

# Young Workers Legal Service

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Committee Secretary  
Senate Education, Employment and Workplace Relations Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

To the Committee Secretary

Please find attached the Young Workers' Legal Service's submission in response to the inquiry into the welfare of international students.

Yours sincerely

Nadine Levy

Coordinator

YWLS

## **I. Background**

Since 2003 the Young Workers Legal Service (YWLS) has been providing advice and representation to young workers throughout South Australia. The service has assisted thousands of young workers, from a range of ethnic and social backgrounds, working in various industries and occupations. The Service has gained first hand experience of the issues facing young workers under the age of 30. While the majority of the Service's clients come from within the greater Adelaide area, the Service has given advice and represented clients from all around the state, including Kadina, Whyalla, Port Lincoln, Gawler, Ceduna, Roxby Downs, Port Augusta and Murray Bridge.

The Service is staffed predominantly by volunteer law students who offer their own time to meet with young workers who require advice, information or representation. Two industrial Officers advocate for young workers in a host of industrial tribunals, including the South Australian Industrial Relations Court and Commission, Fair Work Australia (FWA), the Australian Human Rights Commission (AHRC) and the Equal Opportunity Commission (SA).

The YWLS has two main functions. First, the Service acts as an advocate, assisting young workers who wish to understand their rights and entitlements in the workplace. The Service endeavours to help young workers understand and pursue their legal options. Young workers are vulnerable in more than one way; their concerns are often not treated seriously; they have limited experience in the workforce; and they frequently lack the confidence to raise issues of concern. Our aim is to empower young workers to become active in the workplace and if need be seek remedies through the legal system. YWLS volunteers advise young workers on the most recommendable industrial and legal causes of action and assist them in preparing, presenting and communicating their version of events and preferred solutions.

Secondly, the YWLS is an educator. The YWLS volunteers meet with young workers after they have had a difficult experience in the workplace. This provides a great opportunity to offer education about how to ensure that the rights and conditions will be

protected in the future. The Service believes that for young people to have safe, successful and enjoyable working lives, it is paramount that they be proactive in their workplace. The Service offers workshops and presentations on this topic at schools and various community youth events, including events run by Multicultural Youth SA for international students.

## **II. International Students**

The YWLS has advised many international students on a range of employment-related issues. Most have been referred by the Universities' international student services or the Legal Services Commission. These submissions outline our concerns about how mistreatment in the workplace can jeopardise international students' quality of life. Our main concerns relate to the occupational health and safety risks international students face at work; the prevalence of underpayments amongst international students engaged in paid work; the lack of accessible information about where to go for help when experiencing difficulties in the workplace; and relate to the quality of vocational training received by international students.

## **III. Relevant Agencies/Organisations**

Generally, young workers who contact the Service have been referred by other agencies or unions. Most young workers who approach the YWLS have already spoken to many organisations about their issue at work but have not received the help and assistance they need. Often when they reach the Service they feel confused, frustrated and helpless. Indeed, international students are at a further disadvantage in obtaining the information they need about their employment conditions, given that most are not readily familiar with Australian laws and a number are not proficient in the English language. International students should be informed of where to go if they need help as soon as they start their course. They should also be informed that many agencies and organisations, like the YWLS, provide a free and anonymous enquiry service for all workers. Universities and Registered Training Organisations should take a leading role in providing this type of information to international students.

We also believe that it is important for international students to be educated about the role of unions in our society. Students should be aware that they have the right to join their relevant union and that unions provide advocacy and representation to many workers in Australia.

In 2007 the YWLS was involved in a workshop for international students held at the University of South Australia. Over 60 international students attended the workshop. Many shared their stories about their experiences in the workplace: some young workers from the Sudanese community explained that they felt that they were subjected to bullying and racial vilification in the workplace; others who worked in a factory on a part time basis expressed concern about unsafe work environments. The workshop proved to be beneficial for those involved: it provided international students with a safe space to ventilate their concerns and receive some confidential advice about their rights and conditions at work.

