



Our ref:

Inquiry into the Welfare of International Students

Inquiry Unit: Senate Education, Employment and Workplace Relations Committee

PO Box 6100

Parliament House

Canberra ACT 2600

Australia

KINGSFORD
LEGAL CENTRE

14 August 2009

Via email: eewr.sen@aph.gov.au

Dear Madam/Sir,

Submission to the Inquiry into the Welfare of International Students

Kingsford Legal Centre welcomes the opportunity to make a submission on the welfare of International Students in Australia.

Kingsford Legal Centre (KLC) is a community legal centre and part of the Faculty of Law at the University of New South Wales. KLC provides advice and representation to people who live and work in the Botany and Randwick Local Government Areas and to staff and students at the University of New South Wales. KLC also provides advice in discrimination matters to people throughout New South Wales.

KLC's position on campus at the University of New South Wales and its role in providing free legal advice to students means that KLC provides advice and assistance to many international students faced with legal problems in Australia. Approximately 13% of KLC's clients identify as students (which includes both domestic and international students) and 60% of KLC's clients were born outside Australia.

Recent media attention that has highlighted the welfare of international students in Australia reflects some of the experiences of international students who seek our assistance. International students in Australia come from a range of socio-economic backgrounds and many arrive in Australia unaware of the law and, therefore, vulnerable to

exploitative practices. Other factors such as speaking English as a second language and having no friends and family in Australia can lead many students to become socially isolated and unsure of where to seek help and assistance. International students can also be fearful that complaints could have negative repercussions for their visa status, cause concern or distress to their family at home, or negatively impact on their studies. This often results in international students not seeking assistance to enforce their rights or to report exploitative legal arrangements.

The casestudies in this submission are drawn from the experiences of international students who have sought the advice and assistance of KLC.

Issues facing International Students in Australia

While international students are attracted to study in Australia by the calibre of our educational institutions, image as a friendly nation and physical environment, many quickly realise that being an international student in Australia is a difficult experience. Living in precarious housing, working for below award wages or being robbed are common experiences for international students in Australia. From KLC's experience key issues affecting student welfare, safety and the ability of overseas students to study and live in Australia include:

- unfair, illegal and exploitative accommodation practices;
- vulnerability of students to becoming victims of crime and the impact of this on overseas students;
- exploitation in employment arrangements and visa limitations on work;
- transport costs, the lack of student concessions and public transport fines;
- traffic offences related to driver's licences;
- racism and discrimination directed at international students;
- vulnerability to threats about their visa if they complain about unfair or illegal practices or attempt to enforce their rights.

Summary of Recommendations to the Inquiry

1. There should be comprehensive legal information about housing rights and responsibilities aimed directly at international students on the internet – for example at <http://studyinaustralia.gov.au> and circulated in hard copy format with course and visa information.
2. The information should highlight some of the dangers that students should be aware of when entering housing arrangements in Australia and be in a range of languages;
3. The website should include a list of “Dos” and “Don’ts” when entering into housing agreements and include checklists for students to ensure their rights are adequately protected;
4. Students should be informed in NSW that they should enter into arrangements as tenants and the website should include a downloadable Residential Tenancies Agreement which students can ask landlords to sign;
5. Students should also receive information about sources of free legal assistance in Australia (such as community legal centres) upon receiving information about their course or visa;
6. Student housing services run by universities should have a zero tolerance policy toward landlords that engage in exploitative, unfair or illegal practices and should not recommend such landlords to students and actively warn students about known landlords.
7. That the Government consider raising the current visa restriction of 20 hours paid work for international students to ensure that international students can earn enough money to meet their basic needs without recourse to illegal employment arrangements.
8. That information about employment rights, including award entitlements and information about anti-discrimination law be developed specifically for international students and provided on the internet such as at <http://studyinaustralia.gov.au> and with course and visa information.
9. The Government should continue to work to reduce the incidence of violence towards people born outside Australia;
10. The Government should collect and monitor crime statistics on the rate of crimes committed against international students in Australia;

11. The Government should work particularly to condemn racist violence directed at international students;
12. The Government should consider providing information and advice to international students on the Australian justice system in order to increase confidence in the justice system and police by international students- e.g. through sessions run at universities and information provided with course information.
13. All international students should be provided with information concerning free legal advice and non-legal referrals such as counselling for victims of crime.
14. Student concessions should be made available on public transport to international students.
15. Key Commonwealth and State Government agencies should meet regularly to discuss and implement strategies concerning the welfare of International Students. Agencies should create student liaison positions aimed at working directly with students to improve their experience whilst in Australia in areas such as housing, policing and employment.

