

Submission

No 50

INTERNATIONAL STUDENT ACCOMMODATION IN NEW SOUTH WALES

Organisation: Kingsford Legal Centre, The University of NSW
Name: Ms Emma Golledge
Position: Principal Solicitor
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14 October 2011

Mr Bruce Notley-Smith MP
Member for Coogee
Chair Social Policy Committee
Social Policy Committee
Parliament House
Macquarie St
Sydney NSW 2000

KINGSFORD
LEGAL CENTRE

via email: Ben.Connors@parliament.nsw.gov.au

Dear Mr Notley- Smith,

Submission to the Inquiry into International Student Accommodation in NSW

Please find enclosed Kingsford Legal Centre's submission to the Inquiry. We welcome the opportunity to provide feedback on the issues faced by international students in relation to their housing.

If you would like to discuss any aspect of the submission please contact the Centre on 9385 9566.

Yours sincerely,
KINGSFORD LEGAL CENTRE

A handwritten signature in blue ink, appearing to read 'Emma Golledge'.

Emma Golledge
Principal Solicitor

Janie Ng
Student Law Clerk

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Kingsford Legal Centre

Submission to the Inquiry into International Student Accommodation in NSW

October 2011

About Kingsford Legal Centre

Kingsford Legal Centre welcomes the opportunity to make a submission to the Inquiry into International Student Accommodation in NSW

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 provides general advice on a wide range of legal issues and undertakes casework for many clients who, without our assistance, would be unable to afford a lawyer.¹ KLC also undertakes law reform and policy work in areas where the operation and effectiveness of the law could be improved.

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

Kingsford Legal Centre's experience with International students

Kingsford Legal Centre provides legal advice and assistance to many international students and housing problems remains a recurring theme. In our experience, international students are vulnerable to exploitation in their housing. It is our view that some commercial providers of accommodation specifically target international students and build their business around profiting from current legal loopholes which allow for poor standards, high cost and little stability in housing.

Many of the problems faced by international students in their housing are also experienced by clients of KLC who are forced to live in whatever accommodation they can find. Many of our clients reside in housing

¹ In 2010 KLC provided 1,580 legal advices and opened 161 new cases.

situations that are not covered by the *Residential Tenancies Act* (2010) and fall within the broad description of boarding or lodging situations. This submission deals specifically with the housing issues faced by international students, but the lack of legal regulation of housing arrangements outside tenancies impacts on many other vulnerable groups. This includes people who are disadvantaged in securing tenancies, such as people on Centrelink incomes, people with poor rental histories and people who have been released from prison.

Main housing issues faced by international students

In our experience international students have little knowledge of the New South Wales (NSW) accommodation system. Many enter into accommodation agreements while still overseas through internet advertisements. Students who do this often arrive to discover the accommodation they have paid money for does not exist or is radically different to what they thought it would be.

As international students come to Australia primarily to study there is significant pressure to organise accommodation that will allow students to focus on their studies. There is also a significant lack of affordable rental accommodation near major Universities such as the University of NSW. As a result students often pay very high rents for accommodation that is lacking in quality. In our experience students are more likely to be in lodging situations where many students are living in the one premises. It is common that students share rooms with other students and living areas are often also used as bedrooms.

1. Being the victims of fraud in relation to their accommodation

Many students secure their accommodation before they leave their home country due to anxiety about the tightness of the rental market in Australia. Some students can outlay large deposits for accommodation that they discover on their arrival does not meet what was advertised or does not exist at all.

KLC Caestudy

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.²

² Based on a KLC client.

2. Unfair, exploitative or illegal accommodation requirements

Illegal and unfair practices in accommodation remain relatively common place and many international students are vulnerable to landlords that deliberately target international students in these practices. While 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.

Legislative changes requiring students to have written tenancy agreements, to obtain the protection of tenancy law, has also meant that many students are now legally considered boarder/lodgers when previously the law would have established an oral sub-tenancy.³ The need for students to have access to legal advice before entering their accommodation is therefore even more important. In our experience most international students do not access this advice prior to entering an agreement and only seek out assistance when faced with a problem in their housing.

KLC Casestudy

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. 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.⁴

3. Overcrowding, substandard or unsafe accommodation

As most of the accommodation international students reside in is not legislatively regulated under the *Residential Tenancies Act* (2010) the quality and condition of the premises can be very poor. Students living in these situations have very limited options to take legal action to enforce basic standards if they are not tenants.

³ The operation of section 10 of the *Residential Tenancies Act* 2010 has significantly altered the law for sub-tenants. *The Residential Tenancies Act* 1987 provided coverage for agreements “whether the agreement is oral or in writing, or partly oral and partly in writing” (section 3 *Residential Tenancies Act* 1987 repealed) – providing greater legislative protection for sub-tenants.

⁴ Based on a KLC client.

KLC Casestudy

Felipe signed an agreement for a room in a large house which included a shared living room and kitchen. The document stated 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 each day 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.⁵

KLC Casestudy

Hugo rented a unit in near the university. He reported a faulty door lock to his real estate agent. However, the door lock remained un fixed. 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 a secure premises.⁶

KLC Casestudy

Amir was living in shared accommodation. He shared his room with another student who he didn't know. His landlord increasingly pressured him to help him advertise his business. Amir did not feel comfortable doing this. As a result the landlord started accusing Amir of using too much electricity and threatened to lock him out. She also stopped him from using the kitchen and the laundry. Eventually Amir moved out as he was extremely stressed by the landlord's behaviour and his studies were suffering.⁷

⁵ Based on a KLC client.

