

**Submission
No 138**

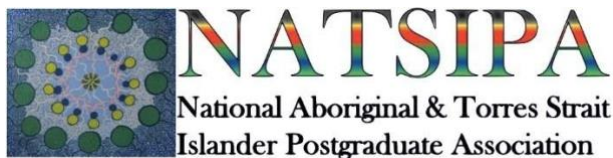
ANTI-DISCRIMINATION AMENDMENT (RELIGIOUS FREEDOMS AND EQUALITY) BILL 2020

Organisation: Council of Australian Postgraduate Associations (CAPA)

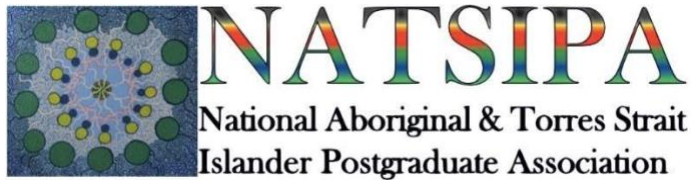
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**Council of Australian Postgraduate
Associations (CAPA) and National Aboriginal
and Torres Strait Islander Postgraduate
Association (NATSIPA)**

**Response to Anti-discrimination Amendment
(Religious Freedom and Equality Bill 2020
(NSW))**



August 2020



Compiled with the assistance of the office bearers of the National Aboriginal and Torres Strait Islander Postgraduate Association (NATSIPA) and Council of Australian Postgraduate Associations (CAPA) and its affiliated member organisations.

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Foreword

This is a joint submission of the Council of Australian Postgraduate Associations (CAPA) and the National Aboriginal and Torres Strait Islander Postgraduate Association (NATSIPA).

The Council of Australian Postgraduate Associations (CAPA) is the peak body representing the interests of the over 455,000 postgraduate students in Australia. We represent coursework and research, as well as domestic and international postgraduates. We are comprised of 28 university and campus based postgraduate associations, as well as the National Aboriginal and Torres Strait Islander Postgraduate Association (NATSIPA). CAPA carries out its mission through policy, research, and activism, communicating the interests and issues of postgraduate students to higher education stakeholders as well as Federal and State Governments, Opposition parties, and minor parties.

The National Aboriginal and Torres Strait Islander Postgraduate Association (NATSIPA) is the peak representative body for Aboriginal and Torres Strait Islander postgraduate students, representing almost 650 Aboriginal and Torres Strait Islander Higher Degree by Research (HDR) students and over 2200 Aboriginal and Torres Strait Islander postgraduate coursework students.

We welcome this opportunity to contribute feedback to the *Anti-discrimination Amendment (Religious Freedoms and Equality) Bill 2020 (NSW)*, a bill relating to discrimination on the grounds of religious belief or activity, and for related purposes. A diversity of values, cultures, and religions can be found among staff and students at universities. This makes campus environments particularly vulnerable to discriminatory behaviour. With this new legislation, providing equitable solutions to protect staff and students will become increasingly difficult. We are therefore very concerned that there will be a rise in incidences of discrimination, hindering the growth of knowledge and tarnishing the international reputation of our universities. Our core recommendation is as follows:

Recommendation: That the Anti-discrimination Amendment (Religious Freedoms and Equality) Bill 2020 (NSW), be rejected and any future iterations be abandoned.

Issues with the Bill

CAPA and NATSIPA represent a diverse range of students, and regularly do so on issues relating to and intersecting with inequality and discrimination. According to the Australian Bureau of Statistics (2018) the contribution of postgraduate research students to Australian Universities remains steady at 57% of all paid working hours spent on research and development.¹ Postgraduate coursework degrees, meanwhile, teach students critical thinking, analysis, communication, and problem solving. Postgraduate research and coursework students are thus of significant value to knowledge production and to the Australian economy generally, both through their research and their professional practice. Research innovation and production is vital to Australia’s position globally, and is not only highly desired but necessary at all levels of the national workforce.

In order to succeed, postgraduate students require academic policies, processes, and professional cultures at Australian universities to be broadly equitable and non-discriminatory. We contend that the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 (NSW) undermines the conditions for success by enshrining through legislation the right to discriminatory action and behaviour based on “religious beliefs or religious activities.”

