

2 May 2018

Strictly Private and Confidential

Professor Peter Ridd
College of Science and Engineering
James Cook University

Dear Professor Ridd

Employment with James Cook University - Final determination on termination of your employment

I refer to:

- (a) your meeting with the Deputy Vice Chancellor, Division of Tropical Environments and Societies, [REDACTED] and the Director HRM, Mr [REDACTED], on 8 February 2018 at which you were provided with a letter from [REDACTED] detailing allegations of serious misconduct that the University required your response to (**Allegations Letter**);
- (b) your response dated 23 February 2018 submitted through your solicitors (**Response**);
- (c) the letter of 13 April 2018 from the Deputy Vice Chancellor, Division of Services & Resources (**DVC**), [REDACTED] to you, in which you were notified that [REDACTED] had determined that you have engaged in serious misconduct and that [REDACTED] termination of your employment is an appropriate sanction (**Preliminary Determination**); and
- (d) your submissions dated 20 April 2018 submitted through your solicitors (**Submissions**).

I have reviewed all of the evidence, including your Submission, and taken into account all relevant matters.

The purpose of this letter is to confirm that I have made a final determination, pursuant to clause 54.5 of the *James Cook University Enterprise Agreement 2013-2016* (**Enterprise Agreement**), to terminate your employment for serious misconduct.

As you are aware, the DVC found that you have engaged in serious misconduct, including denigrating the University and its employees, and not acting in the best interests of the University. That conduct is a serious breach of the Code of Conduct and contrary to the interests of the University.

In particular, you have:

- (a) deliberately published, or caused to be published, comments that are untrue, misleading and/or not full and frank, including by perpetuating your personal view that the University has taken disciplinary action against you because you have expressed a particular scientific view—a representation that is patently false given:
 - (i) you have been told on numerous occasions that the University is not concerned with you expressing your scientific views; and
 - (ii) the University's concern is, and continues to be, that whatever scientific view you express you comply with your obligations as an employee of the University, including maintaining professional standards and complying with the Code of Conduct; and
- (b) failed to take reasonable steps to manage or avoid a conflict of interest between your personal interests and the interests of the Institute of Public Affairs, and the interests of the University as your employer; and
- (c) deliberately and repeatedly breached confidentiality directions by publishing and disclosing confidential information.

Collectively and individually, your conduct has eroded the necessary trust and confidence required for the continuation of the employment relationship.

As your employment is being terminated for serious misconduct, your last day of employment is today, 2 May 2018.

Further details of my final determination are set out below.

Background

The University's concerns with respect to your conduct are set out in the Allegations Letter.

In her Preliminary Determination, the DVC found that you have engaged in a pattern of conduct by:

- (a) deliberately breaching confidentiality directions provided to you by the University;
- (b) deliberately denigrating the University and its employees; and
- (c) not acting in the best interests of the University.

The DVC found that your conduct is a serious breach of the Code of Conduct and contrary to the best interests of the University, and that collectively and individually, your conduct is destructive of the necessary trust and confidence for the continuation of the employment relationship.

Findings on the allegations

The DVC's findings on the allegations of serious misconduct are set out in the attachment to the Preliminary Determination.

In summary, the DVC found that you have:

- (a) deliberately published, or caused to be published, comments that are untrue, misleading and/or not full and frank, regarding the disciplinary process, including:
 - (i) continuing to perpetuate the view that the University has taken disciplinary proceedings against you because you have expressed a particular scientific view when that is a deliberate misrepresentation of what occurred, through:
 - A. comments published by you on your Go Fund Me website (Allegation 4.1);
 - B. comments published by you on the Wordpress Website (Allegation 4.2);
 - C. the comments attributed to you in The Australian Article (Allegation 4.3);
 - D. the comments attributed to you in The February Australian Article (Allegation 4.4); and
 - E. in comments contained in the Flyer (Allegation 4.5);
 - (ii) making several comments about the University's review of your email account that suggest you were denied procedural fairness in the 2017 disciplinary process, in circumstances where those comments are denigrating of the University and inconsistent with what has occurred, including:
 - A. a comment in the February Australian Article (Allegation 5.1);
 - B. comments published by you on your Wordpress website (Allegation 5.2); and
 - C. comments published in the Flyer (Allegation 5.3)
- (b) breached a lawful and reasonable direction to provide a copy of your correspondence with *The Australian* (Allegation 1);
- (c) deliberately breached, on multiple occasions, lawful and reasonable confidentiality directions issued to you by the University, including by:

