

**THE VICE-CHANCELLOR
IS [REDACTED] TO CUT
[REDACTED] FROM THE
[REDACTED] DEPARTMENT.
TO COMMENT [REDACTED]**



*** The rest of this message is
available only to those staff
directly affected.**

DON'T BE SILENCED.

**TŪ KOTAHI | TŪ KAHA
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**TERTIARY EDUCATION UNION
Te Hautū Kahurangi o Aotearoa**

The Vice-Chancellor is silencing debate at the University of Auckland by including a confidentiality clause in change proposals

In other words, you cannot share or talk about what's on the table – unless you are directly affected. Professor McCutcheon says you owe him 'fidelity and loyalty'. But we bet when you joined the University, you thought you were making a commitment to the future of your profession, not fidelity to the Vice-Chancellor.

Professor McCutcheon is undermining the very core of what universities are about

It's bogus to suggest 'fidelity and loyalty' to an employer trumps the legal obligation staff have to act collectively as critic and conscience. Added to this, his silencing of debate through use of his confidentiality clause is contrary to good employment practice and sound decision-making.

Professor McCutcheon is undermining the University's own mission

The University of Auckland mission includes a "commitment to serve its local, national and international communities." The Vice-Chancellor's rejection of public debate undermines this commitment.

Professor McCutcheon is failing to abide by the University's policies

University of Auckland Policy states that change management is to be conducted in a fair and transparent way. There is no transparency for any group in the university community if staff, students, and other stakeholders are prohibited from speaking about the change proposal.

Professor McCutcheon's actions are an affront to the legislated role of critic and conscience

Under the Education Act, staff at the University of Auckland have the right to question and test any 'received wisdom' including that of senior management. Staff are also protected in debating matters relating to teaching.

Professor McCutcheon is contravening domestic and international conventions

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'.

22 June 2018

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

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





Vice-Chancellor's Office

Professor Stuart N. McCutcheon PhD
Vice-Chancellor

10 July 2018

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By email: Sandra.Grey@teu.ac.nz

Dear Dr Grey

I write in response to your letter dated 22 June 2018. I must say that I was disappointed not to be given the courtesy of replying to you before a copy of your letter found its way to the media. That does not strike me as an act of good faith on your part.

Your allegation that we are seeking to silence debate at the University is simply not correct. In matters relating to employment, the obligations of both the employer and the employee are defined by the Employment Relations Act 2000, case law, the relevant employment agreement and the University's policies, which staff agree to abide by as part of accepting employment at the University. Your letter ignores the fact that the statement in our change management proposals to which you object applies only to staffing reviews. I also do not consider the wider references in your letter to be relevant to the employment context within which this issue has arisen.

During staffing reviews in particular, the employer requires staff to raise any concerns and provide feedback using the process of consultation specified in the University's collective agreements and in the Review and Restructure Policies and Procedures. We do not accept that the concept of academic freedom in section 161 of the Education Act automatically entitles any academic employee to comment publicly on matters that relate to either their employment or the employment of other staff. Section 161 clearly states that academic freedom must be exercised *within the law*. The use of the phrase "within the law" indicates that academic freedom is a right which has to be balanced against other interests and other legal obligations. This is particularly the case here when there is significant potential for impacted staff to have their privacy breached.

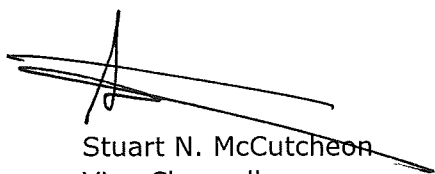
As the employer, I consider that both parties have legal obligations to each other in an employment context, which within the law limit the application of academic freedom. This is because the context of the engagement during a staffing review, for example, is the employer/employee relationship, and not a staff member's particular academic status or expertise. Information such as restructuring proposals are also provided as required by law and the University's policies. During any review, we treat staff equally and consult with them in accordance with the obligations stipulated by the law and by our policies, irrespective of their academic expertise and regardless of their classification as an academic or as a professional staff member (to whom the right of academic freedom is not extended by law).

For these reasons, I consider adverse public comment during restructuring to be contrary to accepted legal consultation practices, to breach an employee's statutory obligations of good faith to participate in employment actively and constructively, and to amount to behaviour that is contrary to the established obligations of loyalty and fidelity that an employee owes the employer. In this regard, I note that such obligations are not merely implied, but expressly set out in clause 2 of the Academic Staff Collective Agreement, titled "*Mutual Responsibilities*" which obliges staff to diligently and faithfully serve the employer.

Your letter indicates a view that any staffing reviews at the University ought to be the subject to wide-ranging public consultation. Such an approach would require changes to our policies and we would have to weigh up the benefits of greater openness against the consequences of public exposure for affected staff, increased uncertainty and the extended timeframes for consultation. No such changes to policy have been proposed and until there are any changes both staff and I as employer are required to adhere to policies as they currently exist.

For the reasons set out above, I do not accept that the University's expectation that staff abide by their statutory and employment obligations is contrary to law.

Yours sincerely



Stuart N. McCutcheon
Vice-Chancellor

Cc: *Andrew Phipps, Director of Human Resources*
Ronni Cabraal, Legal Counsel & Employment Relations Manager
John Morrow, Deputy Vice-Chancellor (Academic)
Lisa Finucane, Media & Communications Manager
Phillipa Muir, Partner, Simpson Grierson

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 of 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





Vice-Chancellor's Office

Professor Stuart N. McCutcheon PhD
Vice-Chancellor

25 July 2018

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By email: Sandra.Grey@teu.ac.nz

Dear Dr Grey

I acknowledge receipt of your letter of 23 July.

My views are already laid out clearly in my earlier correspondence and so I see no benefit in being a part of your "teach-in".

Yours sincerely

Stuart N. McCutcheon
Vice-Chancellor