

Academic Freedom: Law and Ethics

The legislation

In New Zealand, the concept of academic freedom is enshrined in legislation. The Education and Training Act 2020, requires universities to “accept a role as critic and conscience of society.” The legislation mentions “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.” This is often the part of the law that causes controversy and debate.

The Act also talks about the freedom of academic staff and students to engage in research, and the freedom of the institution and its staff to regulate the subject-matter of courses taught at the institution. There is also the freedom of the institution and its staff to teach and assess students in the manner they consider best promotes learning.

Nevertheless, the issue of what academic staff and students can and cannot say may be a difficult one. It is a question of interpretation.

How should we interpret what the Education and Training Act?

The Legislation Act tells us how to ascertain the meaning of legislation. It says that the meaning of legislation must be ascertained from its text and in the light of its purpose and its context. The Education and Training Act provides that academic freedom is to be preserved and enhanced. That intention is very clear. Academic freedom must not only be maintained, but also enhanced. Certainly, it should not



be restricted. Academic freedom is inseparable from a university’s role as critic and conscience of society. There is a statutory responsibility for universities to protect and exercise academic freedom. The Act speaks of 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 opinion.

The limitations

Clearly, an academic does not have an untrammelled right to say what they like, to whom they like on anything that they like. “Within the law” are the operative words.

The limitations on academic freedom are found both inside and outside of the Education and Training Act. The Act provides that academic freedom must be exercised consistently with the maintenance of ‘the highest ethical standards’.

High ethical standards involve public scrutiny to maintain them. Accountability and the proper use of resources is also required.

Essentially, it is a question of both law and ethics.

The exercise of academic freedom must be done within the law. The criminal law for example, immediately springs to

mind. There are prohibitions, for example, about obscenity, hate speech, contempt of court and making threats or inciting violence.

There are other statutes, too, that are relevant such as the Defamation Act, Summary Offences Act, the Harmful Digital Communications Act and the Human Rights Act. Both civil and criminal that place limits on academic freedom.

In civil law, for example, there is the possibility of an action for defamation. Defamation protects against unjustifiable attack. It happens when an untrue or misleading statement that harms reputation is made (either verbally or in writing) about a person or organisation. A defamatory statement is one that exposes another person to hatred or contempt or ridicules them. It may make others think less of them.

There is sometimes a fine line between the protection of reputation and the freedom of expression as provided for in the New Zealand Bill of Rights Act 1990.

Defamatory statements may make an employer vicariously liable and liable for the payment of damages.

Ethics

The limitations on academic freedom are imposed not only by law but also by ethics. This might

involve, for instance, fairness and reasonableness in dealing others. Ethical behaviour requires an academic to have some reasonable foundation for commentary. The rules of natural justice say that it is only fair that if a disparaging comment is made about another person, they should have a reasonable opportunity to respond.

Academic freedom does not mean that an academic can act with impunity. It does not entitle academics to break the law, defame others, breach contracts or express views that are ignorant, professionally ill informed, incompetent, or dishonest. It does mean that academics must obey very high ethical standards.

Employment Relations Act

The ERA contains tools that may help us uphold academic freedom. We know, for instance, that academics in precarious work may be at risk if they criticise their employer. They may find themselves without an income when their “casual” or fixed term appointments are not renewed. Casual and fixed term academics are often early career academics with little economic or industrial power. The ERA enables us to challenge these arrangements and we frequently do.

When there is bullying, harassment, silencing, humiliation, or dismissal, we can use personal grievance procedures for unjustified disadvantage or unjustified dismissal. We can use these tools when people have courage and knowledge of their rights. Courage and conviction are needed, otherwise the available tools are useless. Without these things there will be a void and academic freedom will be further eroded.

Precarious work at AUT

There has been steady creep in precarious employment in our sector.

Interim findings were recently published from the Precarious Academic Work Survey (PAWS), carried out by UOA, UOW, TEU, NZUSA, TEAGA, and others. The survey focused on temporary casual and fixed-term employees, and the interim findings discuss the causes, extent of, and problems created by these practices in our sector. Some key survey findings are highlighted and discussed below, followed by actions that we can take to tackle these problems together at AUT.