- (i) disclosing confidential information regarding the 2016 and 2017 disciplinary processes to *The Australian* (Allegation 1);
- (ii) publishing a suite of documents relating to the 2016 and 2017 disciplinary processes on your Wordpress website (Allegation 2.1);
- (iii) disclosing confidential information in the following further instances:
 - A. in providing to ██████████ a folder of documents that were confidential documents relating to the 2016 and 2017 Disciplinary Processes, and which you knew to be confidential (Allegation 3.2);
 - B. through an article published by Professor Emeritus Don Aitkin on the Cairns News website on 29 January 2018, which refers to you writing to him about the misconduct processes (Allegation 3.4); and
 - C. in the contents of a Flyer being distributed on the University campus which refers to the 2017 Disciplinary Process (Allegation 3.5)
- (d) denigrated your colleague Professor ██████████ in republishing comments that were previously found to be denigrating towards Professor ██████████ (Allegation 2.2);
- (e) trivialised, satirised or parodied the University taking disciplinary action against you with respect to an email sent to a student of the University (Allegation 6);
- (f) perpetuated a view that you were not allowed to talk to your wife about the disciplinary process, when in fact this was contrary to what you were told by verbally and in writing, and in doing so you published to outsiders comments that are untrue, misleading and/or not full and frank (Allegation 7);
- (g) failed to treat the Dean of your College with respect and courtesy regarding an email you sent him on 28 November 2017 (Allegation 8); and
- (h) failed to take reasonable steps to avoid or manage a conflict of interest between your own interests and the interests of the Institute of Public Affairs, and the interests of the University (Allegation 9).

The DVC found that Allegations 3.1 and 3.3 were unsubstantiated. Those allegations related to:

- (a) discussions you had with ██████████ Dean of Graduate Research Studies, about the disciplinary processes; and
- (b) the February Australian Article and whether you disclosed confidential information.

I have reviewed those findings, and the evidence available to the DVC, including the Allegations Letter and the Response.

I am satisfied that it was open to the DVC to make her findings on each allegation that was substantiated, and the two allegations that were unsubstantiated.

Your Submissions

Your Submission raised a number of issues on the proposed termination of your employment.

First, the Submission says that the "bulk" of the findings in the Preliminary Determination are the subject of your Court proceeding, that you had reasonable grounds for disputing the confidentiality directions given to you by the University, and that as a result, you cannot be said to be wilfully and knowingly conducting yourself in breach of your obligations as an employee of the University.

Second, that there has been no "actual harm" to the University by your conduct.

Third, for those reasons and having regard to your length of service and teaching contributions, the appropriate disciplinary sanction is a censure.

The Submission then goes on to state, as the "primary position" that:

- (a) the DVC did not have the power to make the Preliminary Determination;
- (b) alternatively, the bulk of the findings are the subject of factual and legal disputes in your Court proceeding, and if those matters are determined in your favour, the findings in the Preliminary Determination will fail (as will the Final Censure);
- (c) the balance of the findings (not subject to dispute in the Court proceeding) are of themselves incapable of constituting serious misconduct, particularly in the absence of the Final Censure (if set aside);
- (d) the DVC failed to give adequate (and in some cases any) reasons in relation to arguments made by you in your Response; and
- (e) the appropriate disciplinary sanction, if any, is counselling or a censure.

I have considered those Submissions. So far as it is necessary, I have set out my response to those Submissions below.

The power of the DVC to make the Preliminary Determination

Your Submission states that the DVC did not have the power to make the Preliminary Determination alleges that the DVC acted "ultra vires". I understand this to be a submission that ██████████ did not have authority to make a decision under clause 54.3.6 of the Enterprise Agreement.

