

REPLY SUBMISSIONS ON BEHALF OF THE DELEGATE

The Delegate replies to the submissions made by Dr Anderson on 14 January 2019 as follows:

1. Dr Anderson is not correct in his assertion in paragraph 1 of the Submissions that the matter before the Review Committee has arisen "because of a confrontation over principles regarding public comment." Rather, the matter has arisen because, on multiple occasions, Dr Anderson has contravened the Code of Conduct, which is binding on him by virtue of his employment with the University, and because Dr Anderson has deliberately contravened the warnings issued to him in relation to his conduct.
2. Dr Anderson's description of the disciplinary processes that were followed by the University as "an illegitimate campaign of censorship" demonstrates why the proposed decision to terminate Dr Anderson's employment should be confirmed. Dr Anderson simply does not accept that the University is entitled to set standards of conduct for its employees and that its employees are required to adhere to those standards, regardless of their personal views.
3. Dr Anderson defends his conduct as being a "disciplined" response to abuse and slander of him by media and lobbyists. He concedes that people may be offended by his publications but asserts that "offensiveness" cannot be a relevant criterion in determining whether the publication constitutes misconduct. The reason for this appears to be that his area of research and publication is 'controversial' and controversial areas attract a higher standard of intellectual freedom. The University has a long history of defending the rights of staff to make controversial findings on the basis of their research. There is no basis, however, for the assertion that some statements deserve a higher standard of intellectual freedom and it should be rejected.
4. In Dr Anderson's view, this justifies his refusal to comply with the University's standards, and the application of his standard - 'FPINA' (factual, in the public interest and with no abuse), as determined by Dr Anderson. There is no reasonable basis upon which the Review Committee should accept this view, or its underlying proposition that the employer has no right to determine whether material published on social media by an employee is inappropriate or contrary to University policy.
5. Dr Anderson's justification for his conduct is a rejection of the legitimate interests of the University and a rejection of the obligations that he owes the University as its employee.
6. Dr Anderson's defence of his conduct depends on a selective and misconceived reliance on one clause of the Enterprise Agreement, to the exclusion of other provisions that impose obligations that are inconsistent with Dr Anderson's paradigm.
7. The right of intellectual freedom referred to in clause 315 of the Enterprise Agreement is not unconditional and does not exist in a vacuum. Importantly, the clause does not define 'intellectual freedom' and is not expressed to prevail over other provisions in the Enterprise Agreement.
8. The Enterprise Agreement, which covers both academic and professional staff of the University, also contains an express obligation on employees to comply with the Code of Conduct (clause 306) and defines misconduct to include a breach of the Code of Conduct. Serious Misconduct is also defined in the Enterprise Agreement to include repeated breaches of the Code of Conduct.
9. The obligations imposed on employees by the Code of Conduct are inconsistent with Dr Anderson's FPINA standard and cannot be overridden or ignored by a purported reliance on clause 315 of the Enterprise Agreement.
10. Dr Anderson's submissions make no reference to the Code of Conduct, his obligation to comply with the Code of Conduct, the definitions of misconduct and serious misconduct in the Enterprise Agreement, or the provisions in the Enterprise Agreement dealing with disciplinary proceedings. This is further

demonstration of Dr Anderson's refusal to accept the authority of the University in relation to his employment.

11. The disciplinary processes that resulted in the proposed decision to terminate Dr Anderson's employment were conducted at all times in accordance with the Enterprise Agreement.
12. In making its recommendation, the Review Committee is required to have regard to:
 - a. whether any Misconduct or Serious Misconduct occurred, and any factors in mitigation;
 - b. whether the procedures that were followed afforded the staff member the procedural fairness afforded by clauses 384(c) and (d) of the Enterprise Agreement, and if not, whether the outcome was affected by any procedural defect that may have occurred; and
 - c. whether the proposed termination is reasonable in the circumstances.
13. The Committee should be satisfied that:
 - a. The right described in clause 315 of the Enterprise Agreement did not override Dr Anderson's obligation to comply with the Code of Conduct and the Delegate's warnings in relation to his social media activity;
 - b. The obligations in the Code of Conduct are fair and reasonable and apply equally to all employees covered by the policy;
 - c. Dr Anderson breached the Code of Conduct on multiple occasions;
 - d. Dr Anderson did not comply with the written warning issued by the Delegate in April 2017 and the Final Warning issued in October 2018;
 - e. Dr Anderson's contravention of the Final Warning was deliberate and intentional;
 - f. Dr Anderson had no good reason for his contravention of the Delegate's warnings or for his repeated breaches of the Code of Conduct;
 - g. Dr Anderson engaged in serious misconduct within the meaning of the Enterprise Agreement;
 - h. The University complied with the requirements of the Enterprise Agreement and Dr Anderson was afforded procedural fairness at all times; and
 - i. The proposed termination of Dr Anderson's employment is reasonable and fair in all the circumstances.
14. The recommendations sought by Dr Anderson in paragraph 26 of his submissions are outside the scope of the Review Committee's functions and should be rejected.
15. The direction to Dr Anderson that he keep confidential information regarding internal disciplinary matters was reasonable and appropriate and cannot be characterised as "censorship" or "secrecy demands".
16. The assertions in paragraph 21 of Dr Anderson's submissions that the University's actions have been a response to "lobbyist pressures" and that the University lacks commitment to free speech are untrue, without foundation and should be rejected. There is no conflict of interest in requiring, and ensuring through appropriate disciplinary action, that the right of intellectual freedom is exercised consistent with the requirements of the Code of Conduct and other legal employment obligations.
17. The Delegate otherwise relies on the Submissions and Statement of Professor Garton lodged on 14 January 2019 and submits that the proposed decision should be confirmed.