

Submission

No 53

INTERNATIONAL STUDENT ACCOMMODATION IN NEW SOUTH WALES

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Date Received: 17/10/2011



Australian
Human Rights
Commission

Race Discrimination Commissioner

Dr. Helen Szoke

17 October 2011

Mr Bruce Notley-Smith MP
Chair, Social Policy Committee,
Legislative Assembly,
Parliament of New South Wales
Macquarie Street
Sydney NSW 2000

Dear Mr Notley-Smith MP

Inquiry into International Student Accommodation in New South Wales

Thank you for inviting the Australian Human Rights Commission to make a submission to the Social Policy Committee of the NSW Legislative Assembly in its Inquiry into International Student Accommodation in New South Wales. Thank you also for the extension provided to the Commission to submit this contribution.

Please find attached a short paper broadly addressing the Committee's Terms of Reference.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Helen Szoke'.

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Inquiry into International Student Accommodation in New South Wales

1 Introduction

1. The Australian Human Rights Commission (the Commission) welcomes the opportunity to submit comments to the Social Policy Committee of the NSW Legislative Assembly in its Inquiry into International Student Accommodation in New South Wales. The Commission is established by the *Australian Human Rights Commission Act 1986* (Cth) and is Australia's national human rights institution.
2. The Commission commends the New South Wales Parliament for initiating this Inquiry. Issues relating to the safety and well-being of International Students in Australia are enormously complex, necessitating the active engagement and cooperation of not only the Australian Government and State and Territory Governments, but also between education providers, employers, and a broad range of service providers.
3. In the Commission's experience, the interests and concerns of International Students too often fall between the cracks of competing government jurisdictions, education providers and other service providers.
4. The Commission is pleased to highlight some issues relating to International Student accommodation that may be helpful for the Committee to consider during this Inquiry. These comments draw on the extensive work the Commission has undertaken in relation to International Students residing in Australia.
5. Specifically, these comments draw on the Commission's work in developing the DRAFT *Minimum Standards for International Student Safety and Well Being*. This work has been done through consultation with International Students and their representative bodies, various levels of the education and training sector and other agencies associated with the interests of International Students including law enforcement, welfare, state emergency services and state government representatives. While the Commission's work necessarily focuses on international and national laws rather than NSW legislation, many of the concepts explored in developing the DRAFT *Minimum Standards* are applicable across jurisdictions.

2 Summary

6. International Students form a significant population set and may live in Australian communities for a lengthy period of time, depending on the duration of their education program(s). International Students, individually and collectively, make significant contributions to Australian society.

7. The Commission considers that International Students are young people who have the right to both make choices about their education and lives while they are in Australia, and the right to exercise their own values and beliefs in a manner that is consistent with the domestic laws of Australia and international law.
8. Safe, clean, convenient and affordable housing is essential for International Students to feel a sense of belonging and feel safe, have a place which they can call home and enable them to focus on their educational and other pursuits.
9. Similar to other temporary migrants, International Students can experience considerable difficulties and vulnerabilities due to their absence from their country of origin. For example, economic insecurity, social isolation, language barriers and culture shock.
10. The Commission's consultations have revealed that International Students may also experience direct and indirect discrimination, exploitation, and/or be disadvantaged due to their race, temporary migrant status, culture, religion, language or other grounds. This can occur not only in relation to accessing safe and affordable accommodation; in our experience International Students also regularly face discrimination by health providers, migration agents and employers on a range of grounds.

3 The DRAFT *Minimum Standards for International Student Safety and Well Being*

11. The proposal for the development of *Minimum Standards for International Student Safety and Well Being* was initiated by the Commission, in partnership with student representatives and academics working in the tertiary sector, who identified the need to ensure that human rights considerations would inform appropriate and relevant responses to the needs of International Students following reports of violence, racial attacks and welfare concerns, particularly in eastern states.
12. Over the past 18 months, the Commission has been developing the *DRAFT Minimum Standards* in close consultation with International Students and with stakeholders including Universities Australia, the National Union of Students, the Council of Australian Postgraduate Associations, the Council of International Students Australia and International Student service providers.
13. There has also been significant input from decision makers and regulators, with the Commonwealth Department of Education, Employment and Workplace Relations (DEEWR) recently coordinating whole of government feedback on the draft document.
14. Underpinning the *DRAFT Minimum Standards* are the principles of non-discrimination in relation to the rights of domestic and International Students and equality between domestic and International Students in Australia.