The Submission does not explain on what basis you say that the DVC did not have the power to make her Preliminary Determination.

I am satisfied that the DVC had authority to make the decision under clause 54.3.6 of the Enterprise Agreement.

Matters the subject of dispute in your Court proceeding

Your Submission asserts that the bulk of the DVC's findings are the subject of factual and legal disputes in your Court proceeding, and if those matters are determined in your favour, the findings in the Preliminary Determination will fail.

Your Submission also asserts that because of this, you cannot be said to be acting deliberately and knowingly in breach of your obligations as an employee of the University.

Your Submission does not identify what findings you have referred to or provide any basis for me to assess this assertion, nor how it is that this is relevant to my consideration of a final determination on termination of your employment.

Nevertheless, I have considered the issue.

I note that several of the DVC's findings relate to conduct for which you were censured in the Final Censure issued by the Senior Deputy Vice Chancellor (SDVC) on 21 November 2017 (**Final Censure**). These include:

- (a) the findings relating to breaches of confidentiality;
- (b) the findings relating to conduct that is denigrating of the University, in particular making false and/or misleading statements about the disciplinary process, perpetuating a view about the nature of the disciplinary proceedings that does not reflect what happened; and
- (c) the findings relating to conduct that is denigrating of your colleagues, in particular your denigration of Professor [REDACTED]

I am satisfied that the University is entitled to rely on the Final Censure in respect of this disciplinary process, including the directions given to you about maintaining the confidentiality of the disciplinary process and the expectations clearly set out in the Final Censure regarding your behaviour and compliance with the Code of Conduct.

The Final Censure remains valid and operational. It has not been set aside by a Court nor has the University been restrained by a Court from relying upon it. You have remained an employee of the University at all times relevant to your conduct. That position is not altered by your Court proceeding.

In any event, I have also had regard to the conduct giving rise to the 2016 censure as well as the censure given to you and its related directions (**2016 Censure**). These were not subject to any challenge and remain in place.

Accordingly, you remain subject to the expectations that apply to all employees of the University, including the obligations to comply with the Code of Conduct and lawful and reasonable directions given to you.

Lack of adequate reasons

Your Submission complains of a lack of adequate reasons from the DVC, suggesting that in "some cases" no reasons were given, in relation to arguments you made in your Response.

The Submission does not provide any detail to support this assertion.

I have reviewed the Preliminary Determination.

It is 19 pages long, including its attachment. The DVC has dealt in detail with each of the nine allegations set out in the Allegations Letter, including their sub-allegations.

In addition, the DVC has dealt discretely and comprehensively with two of the main responses by you, regarding:

- (a) whether you are bound by the confidentiality directions given; and
- (b) the nature of the disciplinary process and why it does not relate to academic freedom.

The Preliminary Determination also states:

In making my determination, I have reviewed all the relevant evidence and taken into account all relevant matters, including your Response and matters raised in correspondence from your solicitors. While I may not have expressly referred to all of the matters that you have raised, including through your solicitors, I have considered these matters and turned my own mind to whether, on balance, you have engaged in the conduct alleged and if so, whether it amounts to Serious Misconduct

I am satisfied that there is no basis for your assertion about the lack of reasons for the Preliminary Determination. It is apparent that the DVC gave detailed consideration to all relevant matters, even if not expressly referred to in her Preliminary Determination.

Final Determination

I am required by clause 54.5 of the Enterprise Agreement to make a final determination on whether your employment should be terminated for serious misconduct.

As I state above, I have determined that your employment should be terminated for serious misconduct.

In making my final determination, I have reviewed all the relevant evidence and taken into account all relevant matters, including your Response and Submission and the matters raised in correspondence from your solicitors.

I have not expressly referred to all of the matters that you have raised, or all of the evidence, however I have considered this material and turned my own mind to whether, on balance, your employment should be terminated for serious misconduct.

