

Sydney University Postgraduate Association

Submission to the NSW Law Commission's Review of the *Anti-Discrimination Act* (1988)

Introduction

Sydney University Postgraduate Representative Association (SUPRA) is the representative organisation for postgraduate students at the University of Sydney. Established in 1970, SUPRA's constituency has grown to over 33,737 postgraduate students. SUPRA's casework and legal services handles over 2000 cases each year. SUPRA is governed by a democratically elected body of post-graduate students who attend the University of Sydney.

Over the past forty years, SUPRA has helmed several campaigns for the inclusion of all students in the NSW transport concession scheme. Full-fee paying international students are currently ineligible for transport concessions, because the Transport Administration Act (1988) is exempt from complying with the Anti-Discrimination Act (1977). However, SUPRA believes that the ongoing decision to exclude students from the transport concession scheme is an act of discrimination on the basis of nationality, which is one of the sub-categories of discrimination on the grounds of race. It is patently discriminatory that one group of students must pay double what their peers pay for the same service, simply because of a difference in nationality or citizenship.

The deleterious impacts of this discrimination have only been intensified over the last twenty years. The rental and housing crisis in NSW is forcing students to live further away from university campuses due to skyrocketing rents; consequently, student pay more for travel. More and more degrees require participation in unpaid placements, work experience and internships, requiring students to travel further afield to satisfy the requirements of their degree—and, consequently, pay more in travel costs.

Background

In 2006, SUPRA along with University of Sydney postgraduate students Arturo Bravo Nuevo and Roberto Martinez Neira were named applications in a matter reviewed by the Equal Opportunity Division of the Administrative Decisions Tribunal. SUPRA, Nuevo and Neira alleged that the Minister for Transport Services, Director General of the Ministry of Transport, the State Transit Authority, and the State Rail Authority had:

"...discriminated against them on the ground of race in relation to the provision of public transport services... that the NSW Government's longstanding policy of not providing full-fee paying overseas university student with concessional travel on public transport services contravenes the Anti-Discrimination Act 1977 (NSW) ('The Act') because it amounts to discrimination on the basis of nationality, which is one of the sub-categories of discrimination on the ground of race."

The Equal Opportunity Division of the Administrative Decisions Tribunal upheld SUPRA's allegations and found that whilst there was no intent to harm international students, the effect of the longstanding policy to exclude international students from the transport concession scheme was that students who do not hold Australian or New Zealand citizenship are disadvantaged by the policy.

In the aftermath of this decision, the *Transport Administration Act* (1988) was amended to state the following:

“88. 3(A): If the regulations so provide, persons of a class prescribed by the regulations are not entitled to be issued with a free travel pass or a concessional travel pass under this section. This subsection applies despite any determination or direction of the Minister or of an Authority or the Anti-Discrimination Act 1977.”

Recommendations

This exemption has made it virtually impossible for the NSW Government or Transport Authority to enact the Administrative Decisions Tribunal’s 2006 decision that excluding a group from the transport concession scheme based on nationality does constitute discrimination. Though the decision was sound and based on the Act, no corresponding change in policy could be made to ensure equal access to transport concessions due to the amendment to the Transport Administration Act (1988). This meant that the Administrative Tribunal’s decision based on the Anti-Discrimination Act (1977) was effectively powerless—and, by extension, so was the Act itself.

Since the 2006 decision, SUPRA’s casework service has spent the intervening seventeen years campaigning for full-fee paying international students to be included in the transport concession scheme. However, there have been two key roadblocks: the lack of scope of the *Anti-Discrimination Act* (1988) to cover students impacted by this form of discrimination; and the protection afforded to the NSW Government to continue discriminating against students in this fashion by the *Transport Administration Act* (1988).

We are concerned that what became of the 2006 decision in *SUPRA [and others] v Minister for Transport Services [and others]* is a clear example of how difficult it can be for people who reside in NSW and experience discrimination to use the protections of the Act.

We ask that the Law Reform Commission consider the following in its review of the *Anti-Discrimination Act* (1977):

- That the Anti-Discrimination Act (1977) be strengthened to reduce the capacity of other Acts to supersede or overrule it.
- That the Act include provisions to ensure that decisions by NSW courts and tribunals based on the Act, be upheld—not circumvented by changes to other legislation.