by the University as to confidentiality have nothing to do with any information that has been gathered or recorded for the purpose of the misconduct process.

280. The First Confidentiality Direction simply referred to cl.54.1.5 but all that had happened was that there were allegations made. The construction of that sub- subclause must relate to information gathered and recorded. At that time, there had been no information gathered so there was nothing to keep confidential.
281. The Second Confidentiality Direction speaks of “confidentiality obligations” which, for the reasons previously given, do not exist.
282. The Third Confidentiality Direction simply asserts that “these matters are confidential”. There is a direction to keep the details of the allegations and all matters relating thereto, including the 2016 censure, strictly confidential. It is difficult to label the censure as “information gathered and recorded” because the censure is a conclusion. In any event, there is no obligation by the staff member to keep the matter confidential.
283. The Fourth Confidentiality Direction speaks of the expectation that Professor Ridd will keep all matters relating to the disciplinary process and this censure strictly confidential. It also speaks of the disciplinary process remaining strictly confidential. None of those statements is consistent with the wording of cl.54.1.5.
284. The Fifth Confidentiality Direction speaks of keeping “all matters relating to this disciplinary process strictly confidential including the existence of the disciplinary process...” The “process” is certainly outside of the wording of the clause as it is not information gathered and recorded in the process. In any event, there is no obligation by the staff member to keep the matter confidential.
285. I find that there was no power given by cl.54.1.5 to the University to make any of the confidentiality directions that it made.
286. There may still be an argument that there was a power at common law for the University to make those directions, notwithstanding that the directions point to the power stemming from cl.54.1.5. But this argument was not pressed by the University during the trial.
287. The real question is whether giving those directions contravenes the intellectual freedom guaranteed by cl.14, even if there were such a power.

288. As has been previously explained, the constraints upon the expression of the rights conferred by cl.14 are the constraints that are within cl.14 itself. The right to express opinions about the operations of JCU (cl.14.2) and the right to express disagreement with university decisions and with the processes used to make those decisions (cl.14.4) are subject only to the constraints within that clause.
289. Overall therefore, there is no power whether at common law or pursuant to cl.54.1.5, that overrides the rights given to a staff member pursuant to clause 14 of the EA.

The Other Directions

290. The two speech directions and the no satire direction were designed to limit what Professor Ridd said or did.
291. For the reasons I have previously given, those directions were contrary to the rights that Professor Ridd had to express his opinion about the operations of JCU or to express disagreement with the decisions of the University.
292. The directions could not limit what Professor Ridd said or wrote because they were contrary to the limits imposed on intellectual freedom by cl.14.

Conclusions

293. The fundamental error made by the University is one that pervades their conduct throughout the whole of their interaction with Professor Ridd.
294. The University has assumed that the Code of Conduct takes precedence over cl.14. That is why there is no reference to cl.14 in any of the reasons given for the findings.
295. It is easy to understand why this fundamental error has been made. If one truly believes that the Code of Conduct is the lens through which all behaviour must be viewed, then cl.14 is simply superfluous and can be ignored. But this is not the reality of the situation. It is actually cl.14 that is the lens through which the behaviour of Professor Ridd must be viewed.
296. To use the vernacular, the University has “played the man and not the ball”. 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. It may not always be possible to act collegiately when diametrically opposed views clash in the search for truth.

297. Many aspects of the Code of Conduct cannot sit with the concept of intellectual freedom and certainly contravene cl.14. For example, the Code speaks of the need to “*value academic freedom, and enquire, examine, criticise and challenge in the collegial and academic spirit of the search for knowledge, understanding and truth*”. The University has denounced Professor Ridd because his enquiry, examination, criticism and challenge was not, in their view, done in the collegial and academic spirit. But there is no need for such enquiry, examination, criticism or challenge to be done that way under the rights conferred upon Professor Ridd by cl.14.
298. The University have been at pains to say that it is not what Professor Ridd has said, but rather the manner in which he has said it, that is the underlying reason for the censure, the final censure and the termination. But the University has consistently overlooked the whole of what has been written. They have concentrated on small, almost incidental parts of what has been said and then used the Code of Conduct to pass judgement on those small parts, with the intention that the flow on effect of that judgement would impugn the whole of what Professor Ridd has written.
299. The Code of Conduct is subordinate to cl.14 of the EA. And what is said by Professor Ridd must always be looked at in its whole context. The University have continually “cherry-picked” portions of the writings of Professor Ridd and said “that is not the exercise of intellectual freedom”. But it is the whole of what is written that must be looked at rather than excerpts taken out of context.
300. If the whole of what is said is objectively an exercise of intellectual freedom, then the protections of cl.14 apply. As was said earlier, in the search for truth, some people may be offended, even insulted. Sometimes, it is just not possible to be “collegial” in the search for truth. But if what is occurring is in furtherance of intellectual freedom, then cl.14 protects it.

