



22 June 2018

Professor Stuart McCutcheon
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Sent by Email

Tēnā koe Professor McCutcheon,

The Tertiary Education Union (TEU) nationally is calling on you to immediately stop silencing debate at the University of Auckland.

Change management documents now include the following statement:

Staff may be contacted by the media for comment on the Proposal. However, in these circumstances, your obligation is to provide your feedback (including any concerns you may have about the Proposal) directly to the Review Committee in accordance with the process set out in the Proposal. This obligation is not overridden by academic freedom, which must be exercised within the law (Section 161 (2) (a) of the Education Act 1989). Staff have legal obligations relating to good faith in employment (which require them to be active and constructive in maintaining a productive employment relationship), and release of this information would be inconsistent with **contractual obligations of loyalty and fidelity owed to the Vice-Chancellor, as the employer**. In return, the employer has obligations to consult with staff, which he is doing through this process.

The statement contradicts and undermines the very core of what universities are about, as set out in:

- The mission of the University of Auckland
- Policies of the University of Auckland
- New Zealand legislation and custom
- Domestic and international conventions fundamental to tertiary education

Added to this, your silencing of debate through use of this statement is contrary to good employment practice and sound decision-making. Further, the statement violates the responsibility you have to provide “academic leadership along with effective management, and for leading strategic planning and directing resource allocation.”

I will deal with each of these matters in turn.

Undermining and contradicting the mission of the University of Auckland

The University of Auckland's mission is to be "A research-led, international university, recognised for excellence in teaching, learning, research, creative work, and administration, for the significance of its contributions to the advancement of knowledge and its commitment to serve its local, national and international communities."

By prohibiting proper public debate on the way the university is run, you are failing in fulfilling your mission to ensure that knowledge is advanced. Further, your rejection of public debate stymies the University of Auckland's ability to demonstrate a "commitment" to "local, national, and international communities".

Your actions in recent change management processes undermine the very values you are charged with advancing as vice-chancellor. Requiring staff to desist from engaging in proper debate about matters that affect students, communities, and their ability to fulfil the purpose of the university at which they work contradicts one of your core values: "Creating a diverse, collegial scholarly community in which individuals are valued and respected, academic freedom is exercised with intellectual rigour and high ethical standards; and critical enquiry is encouraged."

Fostering collegiality is at the heart all we do as academic and general staff - at every institution. This is founded on trust and open debate. You are attempting to stifle the crucial checks and balances that ensure universities are respected as places of critical and open inquiry.

Undermining and contradicting the policies of the University of Auckland

Many of the University's own "Review and Restructure Policy and Procedures" are contradicted by your actions. However, I am going to focus here on three of the principles contravened by your efforts lock down public debate around change management:

- A fair and transparent process including impacts on Māori and equity groups be considered as appropriate
- Minimum disruption to business-as-usual is ensured
- Recognition of the University's strategic objectives for Māori and the Treaty of Waitangi/Te Tiriti o Waitangi

There is no transparency for any group in the university community if staff, students, and other stakeholders are prohibited from speaking about the change management proposal. Business-as-usual for the University of Auckland is set out in the mission referred to above. Any move to silence or constrain collegial activity and critical inquiry entirely disrupts "business-as-usual".



Te Tiriti o Waitangi is a document that requires acknowledgement of tino rangitiratanga, and sets out the importance of reciprocity and strong relationships. These cannot be observed and maintained if staff are not permitted to talk with iwi and hapū about change processes being undertaken at the University of Auckland.

The University of Auckland's "Media, Public Communication and Statements Policy" notes that members of the university may comment publicly in one of four roles, including:

- a) As an academic commenting publicly on a matter related to their academic area of research and expertise and their role at the University"

Note that this policy allows for members of the University to comment on 'their role at the university'. Many matters concerning the management and daily activity of the university are germane to the role academics hold. It follows, therefore, that academics may comment on matters pertaining to change management.

New Zealand legislation and custom

The actions you have taken are an affront to the legislated role of critic and conscience and the right and responsibility of academic freedom.