Accommodation issues facing international students

Illegal and unfair practices by landlords

Tran was an international student who located accommodation before he arrived in Australia to study. The landlord corresponded with him via email and assured him that the room was very close to the university. The landlord offered to pick Tran up from the airport on the day of his arrival which he was grateful for as he did not know Sydney. When he arrived his landlord was not there to pick him up. He took a taxi to the address and was shocked that the accommodation was very far away from the airport. He realised that the accommodation was nowhere near the university and was over an hour away by car. Tran's accommodation was also not what he expected – the landlord made him undertake onerous chores which had not been agreed. The landlord took \$1000 bond from him and did not give him a receipt. His landlord took his passport and kept it and continued to seek to threaten money from him. Tran felt trapped as his landlord had his passport and had \$1000 of his money- he didn't know what he should do.

Illegal and unfair practices in accommodation remain relatively common place and many international students are vulnerable to landlords that deliberately target them in these practices. Whilst information about renting practices and the rights of tenants is relatively well known and easy to access for the general Australian community, international students are often ill-informed about their housing rights and often do not know where to seek assistance. Many accommodation contracts are arranged prior to the student moving to Australia, further limiting the extent to which students can receive advice and assistance on the legality of the housing arrangements. This also increases the risk that the landlord has misrepresented to the student the nature of the accommodation – such as it's proximity to university.

In KLC's experience it is common place that many international students are treated as boarders or lodgers. This means they miss out on crucial protections afforded to tenants and in NSW do not have recourse to the Consumer, Trader and Tenancy Tribunal when a dispute arises. Many international students have no knowledge of the legal distinction between tenants and boarders and lodgers at the time they arrange their housing and therefore commonly enter agreements which offer little or no legal protection.

Withholding of rental bonds

Li rented a room from her landlord. There was no written agreement in place. Her landlord later accused her of damaging the room but Li strongly denied this. When she decided to leave the landlord withheld half her bond on the basis of the damage. As it was not lodged with the Rental Bond Board the landlord could do this without her consent. Even though Li objected to this there was little she could do to stop her landlord doing this.

A consequence of the lack of legal regulation of boarding and lodging situations is that very large rental bonds are often retained by landlords. As Tran's situation highlights landlords can require significant bonds from students and very often do not provide a receipt. Unlike the law regulating tenants, there is no legal requirement that landlords lodge this bond with an independent third party such as the Rental Bond Board in NSW. As a consequence, this money - which should only be accessed if there is outstanding debt or damage at the end of the contract - is routinely withheld by landlords, often without legal justification. KLC provides advice to students about how they can recover this money through the Local Court but this can be extremely daunting for a person not familiar with Australian Courts or who has English as a second language. As a consequence, money is often forfeited without legal basis to landlords by students. KLC has also noted that this issue often arises when a student is preparing to return home and therefore faces further difficulties in conducting debt recovery in Australia. As a consequence most students do not initiate legal proceedings and landlords often retain bonds without legal justification from international students.

Living with threats of eviction and in fear of eviction

Once in their housing, the lack of legal regulation of people in boarding or lodging situations means that students quickly become aware that any complaints or disputes with their landlord could result in their eviction with little or no notice. Students are often threatened with eviction if they complain about the standard of accommodation, rent increases or the behaviour of the landlord. The threat of eviction hangs heavily for international students who fear the interruption it would cause to their studies and who may not have many social supports in Australia that could provide practical help if they lost their accommodation. As a result, many students are forced to accept unfair and exploitative practices in their accommodation. This is especially so when the landlord has retained a

large bond or the student's passport. While KLC provides advice to students about the illegality of such conduct, the reality is that many students do not enforce their limited rights or even question the landlord's conduct due to the precarious nature of their housing.