301. It is only when behaviour is not covered by cl.14, that the Code of Conduct can apply. 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. That is at the heart of intellectual freedom.
302. That is why intellectual freedom is so important. It allows academics to express their opinions without fear of reprisals. It allows a Charles Darwin to break free of the constraints of creationism. It allows an 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. And that, at its core, is what higher learning is about. 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.
303. In light of the above, I make the following rulings:
- a) The first finding made by the University was unlawful because it breached the rights that Professor Ridd had pursuant to cl.14.
 - b) The censure given to Professor Ridd was unlawful as it contravened cl.14 of the EA.
 - c) The First Speech Direction was unlawful in that it sought to interfere with the rights that Professor Ridd had pursuant to cl.14.
 - d) The Second Finding made by the University was unlawful because it breached the rights that Professor Ridd had pursuant to cl.14.
 - e) The First Confidentiality Direction was unlawful because the University had no power to give that direction, and even if it did have the power, such a direction was in contravention of the rights that Professor Ridd had pursuant to cl.14.
 - f) The Third Finding made by the University was unlawful because it breached the rights that Professor Ridd had pursuant cl.14.
 - g) The Second Confidentiality Direction was unlawful because the University had no power to make such a direction, and even if it

did have the power, such a direction was in contravention of the rights conferred on Professor Ridd by virtue of cl.14.

- h) The Fourth Finding made by the University was unlawful because it breached the rights of Professor Ridd had pursuant to cl.14.
- i) The Fifth Finding made by the University was unlawful because it breached the rights of Professor Ridd given to him by cl.14.
- j) The Sixth Finding made by the University was unlawful because it breached the rights of Professor Ridd given to him by cl.14.
- k) The Seven Finding made by the University was unlawful because it breached the rights that Professor Ridd had pursuant to cl.14.
- l) The Eighth Finding made by the University was unlawful because it breached the rights that Professor Ridd had pursuant to cl.14.
- m) The Third Confidentiality Direction was unlawful because the University had no power to make such a direction, and even if it did, such a direction contravened the rights of Professor Ridd pursuant to cl.14.
- n) The Second Speech Direction was unlawful in that it sought to interfere with the rights Professor Ridd had pursuant to cl.14.
- o) The Fourth Confidentiality Directions was unlawful because the University had no power to make such a direction, and even if it did, such a direction contravened the rights of Professor Ridd pursuant to cl.14.
- p) The no satire direction was unlawful in that it sought to interfere with the rights Professor Ridd had pursuant to cl.14.
- q) The Fifth Confidentiality Direction was unlawful because the University had no power to make such a direction, and even if it did, such a direction contravened the rights of Professor Ridd pursuant to cl.14.
- r) The Second Censure was unlawful because it contravened cl.14 of the EA.

- s) The Ninth Finding made by the University was unlawful because it related to the breach of a direction which was of itself unlawful.
- t) The Tenth Finding made by the University was unlawful because it related to the breach of a direction which was of itself unlawful.
- u) The Eleventh Finding made by the University was unlawful because it related to the breach of a direction which was of itself unlawful.
- v) The Twelfth Finding made by the University was unlawful because it breached the rights that Professor Ridd had pursuant to cl.14.
- w) The Thirteenth Finding made by the University was unlawful because it breached the rights the Professor Ridd had pursuant to cl.14.
- x) The Fourteenth Finding made by the University was unlawful because it related to the breach of a direction which was of itself unlawful.
- y) The Fifteenth Finding made by the University was unlawful because of breached the rights that Professor Ridd had pursuant to cl.14.
- z) The Sixteenth Finding made by the University was unlawful because it breached the rights that Professor Ridd had pursuant to cl.14.
- aa) The Seventeenth Finding made by the University was unlawful because it had no substance whatsoever, and even if there were the slightest scintilla of evidence, it was contrary to the rights that Professor Ridd had pursuant to cl.14.
- bb) The termination of Professor Ridd's employment was unlawful because it punished Professor Ridd for conduct that was protected by cl.14 of the EA.

304. I invite the parties to make submissions as to the issue of declarations and penalty. I will adjourn the further hearing of the matter to a date to be fixed.

I certify that the preceding three hundred and four (304) paragraphs are a true copy of the reasons for judgment of Judge Vasta
Date:16 April 2019.