The University of Auckland community has the right to question and test any 'received wisdom' including that of senior management:

- (a) the freedom of academic staff and students, within the law, to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions ([Education Act 1989](#))

Added to this staff are protected in debating matters relating to teaching:

- (c) the freedom of the institution and its staff to regulate the subject matter of courses taught at the institution ([Education Act 1989](#))

The University of Auckland's own [Critic and Conscience group](#) notes that "a university is not worthy of the title unless it performs the role of critic and conscience". Any attempt to silence debate about matters of importance to the university infringes on this requirement.

The Critic and Conscience group goes on to note:

"looking at the language in the Act, the freedom of research and to be controversial set out in section 161(2) and recorded as belonging to individuals is something that operates not only in the context of the relationship between the state and the academic but also in that between the employing institution and the academic. This is because section 161(4) notes that university councils and chief executives are required to give effect to the intention of Parliament when performing their obligations. So they are required to maintain and enhance the individual freedoms that are component parts of academic freedom."



Academic freedom must be conducted ethically and with integrity; and 'within the bounds of law'. The accepted norm here is that laws around public speech (defamation, libel, harassment, hate speech) and privacy for individuals would constrain the use of academic freedom. For example, the [University of Canterbury's academic freedom policy](#) notes:

Academic Freedom – academic freedom pertains to any form of expression (including communication and performance). Academic freedom must never be interpreted as a right to act unethically, intimidate or discriminate against those who hold dissenting or nonconforming views or opinions.

Domestic and international conventions fundamental to tertiary education

As noted by [Academic Freedom Aotearoa](#) “...academic freedom is important, and that we, as academics and students, need to work to protect it. Academic freedom is an important pillar of our education system and of our democracy. Academics and students have both a right to academic freedom and a duty to keep it alive by continuing to always question and test received wisdom.”

In an [op-ed in 2016](#), you said:

“The academic freedom to which he refers is the statutory right of academics to teach and assess students in the manner they consider best promotes learning, to engage in research, and to advance controversial or unpopular opinions.”

Yet your actions violate the very right you claim to hold dear – the right of academics to state ‘controversial or unpopular opinions’.

Staff working in tertiary education are not responsible for the maintenance of a ‘business’ rather their loyalty lies in protecting and advancing the broader mission of higher education. This is noted in **the [UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel](#)**, 1997. The recommendation opens by “[r]ecognizing the decisive role of higher education teaching personnel in the advancement of higher education, and the importance of their contribution to the development of humanity and modern society...”

In other words, it is accepted internationally that staff will challenge their own institutions in order to ensure the ‘advancement of higher education’ and to contribute to the ongoing development of ‘humanity and modern society’.

The [Magna Charta Universitatum](#) notes that the necessary cultural, scientific, and technical development of the world we inhabit is built in ‘centres of culture, knowledge and research as represented by true universities’ - and that to fulfil their role, ‘freedom must be available to all members of the university community’.

Your actions are in complete contradiction of this international statement.



Taking action to stop staff from speaking publicly about matters affecting them and their colleagues also breaches individual rights to freedom. Note that the UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel, 1997 says:

26. Higher-education teaching personnel, like all other groups and individuals, should enjoy those internationally recognized civil, political, social and cultural rights applicable to all citizens. Therefore, all higher-education teaching personnel should enjoy freedom of thought, conscience, religion, expression, assembly and association as well as the right to liberty and security of the person and liberty of movement.

You have also contradicted the civil rights of your employees as set out in the [Bill of Rights Act](#). Section 14 of that act states:

Freedom of Expression

Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.

And section 17 states:

Freedom of Association

Everyone has the right to freedom of association.

The right to publicly or privately express an opinion on any change proposal that you may develop is a fundamental right of all citizens of New Zealand/Aotearoa. Your attempt to proscribe staff from sharing the information with colleagues and other communities would be a breach of their rights to freedom of association.

The rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. A silencing of criticism of management decisions in the manner you have proposed does not meet this test, and is not authorised by any statute which deals with your functions and obligations.

Nāku iti noa, nā



Sandra Grey

NATIONAL PRESIDENT