#### **IV. Underpayment of Wages**

The YWLS receives many enquiries each day. The most common enquiry we receive relates to the underpayment of wages and entitlements. Nearly all of the international students who approach the Service for assistance have, at some stage, been underpaid during their employment in Australia. Many are underpaid an hourly rate, misclassified, owed annual leave, superannuation, overtime, penalty rates or payment in lieu of notice. Some are not paid at all. It is our experience that international students are particularly vulnerable to being underpaid: international students are often unaware of the industrial instrument governing their employment; they are often fearful of losing their job if they raise the issue of pay; and they do not always know where to obtain correct information about their wages and entitlements. It is also our experience that employers often believe they can avoid their legal obligations and responsibilities because many international students are new to Australian law and the English language.

International students who begin work should be given information concerning the terms of their employment and details about their employer. This information should be provided in a letter of appointment when they are first engaged to work – see attachment.

Employers should take steps to ensure that the international student understands all matters relating to their pay and entitlements. In some instances, this may require employers to engage an interpreter or invite the student to bring a support person to a pre-employment meeting. The student should be informed of the following:

- the employer's trading and registered name
- the employer's trading address and registered business address
- an Australian Business Number
- contact details for managers and supervisors
- the type of work to be performed, including expected tasks and duties
- the various hourly rates of pay
- the type of employing/industrial instrument that governs their employment
- rest and meal breaks
- whether the employee is working full-time, part-time or casual
- the likely hours of work and/or predicted rosters

It is also clear from discussions with international students that despite changes in the way the Department of Immigration and Citizenship (DIAC) deals with issues about compliance with visa requirements/working hours, that there is some reluctance to approach DIAC about problems they may face with employers, as they fear repercussions in terms of ongoing residence.

## **6 Workers**

*Six international students of Chinese origin, who attended the University of Adelaide obtained casual employment in a seafood factory. Their main tasks and duties were packing and processing seafood. The boss informed them that they would have ongoing work. For the first 3 weeks the students were paid cash in hand. On the fourth week of their employment they were informed that the business would close. The students were still owed pay for 5 days of work. The students unsuccessfully attempted to contact the employer on a number of occasions. The YWLS assisted the students in lodging an underpayment of wages in the industrial Relations Court of SA.*

## **Maria**

*Maria\*, an international student from Taiwan, was employed on a part-time basis by a jewellery company. Upon completing her Degree, Maria was offered full-time work. She was to work 6 days a week from 9am – 5pm and receive a weekly rate of \$400 cash. Maria never received any annual leave entitlements. Maria did not know that she was entitled to higher rate of pay pursuant to the relevant Award. During Maria's first year of employment, Maria was sick for a week. Upon returning to work her boss told her that she was not being paid sick leave because he considered her time off as 'unpaid leave'. Maria subsequently left her place of employment and was shocked to hear that she could make an underpayment of wages claim for close to \$16,000.*

## **V. OHS and Bullying**

Young workers often find themselves in unsafe working environments. The YWLS receives many enquires about occupational health and safety issues. Many clients, some of whom work in risky and dangerous industries, do not receive adequate training on how to protect their health and wellbeing in the workplace. One of the main issues affecting young workers' health is bullying and harassment in the workplace. We have heard many anecdotal stories about how international students are singled out and treated with disrespect in the workplace. International students have reported:

- Being yelled at when given directions
- Being blamed for all problems or mistakes irrespective of who is actually responsible for the error
- Being belittled and ridiculed in public, in front of other staff and/or customers, clients
- The unfair allocation of the shifts and work
- Being subjected to constant criticism and negative comments without proper feedback
- Being targeted or isolated

We have found that bullying behaviour is often accompanied with breaches of OHS&W or other types of unlawful behaviour such as discrimination or sexual harassment. This

tends to demonstrate the intimidation and power that the bully wields over the victim. Indeed, in case of international students some incidents of bullying that would ordinarily be thought of as isolated or minor, actually have a far more powerful and damaging impact on the victim. This is often the case when the “minor” bullying accompanies racist comments, or sexual harassment.

