

# Religious Discrimination Bill: implications for universities

## IRU response to draft *Religious Discrimination Bill 2019*

### About the IRU

Innovative Research Universities (IRU) is the peak policy and development body for a coalition of seven comprehensive universities, located across the nation, committed to innovation and inclusive excellence in teaching, learning and research.

Our membership is Charles Darwin University, Flinders University, Griffith University, James Cook University, La Trobe University, Murdoch University and Western Sydney University.

### Overview

The stated intent of the Religious Discrimination Bill is to “protect against discrimination on the grounds of religious belief or activity”. Universities strongly support this principle. To the IRU’s knowledge, there is no serious suggestion of a problem with religious freedom on campus.

In this submission the IRU highlights two areas where the provisions of *Religious Discrimination Bill 2019* could conflict with the effective operation of a university:

1. where expression of religious beliefs counters educational outcomes
2. how best to assess whether an employee’s use of religiously based statements or acts has done sufficient harm to the university to justify action against the employee.

A practical implication of the Bill for universities is that they will need to review their current codes of conduct and other relevant policies to ensure consistency of purpose and implementation.

### 1. Interaction of educational objectives and religious expression

The IRU supports moves to ensure people are not discriminated against because of their religion. As with the debate around freedom of speech, however, it is relatively easy to agree a principle but more difficult to define how such a principle will be applied in real life, particularly when balanced against other, existing rights.

Section 18(2), for example, directly relates to discrimination at educational institutions:

*It is unlawful for an educational institution to discriminate against a student on the ground of the student’s religious belief or activity:*

*(a) by denying the student access, or limiting the student’s access, to any benefit provided by the educational institution; or*

*(b) by expelling the student; or*

*(c) by subjecting the student to any other detriment.*

Universities should, and do, protect the right of students and staff to act in accordance with their religion, but sometimes doing so can raise problematic issues in other ways.

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By way of example, a core activity of some religions is trying to convince others of the truth of its faith. Universities freely permit student religious groups to hand out fliers and conduct prayer meetings on campus, however, if a student were to continually and inappropriately preach the virtues of her or his own religion in a classroom setting, to the detriment of the learning of other students, the university should reasonably be able to limit such activity.

It is not clear whether the proposed laws would permit a university to constrain this kind of religious-driven activity where it conflicts with educational goals.

Further to this, university teaching staff should not be proselytising students either in the classroom or elsewhere on campus, given the power imbalance between them. If such a scenario were to arise, a university should be free to step in and dissuade such interactions. It is not clear the proposed new laws would lawfully allow a university to intervene in such cases.

**The Bills should allow for a university, and other education institutions, to constrain student and staff religious expression where it conflicts with educational needs. The precise boundary would be one for interpretation through internal processes and, if need be, external legal avenues.**

## 2. Organisational damage not limited to financial loss alone

Section 8(3) disallows employers from imposing a rule of conduct on employees, outside of working hours, unless such a rule is necessary “to avoid unjustifiable financial hardship to the employer”. This would seem to protect employees from, for example, publishing contentious social media posts about their religious beliefs so long as it is done outside of work.

*For the purposes of paragraph (1)(c), an employer conduct rule that:*

*(a) is imposed, or proposed to be imposed, by a relevant employer; and*

*(b) would have the effect of restricting or preventing an employee of the employer from making a statement of belief at a time other than when the employee is performing work on behalf of the employer;*

***is not reasonable unless compliance with the rule by employees is necessary to avoid unjustifiable financial hardship to the employer.***

The IRU does not contend the intention of this clause, which goes to the heart of what the Bill sets out to achieve. However, financial loss is not the only risk an employer might reasonably consider when determining potential damage to its operations. This is particularly the case for universities and other not-for-profit organisations, given they do not gauge success by financial measures alone. Damage to a university’s academic reputation, for example, could potentially be more damaging to a university than financial loss alone.

The IRU is concerned that by specifying “financial hardship” in Section 8(3), to the exclusion of other potential damage, the legislation risks making this the sole yardstick by which harm to an organisation is measured in such circumstances.

Rather than attempting to list further measures of potential harm to an employer, the IRU’s recommendation is that Section 8(3) is deleted altogether. This would allow each case of alleged discrimination to be judged by the general principles of the Bill and ensure any such cases are not decided based on financial impact alone.

**Section 8(3) be deleted to allow each case of alleged discrimination to be judged by the general principles of the Bill.**

2 October 2019