This Bill amends the Anti-Discrimination Act 1977 (NSW), in ways that is of great concern to all students in NSW. It places religious expression above all other human rights, which then creates an open allowance for people to then use religion to discriminate against other people based on:

Division 1

22K Definitions

“*religious beliefs* includes the following—

1. (a) having a religious conviction, belief, opinion or affiliation.

Of extreme concern is the statement by the Hon Mark Latham to the effect that every letter of the alphabet has its own flag, a comment that has obvious references to the LGBTIQ community in Australia. Such comments made by a politician are an indication to the public about the ‘other’ people that are in the sights of One Nation for discrimination.

¹ Figures are calculated using the measure of ‘person years of effort’ (PYE), which assumes a workload equal to a full-time employee performing research and development activities only (ABS 2018).

In this Bill, we observe that there are no less 17 Sections that outline examples of unlawful discrimination *against* people based on all and any religious beliefs and or religious activities.

Subsequently there is the Section included below which enshrines the right to discriminate against any other person based on all and any religious belief and or religious activity.

22U Exception—genuine occupational qualification

Nothing in this Division applies to or in respect of any work or employment where that work or employment involves any one or more of the following—

1. (a) participation in any way in any ritual or custom in a capacity for which the services of a person of a particular religious association, affiliation or belief are required for reasons of authenticity, cultural sensitivity or other religious, ethical or moral requirements or for adherence to any principle of religious injunction,
2. (b) participation in any way in any artistic performance in a capacity for which the services of a person of a particular religious association, affiliation or belief are required for reasons of authenticity, cultural sensitivity or other religious, ethical or moral requirements or for adherence to any principle of religious injunction,
3. (c) working in a place in which food or drink is, whether or not for payment, provided to and consumed in circumstances in which the services of a person of a particular religious association, affiliation or belief are required for reasons of authenticity, cultural sensitivity or other religious, ethical or moral requirements or for adherence to any principle of religious injunction,
4. (d) providing persons of a particular religious association, affiliation or belief with services for the purpose of promoting their welfare in circumstances where those services can be most effectively, efficiently or appropriately provided by a person with the same religious association, affiliation or belief as the intended recipient of that welfare.

These four points enable any religious group to discriminate against others in churches and all other religious gatherings, within any arts-based activity or setting, in any café or restaurant, and with regards to any public or social service.

We content that there are several fundamental issues with this Bill:

- 1. It places religion and religious beliefs over government Rules.** Religious and faith-based organisations and businesses will be given the right to challenge NSW government policies, determinations, contracts and programs that are deemed to be misaligned with their religious beliefs and or religious activities.
- 2. This places religion above the secular law in Australia.** Giving protection to religious people and groups to engage in activities that may be unlawful, such as vilifying or harassing others, or acts that breach civil obligations.

3. **This creates double standards.** Religious groups and organisations will be made exempt from Discrimination law, enabling them to discriminate widely in terms of service delivery, employment and education, *even when receiving public funding*.
4. **It places religion above other human rights.** People with religious beliefs will be able to take action that is allowable above other rights and freedoms with regard to NSW anti-discrimination laws.
5. **No consequences.** Inclusive cultures and workplaces will be all but impossible to enable or support. Government and non-government employment, education, business and community situations will be faced with religious beliefs as the measure of what is acceptable.

To be more specific, Section 22M allows exemption for ‘religious ethos organisations’ from the provisions in the Bill, meaning that they can discriminate against a person on the grounds of anything that they deem is not in alignment with their own religious views and beliefs. Even publicly funded organisations would be given this broad and potentially corruptible right. The ‘religious susceptibilities’ of any religious organisations participants are the reference point for this exemption. This vague description allows an extremely wide range of emotions, imaginings, ideas and ideologies to be dangerously wielded as ‘religious susceptibilities’. These are extended and extra exemptions. In addition, commercial enterprises are included here so a restaurant or café would be allowed to discriminate based on ‘religious susceptibilities’.