15. The *DRAFT Minimum Standards* set out the core human rights of International Students studying in Australia and the minimum responsibilities of Government and private education providers in order to provide for these rights.
16. The *DRAFT Minimum Standards* are based on international human rights standards including:
 - the Convention on the Elimination of Racial Discrimination (CERD)
 - the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
 - the International Covenant on Civil and Political Rights (ICCPR)
 - the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹
17. The *DRAFT Minimum Standards* also consider relevant, existing domestic legislation.²
18. In their current form the *DRAFT Minimum Standards* include the following thematic areas: consumer rights and quality education, health and safety, accommodation, employment, transport, immigration, and information and privacy.
19. The *DRAFT Minimum Standards* are currently confidential. The Commission anticipates that the *DRAFT Minimum Standards* will be available for wider public comment once the Commission has incorporated feedback from Commonwealth agencies, and completed internal review and approval processes.
20. The Commission would be happy to provide the Social Policy Committee with a copy of the *DRAFT Minimum Standards* at that time.

¹ The right to adequate housing is well-established in international law, including Article 11 of the ICESCR which refers to an adequate standard of living and the right to adequate housing. In accordance with the Committee on Economic, Social and Cultural Rights General Comment Number 4 (Article 11) on Adequate Housing, housing options for International Students must be affordable, habitable, allow reasonable access to employment options, health care facilities, social facilities and be culturally adequate. Article 11 notes that the time and financial costs of transport can place excessive stress on individuals who already have very little economic security.

² For example, section 12 of the Commonwealth Racial Discrimination Act 1975 makes it unlawful for real estate agents to treat International Students less favourably than other rental applicants/tenants in similar circumstances, based on their race, colour, or national or ethnic origin.

4 The appropriateness of existing standards for International Student accommodation

21. In the Commission's experience, International Students in Australia live in a variety of accommodation including:
- on and off-campus accommodation;
 - home stays;
 - private rental housing; and
 - 'rooming' houses where individual rooms of a house are rented out to students.
22. While discrimination in the provision of accommodation to International Students exists a key issue consistently raised with the Commission by International Students is the lack of affordable and safe accommodation. To this end, the Commission suggests that a key issue for the Committee to consider is how the availability of affordable and safe on and off-campus accommodation options to all students can be expanded.

4.1 Residential Tenancies Act 2010

23. The Commission considers that all student accommodation services (on and off campus) should be subject to the same consumer protection as other standard rental accommodation under the relevant state or territory Residential Tenancies Act.
24. In NSW, most residential tenancies in NSW are covered by the Residential Tenancies Act 2010 (the NSW Act) and Regulations. The Act and Regulations set out a standard residential tenancy agreement that gives rights and obligations to landlords and tenants, and provides the Consumer, Trader and Tenancy Tribunal (CTTT) with power to hear and settle disputes about residential tenancies, including bond disputes.
25. The Commission considers that consumer protections in the NSW Act, as well as the provisions of the Anti-Discrimination Act 1977 (the ADA), discussed further below, must be robustly upheld so that International Students are able to enjoy the same tenancy protections as domestic students and other prospective renters.
26. For example,
- International Students should not be subject to any additional rental related costs or conditions beyond what is required under the NSW Act.
 - International Students should not be disadvantaged based on their temporary status, including but not limited to, an absence of, or limited tenancy history or proof of income.

27. The Commission recognises that on occasions there are practical impediments faced by International Students in accessing the existing protections of the NSW Act. To that end the Commission recommends measures that may practically assist International Students in accessing and maintaining appropriate and safe accommodation. For example:
- International documents or letters from education providers confirming they are students should be acceptable forms of proof of identity and financial standing as they provide verification that International Students have satisfied minimum requirements to support themselves in Australia.
 - Education providers should provide a template document as proof of enrolment within five days of request from International Students to support rental applications.
28. While the NSW Act provides a range of consumer protections to parties to a standard residential tenancy agreement, the NSW Act excludes specific types of premises and types of agreement from its coverage. The NSW Act is not applicable to accommodation arrangements in serviced apartments, hotels, motels and backpackers hostels or residential colleges in educational institutions (with some exceptions), often used by International Students.
29. Nor does the NSW Act cover agreements under which a person boards or lodges with another person (e.g. boarding or lodging in a private home) or share-housing arrangements where a person sub-lets part of a premises to another without a written tenancy agreement. Again, these arrangements are commonly used by International Students.
30. International Students living in these premises or arrangements effectively fall between the existing regulatory frameworks, and do not have access to the same consumer protections, enforceable by law, as associated with standard residential tenancy agreements.
31. The Commission considers that greater regulation of boarding and lodging agreements and home stay arrangements is required in order to ensure International Students living in these premises or arrangements have access to the same consumer protections as other standard rental accommodation.
32. The Commission acknowledges the complexity around these issues, and suggests that they require attention within a national policy framework, where it can be more clearly determined who has responsibility for better regulating those types of accommodation regularly utilised by International Students.