In making my decision I am acting as the Vice Chancellor of the University, exercising my functions under the Enterprise Agreement.

I am not influenced by your Court proceeding, which is irrelevant to my consideration. You are entitled to commence and continue with your proceeding. The University is equally entitled to defend that proceeding.

In deciding, under clause 54.5 of the Enterprise Agreement, if it is appropriate to terminate your employment, my focus is on the serious misconduct you have been found to have engaged in following the processes under the Enterprise Agreement, and whether that serious misconduct is destructive of the necessary trust and confidence for the continuation of the employment relationship.

My reasons for determining that your employment should be terminated for serious misconduct are set out below.

Termination of your employment

In deciding that termination is an appropriate sanction, I have taken into account that:

- (a) you are aware of your obligations as an employee of the University;
- (b) as a senior employee of the University, you are expected to model appropriate behaviour;
- (c) you have deliberately engaged in a pattern of conduct that misrepresents the nature and conduct of the disciplinary processes through publications online and in the media;
- (d) you have repeatedly and knowingly breached your obligations to maintain the confidentiality of disciplinary processes;
- (e) you have repeatedly and wilfully denigrated the University and your colleagues, and in doing so damaged the reputation of the University;
- (f) individually and collectively, your behaviour is destructive of the necessary trust and confidence for the continuation of the employment relationship;
- (g) you have been censured twice previously for conduct in breach of the Code of Conduct and/or the best interests of the University, including for breaches of confidentiality and denigrating your colleagues, the University and its key affiliates;
- (h) you have shown no contrition or remorse for your behaviour, particularly your repeated denigration of your colleague Professor [REDACTED] and the impact of your behaviour on the University; and
- (i) alternative sanctions would not be appropriate.

The Submissions do not provide any compelling explanation as to why termination of your employment should not be imposed and fail to outline any reasonable mitigating factors to support an alternative disciplinary sanction. Further, the Submissions fail to identify contrition, remorse, awareness, understanding or acceptance of the impact of the conduct that you have engaged in on the University and others, and fails to demonstrate a reasonable basis for the University to have confidence that you would comply with the Code of Conduct and terms applicable to all employees moving forward.

Breaches of confidentiality directions

You have been given confidentiality directions in the 2016 and 2017 disciplinary processes, details of which are outlined in the Preliminary Determination and the Allegations Letter.

I am satisfied it was reasonable for the University to direct you to keep information relating to the 2016 and 2017 disciplinary processes confidential.

Those directions were given to you in order to protect sensitive, personal and confidential information relating to the disciplinary processes. This information was sensitive, personal and confidential, not only to you, but also to the University and to other persons affected by your conduct.

The directions were consistent with clause 54.1.5 of the Enterprise Agreement, which provides that material to which the disciplinary process relates is confidential.

I am also satisfied that you were aware of the confidentiality directions and the seriousness with which the University takes those directions.

Despite this, as found by the DVC, you have repeatedly breached confidentiality directions given to you, including by:

- (a) deliberately disclosing confidential information about the 2017 disciplinary process to *The Australian*, which was then published in the 22 November 2017 article;
- (b) publishing documents about the 2016 and 2017 disciplinary processes on your Wordpress website;
- (c) disclosing confidential information about the 2017 disciplinary process to Professor Emeritus Don Aitken; and
- (d) causing or allowing the Flyer to be distributed on the University campus disclosing the outcome of the 2017 disciplinary process and stating that you had no intention of complying with the Final Censure.

Those breaches demonstrate a willingness to disobey lawful and reasonable directions given to you by the University as your employer, and are destructive of the necessary trust and confidence for the continuation of the employment relationship.

I am also particularly concerned by your comments that you will not comply with confidentiality directions you are given. This includes:

- (a) an article published by *The Australian* on 1 February 2018 (February Australian Article) which attributes the following words to him:

Professor Ridd ... said he was determined to speak freely about his treatment "even though it will go against explicit directions by JCU not to".