This proposed Bill could place NSW students to experience discrimination in areas of employment and accommodation, health and social services, based on ideology of a religious nature that deems them in some way as a disturbance to ‘religious susceptibilities’.

The double standard evident throughout this Bill is encapsulated when stating the anti-discrimination, it enshrines against people of religion, expressed in the phrase ‘and subjecting the person to any other detriment’. Yet acts of detriment to anyone deemed not to align with religious beliefs is exempt from anti-discrimination legislation.

In a country where laws should take care of everyone equally this Bill glaringly advocates for an elite place for specific religious beliefs and activities.

Section 22Z places religion above the law, by stating that people of a religious ethos are not to be expected to act in a manner contrary to the ‘doctrines, tenets, beliefs or teachings of that organisation—

1. (a) in the course of performing any function under a State law or for the purposes of a State program, or
2. (b) in the course of carrying out any other responsibility for the administration of a State law or the conduct of a State program.

This Section absolutely places religious beliefs above State law. Such fundamentalism has no place in Australian society.

CAPA and NATSIPA have particular concerns around the potential for discrimination against Aboriginal and Torres Strait Islander students, LGBTIQ students, as well as students with disabilities, international students, students with families, and many others. Moreover, we are deeply concerned that there is no way to verify religion or belief, or what might be considered 'reasonable', and that 'religious susceptibilities' will be used as a loophole or means of validating discriminatory behaviour.

As CAPA raised in our 2019 submissions to the *Review of Freedom of Speech in Higher Education* and the *Model Code* (CAPA 2019a, 2019b), we are extremely concerned about threats to staff working and student learning conditions and rights within universities. In particular, we feel strongly that "freedom of speech" and "religious freedom" must not be used to allow hate speech, and to create unsafe and hostile workplaces.

In CAPA's aforementioned submissions we provided several recommendations, reiterating the importance of the Racial Discrimination Act 1975 as well as universities' obligations to provide a safe workplace environment for staff and students. Australian Law currently protects diversity through existing discrimination legislation that affords equitable treatment and respectful action towards people of diverse beliefs and ways of life. Currently, people with religious views are able to hold their views without fear of discrimination, *and* are required to adhere to anti-discrimination legislation, as are all Australians. This Bill under discussion is set to destroy this equitability.

We therefore believe that this Bill will result in a number of serious issues for students, such as:

- ❖ Dismissal, denial and/or erasure of Aboriginal and Torres Strait Islander culture and practices
- ❖ Threats to equitable student and staff relations within universities
- ❖ Threats to research field work and data collection opportunities
- ❖ Threats to collaboration and publication opportunities
- ❖ Threats to grants and scholarship opportunities
- ❖ Threats to equitable employment opportunities due to religious beliefs
- ❖ Threats to the equitability of placement opportunities due to preferences given to students of particular religious beliefs

Summary and Recommendations

In summary, there are already protections in place for anti-discrimination that are for everyone in an equal way, regardless of culture and or life milieu. This Bill would enshrine unequal protection and pave the way for discriminatory actions of hatred and vilification to have no consequence if the perpetrator claims it is an expression of their religious beliefs.

This proposed legislation is an anathema to the currently respectful culture of anti-discrimination that is the foundation of an equitable and fair Australia. It is imperative this legislation be rejected immediately, before discrimination becomes a legal right.

CAPA and NATSIPA therefore recommend that **the *Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 (NSW)* be rejected and any future iterations be abandoned.**

References

Australian Bureau of Statistics (ABS) 2018. *8111.0 - Research and Experimental Development, Higher Education Organisations, Australia, 2016.*

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/8111.0Main+Features12016?OpenDocument>.

Council of Australian Postgraduate Associations (CAPA) 2019a. *Submission to the Review of Freedom of Speech in Higher Education.* <http://www.capa.edu.au/submission-review-freedom-speech-australian-higher-education/>.

Council of Australian Postgraduate Associations (CAPA) 2019b. *Model Code Submission.* <https://submissions.education.gov.au/Forms/FOS19/ModelCode/Model-Code-01.03.19-CAPA.pdf>.