Rent increases

Cecile had great difficulty finding somewhere to live when she arrived to study in Australia. She ended up agreeing to rent a room that was sub-standard simply because she had nowhere else to stay and needed to focus on her studies. The landlord, however, increased the rent several times within a short time of her moving in. Cecile felt trapped – she knew the room wasn't worth the amount the landlord was charging but knew that she had nowhere else to go.

International students tend to pay higher than market rents than other tenants in the rental market. This situation occurs because many students are not in a position to negotiate with their landlord concerning the initial rent charged. This could be for a variety of reasons such as language barriers, cultural norms and a lack of awareness about market rates in Australia (the agreement is often made before the student has entered Australia). Once in the accommodation overseas students tend to experience rent increases which are higher and imposed more frequently than for tenants. This again highlights the vulnerability of international students – it is KLC's experience that many students do not feel able to object to a rent increase without threatening the security of their housing. Even in situations where students do wish to formally object their options are extremely limited as there is no legal mechanism by which boarders or lodgers can object to rent increases.

Landlords misleading students about their rights

KLC has also noted the practice that even when international students are tenants under the law, landlords treat them as boarders or lodgers. This means that students miss out on the legal protection they are entitled to and must fight often technical legal cases to assert their basic rights as tenants.

Felipe signed an agreement for a room in a large house which included a shared living room and kitchen. The document stated that it was a residential lease agreement; however, many of the terms were not consistent with the rights of tenants. This included the right of the landlord to evict him with minimal notice and onerous rules about what he could do in the house. One day a builder arrived with no notice and began erecting new walls in the lounge room. He continued to turn up with no notice each day. It became clear that the landlord was creating new rooms and intended to move many more people into the house. Felipe sought the advice of KLC as he was concerned about his rights in the property – he had no access now to the lounge room, his quiet enjoyment was being disturbed by the work, and he was concerned at the prospect that there would be many more people living in the house. When KLC looked at the nature of his contract and the arrangements in the house we formed the view that he was in fact a tenant and was entitled to have his bond lodged, minimum eviction periods and a right to have notice if the landlord wanted to access the property. We advised him to lodge a claim with the tenancy Tribunal and argue he was a tenant. His landlord was trying to evade the law by treating him as a boarder.

Students in substandard accommodation

KLC provides advice to many international students concerned about the standard of their accommodation and their ability to get repairs – again this is made difficult as they are often not tenants.

Hugo rented a unit in near the university. He reported a faulty door lock to his real estate agent, however, the door lock remained unfixed. As a result of this, his place was broken into and his valuable properties were stolen. As he was not a tenant he did not have any real legal redress to force the landlord to provide security

Catherine is an international student currently studying at university. She has rented a flat close to university for four years. In the last 1 year, there were two break and enters that occurred in the flats on her level. It leaves her unit as the only two units in her level that has not being broken into. The flats that have been broken are all flats that are occupied by international students. Catherine believes they are being targeted as they usually own laptops and other electronic equipment. Catherine thinks the perpetrators have monitored

the units and have broken in when everyone is at university. Catherine is afraid that her unit might be the next target. She has asked the landlord for a security bars to be placed on the unit's windows. However, the landlord has ignored her requests.

Recommendations to the Inquiry – Housing

1. There should be a comprehensive legal information about housing rights and responsibilities aimed directly at international students on the internet – for example at <http://studyinaustralia.gov.au>; and circulated in hard copy format with course and visa information.
2. The information should highlight some of the dangers that students should be aware of when entering housing arrangements in Australia and be in a range of languages;
3. The website should include a list of “Dos” and “Don’ts” when entering into housing agreements and include checklists for students to ensure their rights are adequately protected;
4. Students should be informed in NSW that they should enter into arrangements as tenants and the website should include a downloadable Residential Tenancies Agreement which students can ask landlords to sign;
5. Students should also receive information about sources of free legal assistance in Australia (community legal centres) upon receiving information about their course or visa;
6. Student housing services run by universities should have a zero tolerance of landlords that engage in exploitative, unfair or illegal practices and should not recommend such landlords to students and actively warn students about known landlords.

