

23 July 2018

Professor Stuart McCutcheon
Vice Chancellor
University of Auckland
Private Bag 92019
Auckland 1142

Sent by email

Tēnā koe Professor McCutcheon,

1. I refer to your letter dated 10 July 2018 in reply to my letter dated 22 June 2018.
2. You have justified the increasing efforts to silence criticism and quell debate by referring to the Employment Relations Act 2000 (ERA) and the employment agreement. You have also referred to case law, but as you have not identified the cases upon which you rely I cannot respond on that point.
3. I deal first with the ERA. Although the ERA imposes good faith obligations on employer and employee parties in their dealing with one another, nothing in those obligations prevents a party to an employment relationship communicating to another person a statement of fact or opinion reasonably held about an employer's business. It is this provision (section 4(3)) that protects the right of employees to communicate freely with one another and with outsiders about the University and its business. The provision also protects the right of employees to organise collectively to oppose change proposals or restructuring proposals or any other proposals advanced by you or by others in the University.
4. So as to be quite clear with you about this issue, I will state to you clearly now that union members and others in the University are entitled to communicate about and organise against your proposals with others directly affected by them proposals; with persons not directly affected or not affected at all; and with other unions and individuals in civil society at large (including groups overseas). Your claim that the ERA prevents this or authorises you to prevent it, is entirely baseless.
5. Your views as to s161 of the Education Act 1989 are also rejected. Nothing in that Act authorises you or anyone else at the University to threaten union members who criticise the University's proposals; or to monitor Facebook pages and threaten staff who express dissenting views therein; or to issue warnings and threaten dismissals on the basis or criticisms expressed. Employees are entitled to criticise, an entitlement that includes a right to organise such criticism collectively.

6. Your letter essentially expresses the view that (i) the collective agreement prohibits public criticism and collective organising against University proposals and (ii) such criticism and collective criticism is caught by the phrase “within the law” in s161 of the Education Act 1989. On this basis, you claim first that criticism is contrary to the employment agreement and second that because of that it is “contrary to law” and therefore in breach of s161. These arguments have been relied upon by your functionaries to threaten staff with disciplinary action for matters are trivial as providing a link on a Facebook page to a letter published in the New Zealand Herald.

7. You are quite wrong in this approach. The employment agreement does not prohibit either criticism of the Vice-Chancellor and their plan, or collective organising and collective criticism having the same purpose. It does not authorise threats of dismissal against those who talk to the media or engage in public comment. It does not authorise Facebook monitoring or indeed any monitoring of any kind. Contrary to your views, the employment agreement protects the right to criticise and organise, and the union and its members will continue to do so. Your views on academic freedom are too narrow and we do not accept them. The collective agreement goes so far as to recognise a right of union members to participate collectively in the academic governance of the University. That is far cry from the restrictive and intimidatory approach which you are increasingly being identified with. The assertion that the employment law duty of “fidelity” and “loyalty” can be relied upon to silence public comment and to prohibit employees from discussing and organising around your plans is deeply misconceived.

Nāku noa,



Dr. Sandra Grey
Te Tumu Whakarae
National President