33. There may, however, be particular issues that the Committee can consider within the New South Wales jurisdiction. The following points are not exhaustive but reflect the Commission's consultations with International Students and may be of assistance in the Committee's deliberations.
- The Commission is supportive of the development of a national home stay compliance management system – including an accreditation/national registration process, a Code of Conduct, a system of random on-site inspections and a formal complaints mechanism – to enhance protections for International Students using these services.
 - The Commission is of the view that home stay fees should be capped and properly regulated, and that fees charged by all parties, including administration fees imposed by the education providers, should be disclosed to all parties.
 - The Commission believes that International Student tenants living in boarding houses should be provided with greater information and understanding about their responsibilities within the accommodation. While this could take the form of boarding house managers providing a set of house rules in plain English format, which clearly sets out responsibilities in relation to cleaning, payment of utilities etc., the key questions are how this information would be provided, and who would regulate it?
 - Issues of safety for International Students have also been raised in our consultations, and to this end the measures that are listed above may also address concerns which impact directly on female International Students and the reports of prevalence of sexual assault and sexual harassment suffered by some International Students in their efforts to access accommodation. In some cases, the offer of accommodation has been contingent on the willingness to of International Students to provide sexual favours.
 - The Commission considers that procedures need to be developed to avoid situations where International Students are living in overcrowded and unsafe accommodation. One way this may be addressed is for education providers to monitor their enrolment registration systems. When they become aware that a disproportionately high number of International Students are living at one residential address, administrators could be obligated to investigate the circumstances of the accommodation and, where necessary, provide assistance in finding suitable accommodation alternatives.

4.2 Anti-Discrimination Act 1977

34. In NSW, the Anti-Discrimination Act 1977 (the ADA) imposes more specific requirements on principals and agents in the provision of accommodation than the corresponding Commonwealth anti-discrimination provisions. Despite this detail, there are a number of provisions in the ADA which could be viewed through the lens of the International Student experience.
35. Section 4 defines accommodation as including “residential or business accommodation”. The Committee may wish to turn its mind as to whether the broad drafting of this definition provides sufficient protections for a particular disadvantaged group, in this case International Students. The Commission considers that a definition of accommodation that covered all forms of accommodation utilised by International Students may provide a tool for addressing the challenges they face in the accommodation market.
36. In substantially similar terms, the NSW Act provides that it is unlawful for a person, whether as principal or agent, to discriminate against another person on the grounds of race (section 20), sex (section 34), marital or domestic status (section 48), disability (section 49N), homosexuality (section 49ZQ), age (section 49ZY0) or transgender grounds (section 38N) in relation to:
- refusing the person's application for accommodation
 - the terms on which the person is offered accommodation
 - deferring the person's application for accommodation or according the person a lower order of precedence in any list of applicants for that accommodation
 - denying the person access, or limiting the person's access, to any benefit associated with accommodation occupied by the person
 - evicting the person or subjecting the person to any other detriment.
37. In the Commission's experience, each of these areas listed in the ADA are relevant to the experience of International Students, and have been repeatedly reflected in the Commission's consultations with them. In particular the conditions on which accommodation is offered – notably, rental payments, commission payments and the number of persons accommodated in particular premises – are central to many of the stories the Commission has heard.
38. These provisions in the ADA explicitly do not apply if the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises, and the accommodation provided in those premises is for no more than 6 persons. In the Commission's view, this exemption, found in all of the accommodation provisions in the ADA, provides a potential loophole for exploitation by persons who are living in a residence and using another part of the premises to accommodate International Students. In this scenario, the Commission is concerned that conditions and costs associated with accommodation covered by this exemption remain appropriate and fair.

39. Section 22G of the ADA provides that it is unlawful for a person to sexually harass another person in the course of providing, or offering to provide, (whether as principal or agent) accommodation to that other person. The Commission strongly supports this provision. However, subsection 22G(2) provides an exemption, stating that "This section does not apply to anything done by a person in the course of providing, or offering to provide, accommodation in a private household."
40. One of the issues of great concern to the Commission in its consultations has been the prevalence of sexual assault and sexual harassment suffered by some International Students in their efforts to access accommodation. The Commission appreciates the careful balance that this section seeks to address, but draws to the Committee's attention the potential exploitation of International Students this exemption may allow as currently drafted.