### **Hiro**

*Hiro\*, an international student from Japan, was employed by a restaurant as a hospitality worker. His main tasks and duties included serving customers and food preparation. Hiro was paid \$10 per hour. He worked four 8 hours shifts a week, with a daily break of 20 minutes. He never received penalty rates. One day at work Hiro was hit in the head 3 times by a co-worker. The incident was unprovoked. Hiro was rushed to the hospital and sustained a scar tissue injury to his face. Hiro, scared and traumatised, felt that he had no choice but to resign from his job. He felt as though his employer would not take sufficient steps to ensure a situation like that would not occur again. The YWLS assisted Hiro in lodging a workcover claim and in recovering his underpayment.*

### **Peter**

*Peter\*, an international student, 24 years of age, was engaged as a storeroom “contractor” at an Asian Grocery store. Peter had never received any training on occupational health and safety in the workplace, nor was he informed of any safety policies. During the entire course of Peter’s employment he was paid the amount of \$10 per hour, “cash in hand”. He never received a payslip. Peter’s main role was to move bags of rice from a truck to the store and then stack them in a storeroom. Each morning he would move approximately 50 bags of rice. One day at work upon lifting a 25kg bag of rice, Peter began to experience sharp pain in his lower back, so he asked his manager if he could have a break. His manager refused the request and directed him to keep lifting. Peter kept moving bags of rice for another hour and a half. When Peter got home he started to experience an overwhelming amount of pain and was subsequently rushed to hospital and was given medication to relieve the pain. Peter was told that he would need an operation and that he could not return to his job as a storeman. Peter lodged a*

*workcover claim. Initially, the claim was rejected: Peter's employer claimed that Peter was an "independent contractor" and for this reason the company did not have to pay workcover contributions, superannuation or PAYG tax. The YWLS assisted Peter challenge the workcover determination, and his claim was ultimately accepted.*

## **VI. Quality of Training**

In our experience, most international students who are also working are not undertaking that work under a training contract as an apprentice or trainee. Apprentices and trainees have particular protections recognising their particular circumstances as young workers being trained for particular qualifications and employment outcomes. The Department of Further Education Employment Science and Technology (DFEEST) which administers apprenticeships and traineeships provides considerable resources to assist with information as well as to ensure compliance on a range of matters including the quality of the training provided. However, international students who are also working don't have the benefit of this support, though with recent changes to the *Training and Skills Development Act 2008*, they may have access to the Training Advocate to assist with such issues.

### ***Chinese students***

*The YWLS is aware of a number of cases, albeit some years ago, where Chinese born students were recruited under a 442 (training and work) visa. They signed a (non registered) training agreement and an employment agreement on the understanding that they would be trained to become registered nurses. However, they were actually trained in an Aged Care qualification, and then on a labour hire basis provided with employment with various aged care facilities. Furthermore, the charge for the training was over 4 times as much as would have been charged for the same qualification by SA based RTO's.*

### **Background**

*These students were in Australia on 442 visas which allow people from overseas to undertake "supervised, workplace based training programmes" for up to two years. The students had a training arrangement with an Australian company which also had an associated company based in Hong Kong which recruited students to the scheme.*



*The students were then employed by another associated company operating as a labour hire company, who paid their wages and organised work placements. The training was provided through a joint venture between the company and a Registered Training Organisation*

#### *The Arrangement*

*Before leaving China, the students completed a Certificate 3 (Aged Care) Overseas Registered Nurses recognition course and paid \$10,000 for entry to the arrangement in Australia. At this point, the applications for the 442 visas were made.*

*The training organisation was required to locate a host employer. The trainees were guaranteed the minimum rate of pay at the time, even if actual hours worked did not result in this payment. The training organisation was also required to ensure that the relevant off job training took place.*

*The students started their training arrangement in Australia in February 2006. For the first 5 weeks a work placement for the trainees had not been found. For these 5 weeks, they attended lectures, orientation and induction - the training initially was not structured or well planned; rather they were told a day in advance when the training would be and they had to attend*