Some key findings of the PAWS survey:

1. Temporary staff are temporary for long periods, despite wanting academic careers:

“Almost two-thirds of survey participants had been precariously employed two years or more” (p. 23)

“Only 26.4% of survey participants felt it was unlikely that they would pursue a career in academia” (p. 12).

2. There is a lack of opportunities for professional development:

“Nearly half (44.9%) of all survey participants said that they had no access to any form of professional development in their role(s)” (p. 12).

3. Unrecognised and unpaid work is endemic in our sector:

“Almost three-quarters of precarious primary instructors reported working more hours than they were paid for” (p. 23)

“Only 11.3% of participants said that they felt their employment agreement(s) in the last 12 months

always accurately accounted for the hours they worked” (p. 10).

4. Temporary work puts people in a ‘precarious’ or dependant position:

“80.1% of participants affected by discrimination, bullying, or harassment in their workplace said a fear of repercussions stopped them from speaking out at least some of the time” (p. 18).

How is precarious work affecting us at AUT?

These survey findings will resonate with precarious workers at AUT. Being temporarily employed for long periods is problematic because our staff lose out on benefits (including for example additional leaves made available during COVID-19), professional development, income security, and job security for years. Generally, pay increases come from union-negotiated increases to the pay scales. Further, we have seen that departments are able to let go of and re-hire temporary staff on ‘worse’ contracts. As we work in a small sector, saying no to worse conditions can mean having no job at all.

Regular performance of unpaid work – also known as ‘wage theft’ – is another major issue for both temporary and permanent staff at AUT. Unpaid work encourages higher workloads for all staff, and greater use of temporary employment by the university. Vulnerability to wage theft is also exaggerated in our sector because the future employment of temporary tutors, teaching assistants, and lecturers is affected by student reviews. This places pressure on temporary staff to go the extra mile, avoid complaining, and threatens their academic freedom.

How can we tackle this?

MP Chloe Swarbrick recently spoke at the 2021 Stand Up Conference about how unions and their members can effect change. Her two key ingredients are to: 1) be persistent with your message, and 2) be well informed.

We need to do this together:

- At AUT we have an hourly paid/fixed term TEU rep – reach out for questions, support, and discussion about what we can do at AUT to build a more empowered community of hourly paid and fixed term employees: tanya.ewertowska@aut.ac.nz .

- We have two key upcoming events for hourly paid/fixed term staff at AUT branch:

We have a survey planned, to identify key areas for improvement for hourly paid and fixed term staff at AUT. This survey will form part of the basis for

ongoing work. Our branch is hosting a workshop on insecure work on 22 June 2022. This will be facilitated by our hourly paid/fixed term rep, and TEU Organiser from Southland, Daniel Benson. Ask questions and learn about legitimate and illegitimate employment arrangements and what you can do about them.

- AUT TEU has regular events and branch meetings. Come to these and share your experiences and concerns, to build more widespread awareness about practices at our university.

- TEU has an ongoing campaign called secure work = better futures. The campaign is building awareness about insecure work (e.g. through posterage) and working to unionise temporary staff. TEU offers free union membership for those earning less than \$15,000 per annum.

We also need to improve coverage of hourly paid and fixed term staff at AUT:

- Make sure you are a member of TEU – hourly paid and fixed term staff need to re-sign up at the start of each employment agreement.

- Talk to your hourly paid and fixed term co-workers about joining and participating in TEU. With higher numbers of hourly paid/fixed term staff, we have more leverage to improve conditions. Being part of TEU also provides other benefits and opportunities:

<https://teu.ac.nz/join/top-reasons-to-join-teu>

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We stand in Solidarity

I am sure all TEU members have been as horrified as I am with the events that have unfolded where Russia has invaded the peaceful sovereign nation of Ukraine. As a member of Education International we fully support their statement:

“Ukraine: Education unions from around the world stand in solidarity with the people of

Ukraine and have condemned the Russian invasion of the country.”

To our members from Ukraine and all those who have links to Ukraine who are in Aotearoa New Zealand we send aroha and awahi as we can only imagine the distress and concern you must be feeling. And to the people of Ukraine, who have shown such solidarity and strength we say kia kaha – we stand with you.



by
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