International students and employment

Visa restrictions and employment

Students from overseas on a student visas are presently restricted in working beyond 20 hours per week. Students who come to Australia come from a wide range of socio-economic backgrounds, and in some cases, a lifetime of family savings has been used to allow the student to study in Australia. This means that some students arrive in Australia with very little savings and must rely on the income they earn in Australia. Given our observation that international students are also likely to pay higher amounts for their

accommodation and are subject to unregulated rent increases many students must work whilst in Australia to meet their basic needs.

Visa restrictions on students working no more than 20 hours of paid work does not provide an adequate income to live on as students generally receive basic award wages. This places students without savings in a difficult position and can push them into illegal practices such as working for cash beyond their 20 hours. This can place students in a vulnerable position and can allow unscrupulous employers to exploit students who work beyond their permitted 20 hours per week. KLC is aware that many students in these situations agree to diminutions of their rights, often because they are aware and afraid that a disgruntled employer could report that they are working over 20 hours in breach of their visa. This situation often allows illegal work practices to flourish and can place international students in unsafe or unfair workplaces.

Farah worked at a fast food shop. Throughout her employment she was not paid regularly and had only received a small fraction of her wage entitlements. She continued to work and believed her employer's assurances that her wages would be soon paid. She later lost her job and came to KLC asking for assistance to obtain many thousands of dollars owed to her.

Harassment and discrimination in work

KLC also has had contact with international students who experience serious discrimination and racism in their employment. As students often rely on these jobs (both for income and in pursuit of their qualifications) it is our observation that many continue to work without complaint and only seek our assistance after experiencing serious and ongoing harassment or discrimination. This experience often has serious impacts on the individuals involved and often leads them to question whether they should remain in Australia and continue their studies.

Aasim came to Australia on a student visa, leaving at home his wife and young son. He enrolled in a private hospitality college studying for a Diploma. He also obtained a part time job working in the hospitality field in order to obtain the practical experience required under

his Diploma. On his first day at work he was injured by a colleague - Aasim believed that it was deliberate. He had to go to hospital immediately. He later returned to work and was subjected to ongoing racist abuse by his colleagues. He was eventually sacked after the complained about his treatment. After he lost his job he struggled to find other work, became very depressed and found it difficult to continue his studies.

Barriers to employment

Many students from overseas come to study in Australia in the hope that upon qualification they can live in work in Australia. KLC has particularly noted that for overseas medical students there are significant barriers (which many students are not aware of) which prevents their employment in Australia.

Hussein came to Australia and graduated with a medical degree. He was disappointed to learn when he applied to the Australian Medical Board that he was refused on the basis of his proficiency in English. Hussein did not know about this requirement when he came to study in Australia and felt he could show his proficiency through other tests that he had passed. These, however, were not recognised by the Board.

Recommendations – Employment

1. That the Government consider raising the current visa restriction of 20 hours paid work for international students, to ensure that international students can earn enough money to meet their basic needs without recourse to illegal employment arrangements.
2. That information about employment rights, including award entitlements and information about anti-discrimination law also be developed specifically for international students and provided on the internet such as at <http://studyinaustralia.gov.au> and with course and visa information.

International students as victims of crime

It has been the observation of our legal service that international students face particular issues as victims of crime. While it is not possible for KLC to comment on whether there is a higher rate of violence against international students than other people in the community it is our observation that many international students who have been victims of crime such

as robbery remain extremely fearful and seek out our assistance. It is our observation that many crimes against international students go unreported due to fear and a lack of knowledge about the criminal justice process. International students in many cases also do not have large social support systems that may help them deal with a traumatic event such as a robbery and they may be very socially isolated. Students who have been victims of crime also often remain unaware as to where they can seek ongoing assistance such as counselling.