- (b) the Flyer, which includes the following comment:

He "ha[s] no intention of accepting the final censure or complying with the order to remain silent and would rather be fired than accept this situation"

I do not accept your Submission that "*if [you are] ultimately found to be wrong about [your] interpretation of the EA and the validity of the relevant directions given to [you], [you] will, of course, abide by that decision and conduct [yourself] henceforth in accordance that determination*"

That submission is contrary to your repeated breaches to date and your publicly stated intention to continue to disregard directions given to you.

In those circumstances, I can have no confidence that you will comply with lawful and reasonable directions given to you in the future, particularly in relation to confidentiality.

Misrepresentation of the disciplinary process and damage to the University's reputation

The DVC found that you have deliberately engaged in a variety of conduct that misrepresented the 2017 disciplinary process, and in doing so, damaged the reputation of the University including:

- (a) continuing to perpetuate the view that the University has taken disciplinary proceedings against you because you have expressed a particular scientific view; and
- (b) publishing comments suggesting you were denied procedural fairness in the 2017 disciplinary process when those comments are inconsistent with what actually occurred.

You do not deny making any of the comments.

The broad allegations of a lack of procedural fairness are simply wrong. They do not reflect the processes that were followed. The University followed the procedures required by the Enterprise Agreement in determining the Final Censure, that you were given multiple opportunities to address the allegations, and that each of your responses was considered before a decision was made on the Final Censure.

Your Submission states that "no actual harm, loss or material prejudice" caused by your conduct has been identified.

I am satisfied that your conduct has, and is likely to continue to, damage the University's reputation, given:

- (a) the very public manner in which you have been agitating your views;
- (b) the deliberateness of your misrepresentations;
- (c) the number of publications; and
- (d) the fact that you have at no time sought to address your concerns through legitimate internal channels but rather through external media and ostensibly anonymous publications (such as the flyer).

Two examples demonstrate this:

- (a) your commentary in numerous outlets/forums to the effect that you have been disciplined for expressing your scientific views; and
- (b) your commentary on your Wordpress website that you were not allowed to talk to your wife about the 2017 disciplinary process.

Both of those representations are patently false.

You have been told by the University on several occasions, including in the Final Censure, that the University is not concerned with you exercising a right to academic freedom nor that you have expressed a scientific view different to that of the University. You have openly continued to engage in the expression of your academic freedom in other forums throughout this period, with no objection from the University.

The University's concern has been, and remains, that you are required to express your views in a manner consistent with your obligations as an employee of the University, including the Code of Conduct. That is, whatever scientific view you express, you are required to maintain professional standards and comply with the lawful and reasonable directions given to you by the University.

Similarly, you were well aware prior to publishing the comments alleging that you could not talk to your wife that this was untrue. You had been told you could talk to your immediate family provided you could be confident they would keep confidential information confidential—at both the meeting on 24 August 2017 and the letter from the Director HRM on 19 September 2017.

Your misconduct in that regard is serious. It demonstrates a pattern of conduct intentionally designed to damage the University's reputation and without due regard for the impact your behaviour has on the University as your employer, or your obligations as an employee of the University. Collectively and individually, each of the incidents substantiated by the DVC's findings are destructive of the necessary trust and confidence for the continuation of the employment relationship.

Your behaviour indicates to me that you are unwilling and unable to comply with your obligations to the University, including your obligation to act in the University's best interests and not engage in behaviour that undermines the integrity or good reputation of the University.

Your Submission also fails to acknowledge or accept the impact of your behaviour, and is consistent with your prior refusals to accept any responsibility for your conduct, including your conduct in:

- (a) denigrating Professor ██████████
- (b) unnecessarily publishing confidential information about disciplinary processes; and
- (c) continuing to perpetuate a view in the media and online that the disciplinary proceedings are about your right to academic freedom.

Your lack of insight into, or acceptance of, the inappropriateness of your behaviour, is below the standard expected of you as a senior employee of the University.

For those reasons, I am satisfied that your conduct is destructive of the necessary trust and confidence for the continuation of the employment relationship.

Alternative sanctions

Your Submission suggests that you should be censured or counselled.