⁶ Based on a KLC client.

⁷ Based on a KLC client.

4. Vulnerability to arbitrary eviction

In KLC's experience it is common place that many international students are treated as boarders or lodgers and do not fall under the protection of the *Residential Tenancies Act* (2010). 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. We believe that the *Residential Tenancies Act* (2010) which requires sub-tenants to have written tenancy agreements to have the protection of the Act further reduced the legal protection for international students, especially in relation to eviction periods. Many students come to see KLC when they have been locked out of their premises with little or no notice.

KLC Casestudies

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 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.⁸

Xena was an international student who found accommodation close to the university. She did not sign a lease and paid \$420 for bond - she did not receive a receipt for this. Xena paid \$140 per week and shared a room with another person. The landlord became aggressive when Xena spoke in French to other people in the house. The landlord also forbade her from going out on weeknights and accused her of being a prostitute. Things got worse and eventually the landlord evicted her with no notice. The landlord claimed the room was damaged and kept her bond but Xena was adamant that it was in the same condition as she found it. When Xena came to KLC we recognised that the name of the landlord was one that many other students seeking legal advice had given us. We helped Xena lodge a claim at the Consumer, Trader and Tenancy Tribunal but told her that we thought it was unlikely to work as she was probably not a tenant. The Tribunal found that Xena was not a tenant and therefore could not order the return of her rent and bond. We advised Xena that she could pursue the matter in the Local Court but Xena had to return home overseas and did so without her money.⁹

Since this time KLC has seen many more students who have had the same housing problem with the same landlord.

⁸ Based on a KLC client.

⁹ Based on a KLC client.

Appropriateness of current standards for student accommodation and adequacy of current legislation

As outlined by the case studies above the current law offers inadequate protection for international students as well as other people who are disadvantaged in obtaining accommodation.

KLC believes that the lack of legislative protection for people in boarding or lodging situations is the major contributor to the legal issues faced by students. Without legislative protection, minimum eviction periods and access to an accessible and low cost dispute resolution forum such as the Consumer, Trader and Tenancy Tribunal, students are unable to enforce standards and simply abandon accommodation (often forfeiting significant money in the process). This creates what KLC sees as a “revolving door” where new students then take their places, simply to have similar issues. In each case landlords often retain many weeks’ rent and bond, and make money from the fact that students do not stay long term. KLC sees many landlords conducting business on this basis and we have concluded that the targeting of international students is deliberate – rents are often charged at a higher prices and students often simply abandon the accommodation when the conditions become too oppressive – often out of fear – for example that the landlord may jeopardise their visa, or concern that their studies may suffer further if they remain.

The exemption from the operation of the *Residential Tenancies Act* (2010) in relation to boarders and lodgers as well as the requirements contained in section 10 of the Act has placed many more students without the legislative protection of the *Residential Tenancies Act*. In order to effectively regulate this area, section 10 should be amended to include partly, written or oral tenancy agreements.¹⁰ The NSW Government should also take legislative steps to regulate the boarding and lodging situations, which would include the housing situations of international students.

Without these two legislative reforms we believe there will be continued exploitation of vulnerable people in the provision of accommodation.

We support the general aims of the *Dominello* Bill in relation to regulation of boarding houses through a register and an increased role for local Government. In our view these protections will only work to achieve improvements in accommodation if accompanied by legislative rights for people living in border /lodger accommodation. Statutory rights would improve the quality of accommodation by allowing individuals to bring action if premises were below basic standards. We also believe it would remove the incentive for unscrupulous landlords who set up a business model which relies on retaining several weeks’ rent and bond when students leave accommodation or when they arbitrarily evicted. This would have the effect of weeding out landlords who base their business model not on the provision of accommodation, but of the “revolving door” effect of students leaving and forgoing money owed to them.

¹⁰ Section 10 of the *Residential Tenancies Act* 2010 requires a written residential tenancy agreement for a person to be considered a sub –tenant.

Appropriate framework for the on-going operation of affordable student accommodation and other accommodation used by students, including the adequacy of local government powers to identify unauthorised operations and enforce legal compliance.

We believe that both State and local Government has a significant role to play in improving the standards of housing for international students. We would support an increased role for local Government in identifying and regulating dwellings that are being used as multiple occupancies for students. We would also recommend that local Government should be funded to also provide support and assistance to international students made homeless due to the non-compliance of their accommodation.

Many of the students that seek KLC's assistance are living in residential areas in accommodation that is severely overcrowded. This has a significant impact on local residents through issues such as parking, and in some cases can result in serious threats to safety such as through fire. A boarder or lodger that has serious concerns about the safety of the premises they are living in has no effective remedy in order to compel repair. As people in this situation are also extremely vulnerable to arbitrary eviction they can also be reluctant to raise important safety issues with the landlord for fear that they will be evicted. This has implications for the local community as unsafe premises are also a risk to adjoining neighbours.

We believe that better regulation of the housing sector outside statutory tenancies by both local and State Government is required to end exploitation and unsafe practices in this area.

14 October 2011

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