#### *Work placements*

*Eventually, the students were placed in various aged care facilities from March 2006. They were working as carers – they would assist residents, shower and personal hygiene, assisting with feeding, general care and attention. The hours they worked were irregular and changed by the week.*

*The training continued, but was only 2 or 3 hours at a time, and would consist of computer exercises, or answering questions in work books. The training was not structured, or scheduled in advance; they were notified of the training via text message the day before; nothing was set out in a time table; they were told several times, “when you are free, you come to training.” If they could not attend due to work rostering, then they were unable to attend*

#### *Payments*

*The students stated that they paid \$10,000 upfront in China to the Chinese agency. They were advised that they were going to put the money into the bank account of the company.*

*The course fees were actually \$11,000, but they were advised that they did not have to pay the additional \$1000 as they had paid it all up front. The students paid for their own transport, visa, all fees and travel expenses*

#### *Concerns expressed*

*A number of students wrote a letter to the international training manager to discuss a variety of issues they had. These included an issue of monies that were deducted from their wages as well as a few other issues that they had concerning their employment. They did not hear back regarding this for some time and so decided to fax the letter to the manager in June 2006*

*The following day, they received letter back from the manager that answered a few questions but did not address their major concern about deductions.*

#### *Verbal Warning*

*The day before the students sent the letter by fax, they received a verbal warning from a staff member in the company that they were not attending training properly. However, this stems from the problems of the training arrangements, in that they were not planned in advance that it was a matter of when they were free to attend the training.*

*The verbal warning was then repeated in writing in a letter dated the same day. It states that they have failed to attend training on a 'number of occasions' and they must show good cause why the training agreement with the company should not be terminated.*

*This was the first time that they had been told about the problems with them not attending training. However, when the students questioned this, they were advised that the letter was merely procedural.*

#### *The Termination*

*After they received this letter, the students went to work and training as normal. Nothing significant happened between that date and the 4<sup>th</sup> July, when the students were handed letters, while at the training course, advising that their employment was terminated.*

*No reasons beyond a failure to attend training were given as the reason for termination. There was no meeting held to discuss possible options, and they were not given a opportunity to defend themselves.*

*The stated reason for the termination was stated as being failure to attend training sessions however, the students have obligations relating to employment and to the training course. There are internal conflicts between the 2 arrangements, further; the overriding obligation was for them to attend their place of employment.*

*SA Government steps in*

*Because of the termination of employment, they were in breach of their temporary visa requirements and faced the real prospect of deportation. The SA Training Advocate intervened with state and federal authorities and after quite an involved process, were able to organise alternative arrangements. DFEEST also initiated a compliance review, but of course these processes took time and while essential and welcome in a systematic sense, provided little immediate comfort to the students.*

It has been some time since these cases were dealt with. YWLS recommends that the relevant federal and state authorities undertake a special audit of RTO's and employers with significant numbers of students on temporary training/work visas.

<b>Employer Details</b>	
Full business name and address	
Trading name	
ABN	
ACN	

<b>Employee Details</b>	
Name and address	
Date of Birth	
Contact Phone/s	
Emergency Contact Person and details	

**NATURE OF EMPLOYMENT**

Full-time, part-time or casual? (please circle)	Full-time    Part-time    Casual
Fixed term? (please circle)	Yes/No
If yes, state period	From _____ To _____
What job is the employee to perform?	
What duties will the employee perform?	
At what classification level is the employee engaged?	
What is the name of the Award(s) and/or other industrial instrument that operates in this workplace?	

What is the union with coverage under the Award or Industrial Instrument that operates in this workplace?	
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**CONDITIONS OF EMPLOYMENT**

What are the days on which the employee will usually work?	
What are the hours to be worked?	
What days of the week will be worked?	
What are commencing and finishing times?	
When are rosters most commonly set?	

You have been engaged in accordance with the terms and conditions of the \_\_\_\_\_ Award/Agreement

**Signed (Employer):** \_\_\_\_\_

**Signed (Employee):** \_\_\_\_\_

**Signed by parent/guardian:** \_\_\_\_\_

**Date:** \_\_\_\_\_