Jiang and his wife were assaulted late one night. They reported it to the police but sought KLC's advice as they remained terrified after the assault. They thought that by going to the police the perpetrator would be able to identify them and where they lived and seek revenge. Their lack of knowledge about the Australian criminal justice system significantly exacerbated their fear after the attack as they did not understand the role of the police to protect them and their identity from the perpetrators of the attack.

Malik was approached in the city by 2 men that told him they had a gun. They made him hand over his wallet and valuables and forced him to access an ATM and withdraw as much cash as possible. Malik was terrified during the attack. He reported it to the police but became very worried when the police asked him to attend and provide a statement. He sought advice from KLC as he was scared about the process and did not want to provide a statement if it could result in him having to attend Court and give evidence in the presence of his attackers. We provided advice about the protection of witnesses under Australian law, however, Malik remained fearful and was unsure if he would provide a statement to police.

Aiko was assaulted and robbed while waiting for public transport. During the attack she was threatened with a knife. Since the attacks he has been too fearful to use public transport and has driven herself everywhere. She now suffers from a psychiatric condition after the attack. A speeding ticket resulted in Aiko's licence being under threat. She came and sought our assistance as she was terrified of the prospect of catching public transport in the future.

Bao Yu was robbed by 3 men close to her home. Her bag was snatched and she suffered concussion and a cut to her hand. She continued to experience dizziness and memory loss after the accident and did not feel safe in her home or walking in her neighbourhood.

Recommendations – Victims of Crime

1. The Government should continue to work to reduce the incidence of violence towards people born outside Australia;
2. The Government should collect and monitor crime statistics on the rate of crimes committed against international students in Australia;
3. The Government should work particularly to condemn racist violence directed at international students;
4. The Government should consider providing information and advice to international students on the Australian justice system in order to increase confidence in the justice system and police by international students;
5. All international students should be provided with information concerning free legal advice and non-legal referrals such as counselling for victims of crime.

Public Transport Concessions

KLC is aware that as international students are not eligible for student concession cards many receive fines when travelling on public transport on a concessional rate. Given the visa limitations on student employment and that some students may have to undertake substantial travel on multiple forms of public transport KLC is of the view that student concessional rates should also be available to international students in Australia

Recommendation – Public Transport Concessions

1. Student concessions should be available on public transport to international students.

Other issues – driving licences

KLC also has had contact from many international students who do not understand NSW law in relation to driving licences. Many students do not realise that they may rely on their overseas licence whilst studying in Australia. As a result many apply for learner's licences

that are more restrictive than the overseas licences and are caught for offences that would have been permissible under the international licence. The overseas licence cannot be used to drive in Australia once a person holds an Australian licence.

Casey was caught drink driving. He held both an international driver's licence and a NSW learner's licence. He was not aware that he was subject to the restrictions of the learner's licence and did not realise that he was able to legally drive on his international driver's licence without a NSW licence. As a result he had committed an offence by being over the blood alcohol limit for a learner's licence. If he had not applied for the learner's licence he would have not committed the offence as he remained under the legal limit for an unrestricted licence.

Davi held both a learner's licence and an international licence. He was charged with numerous offences under his learner's licence such as driving unaccompanied and not displaying L plates. If Davi had relied on his international licence he would not have been guilty of an offence. Davi did not realise that in applying for a learner's licence he would not be able to rely on his international driver's licence and would be subject to the restrictions of the learner's licence.

Recommendations – Driving licences

1. Information needs to be provided to international students about the law relating to driver's licences, and in particular that students that hold international licences do not need to apply for Australian licences .

Conclusion

While international students come to Australia to study on the back of Australia's reputation as a friendly country with a good education system the experience of many students in Australia dampens that reputation. Being taken advantaged of, losing money and living in fear are common themes in the life of an international student. Whilst providing education, support and assistance to international students to prevent this behaviour is a key part of the solution, there is clearly a responsibility on state and federal

Governments to take serious action to protect the rights of international students. This submission to the Inquiry identifies some key areas in which the Commonwealth Government could, in conjunction with state Governments, ensure that Australia's international reputation is not damaged by the treatment of international students in Australia.

Yours Sincerely,
KINGSFORD LEGAL CENTRE

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