These are not appropriate sanctions.

You have been twice censured for similar conduct.

On 29 April 2016, you were issued with the 2016 Censure by the Senior Deputy Vice Chancellor for several breaches of the Code of Conduct relating to comments made in an email to a news.com.au journalist. The findings leading to the censure included that you had failed to act in a collegial way and failed to uphold the integrity and good reputation of the University.

On 21 November 2017, you were issued with the Final Censure for engaging in a pattern of conduct deliberately breaching confidentiality and denigrating the University, its employees and stakeholders, contrary to your obligations under the Code of Conduct and/or the best interests of the University.

In particular, it was found that you:

- (a) had not expressed a professional opinion in a manner consistent with your obligations outlined in the Code of Conduct, but communicated in a way that collectively denigrated Professor ██████████ the ARC Centre of Excellence for Coral Reef Studies and the Great Barrier Reef Marine Park Authority, suggesting that they were untruthful in their publications;
- (b) denigrated the University by promoting to outsiders that the disciplinary action was being taken to prevent you from expressing your scientific views, when in fact the disciplinary action concerned you doing so in a manner that was inconsistent with your obligations under the Code of Conduct; and
- (c) breached directions to maintain the confidentiality of the disciplinary process.

Those previous censures are relevant to a consideration of whether termination of employment is an appropriate sanction in this instance.

In particular, the 2016 Censure and the Final Censure made you aware:

- (a) of the expectations of you when exercising a right to academic freedom, including your obligation to act in accordance with the Code of Conduct
- (b) of the expectations of you with respect to the maintenance of confidentiality regarding disciplinary processes;
- (c) that denigrating your colleagues would be considered in breach of the Code of Conduct, including the obligation to treat others with respect and courtesy;
- (d) that the University was not concerned that you are expressing a scientific view different to the view of the University or its stakeholders, rather that that you have expressed those views in a way inconsistent with your obligations under the Code of Conduct by deliberately promoting the view that the University was taking disciplinary action against you to prevent you from expressing your scientific view; and
- (e) that the University took disciplinary matters seriously and that if it became aware of further instances of serious misconduct, your employment could be terminated.

Despite being aware of those matters, you have continued to wilfully disregard your obligations as an employee of the University, repeating the same conduct for which you previously been censured.

A censure is not an appropriate sanction in those circumstances. Rather than complying with your obligations as an employee having received these previous censures, you have continued to disregard them.

Given that you have already been given a Final Censure and put on notice that your employment could be terminated, I can have no confidence that a further censure or counselling will modify your behaviour or adequately protect the University from further misconduct.

I have considered your length of service and your contribution to teaching.

Those matters do not mitigate against a conclusion, in the circumstances of this case, that it is appropriate to terminate your employment.

Having regard to the seriousness of your behaviour, its negative impact upon the University, and your refusal to accept responsibility for your conduct, the necessary trust and confidence for the continuation of the employment relationship no longer exists.

Outcome

For these reasons, I have determined to terminate your employment for serious misconduct.

As your employment is being terminated for serious misconduct, your last day of employment is today.

Under clause 37.2.1 of the Enterprise Agreement, you are entitled to 6 months' notice. Pursuant to clause 37.2.2, you will receive payment in lieu of the notice period.

You will also receive your accrued but untaken statutory entitlements (annual leave and long service leave) as at today.

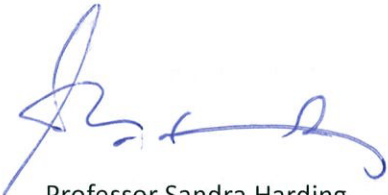
Payment of these monies will be made in the next available pay period after today.

You are required to return all University property (such as laptops, mobile phones, credit cards, keys etc), if you have not already done so. You are to contact [REDACTED] Director HRM, to make those arrangements.

[REDACTED] can be contacted on [REDACTED]

[REDACTED] will also discuss with you arrangements for your personal effects to be returned to you.

Yours sincerely,



Professor Sandra Harding
Vice Chancellor and President