

**Submission
No 32**

**INQUIRY INTO FUTURE DEVELOPMENT OF THE NSW
TERTIARY EDUCATION SECTOR**

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Portfolio Committee No. 3 - Education
Parliament of NSW
Parliament House
6 Macquarie Street
Sydney, NSW 2000

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Dear Committee Secretary,

Inquiry into the future development of the NSW tertiary education sector

The future development of the NSW tertiary education sector depends on ensuring the wellbeing of its most vulnerable students, including international students. In recent years, stakeholders across the international education sector have become increasingly concerned about the mistreatment of international students in housing and at work. It is critical that these issues are addressed within the scope of the current inquiry. In 2018, UNSW Sydney and UTS established a sector-wide consortium to better understand the problems international students encounter, and empirically identify key interventions that would have the greatest impact. Through StudyNSW's Partner Project Scheme, the consortium established Information for Impact: Enabling education providers to address exploitation of international students in accommodation and at work.

Between 2019 and July 2020, through the Migrant Worker Justice Initiative (www.mwji.org) and the UNSW Human Rights Clinic we released a number of reports from the study and related research that address exploitation of international students in NSW's labour and housing markets. Attached to this submission are our three most recent reports:

1. Bassina Farbenblum and Laurie Berg, *International Students and Wage Theft in Australia* (July 2020)
2. Laurie Berg and Bassina Farbenblum, *Living Precariously: Understanding International Students' Housing Experiences in Australia* (December 2019)
3. UNSW Human Rights Clinic, *No Place Like Home: Addressing exploitation of international students in Sydney's Housing Market* (July 2019)

Our earlier reports on both of these topics are available at www.mwji.org/publications.

This submission focuses on regulatory failures in relation to international students' housing which affect the wellbeing of many international students in NSW, and which are entirely within

the jurisdiction of the NSW government and parliament to remedy. For discussion of problems related to workplace exploitation and related recommendations, we direct the Committee to our recent report *International Students and Wage Theft in Australia* which highlights the importance of investing in coordinated legal services for international students who are working, especially services located on university campuses.

International students' problems with housing

Our research reveals a range of exploitation and other problems frequently experienced by international students in NSW. These include deceptive practices (accommodation was different to what was described; paying for accommodation that did not exist at all; landlord moved extra people into the accommodation without the student's consent; student was told that the accommodation was 'not ready' and they had to pay extra to stay elsewhere; and landlord failed to provide their correct contact details). It also includes financial and other exploitative practices (landlord required the student to pay a lot of money up front; landlord would not return some or all of the student's bond; landlord suddenly increased the rent in the middle of a rental period; and unfair eviction). Students also experience poor living conditions (overcrowded accommodation; accommodation that was unsafe or not fit to live in; and landlord would not make repairs).

The *Living Precariously* report, based on a survey of over 5,000 international students, establishes a detailed evidence base on international students' serious experiences of problems in relation to housing and proposes a number of recommended reforms to address the regulatory gaps. We direct the Committee to the Executive Summary in that report which sets out the prevalence of problems international students experienced.

Regulatory failures which contribute to these problems

Most international students living in share house arrangements do not have a formal tenancy agreement. Because they are in subletting relationships without a written tenancy agreement, they are excluded from the tenancy rights and other protections under the *Residential Tenancies Act 2010* (NSW) ('RTA') or other laws. They are significantly more vulnerable to unscrupulous conduct and unfair evictions because in the face of unfair housing practices, they will generally be unable to access the legal remedies that are available to tenants through the NSW Civil and Administrative Tribunal ('NCAT').

Ironically, because subletters in informal share house arrangements are not covered by protections under the RTA, NSW Fair Trading undertakes very little enforcement activity in this area. No other government department has responsibility for addressing exploitative conduct in this area, and there is therefore no accountability for unscrupulous head tenants and landlords who prey on vulnerable young people including international students.

Moreover, exclusion from coverage by the RTA also means share house subtenants without a written agreement cannot access to NCAT to recover a bond. When international students are

unable to recover their bond or obtain remedies for other unscrupulous landlord conduct, leaving accommodation becomes financially stressful or impossible, forcing some to stay in housing that is inadequate or unsafe. Students' lack of access to NCAT to address unscrupulous landlord conduct provides those landlords with impunity and enables them to repeat the conduct with other international students.

Recommendations for reform

We direct the Committee to the recommendations in the *No Place Like Home* report. Key recommendations include:

- The NSW government and parliament should adopt measures to ensure international students can easily reclaim their bond. This will reduce financial hardship and enable international students to move from unsafe or inadequate accommodation.
 - Fair Trading NSW should take enforcement action under the *RTA* when informed that a landlord or agent did not provide a bond receipt or lodge a bond.
 - Increase transparency and accountability by requiring all bond payments to be made online, with associated sanctions against landlords and agents for noncompliance.
- Amend the *RTA* and/or the Residential Tenancies Regulations 2010 (NSW) to provide rights and remedies to the most vulnerable tenants in the marginal rental sector, including international students in share houses, as follows:
 - Redraft section 10 of the *RTA* which expressly excludes share house occupants from application of the statute if they do not have a written sub-tenancy agreement. The revised provision should establish that if a named tenant under a residential tenancy agreement grants to a person for value a right of occupation of the premises, the subtenant has all the rights of a tenant as determined by section 13 of the *RTA*. The agreement between the subtenant and the named tenant may be express or implied and may be oral or in writing.
 - Consider consolidating existing legislation to provide comprehensive coverage of the main types of housing arrangements and simplify the legislative regime, including the *RTA*, the *Boarding Houses Act 2012* (NSW) ('*BHA*') and common law protection. This consolidated Act should provide the highest standard of protection available under existing legislation. The consolidated Act should also fill in existing gaps. It should apply whenever a person grants to another person a right for value to occupy premises for use as a residence. This should include subtenants, boarders, lodgers and those residing in residential colleges.
 - Reduce unfair evictions by amending ss 84 and 85 of the *RTA* to remove 'no grounds' termination of a tenancy agreement. This is especially important in the current COVID context to prevent homelessness with no accountability for unscrupulous landlords.

- Introduce reforms to NSW Civil and Administrative Tribunal processes to increase accessibility for international students, including:
 - Give increased consideration to the visa status of international students in case management to ensure matters are heard and/or resolved before the international student departs Australia where possible. Urgent applications should not be required to be filed in person by international students.
 - Facilitate the lodging of disputes online and conduct hearings either online or via teleconference to allow students to apply to NCAT without fear of missing work or class, or to be better able to pursue a claim after they have left Australia. International students should be able to indicate what time they are available to accommodate time differences if they have returned to their home country.
 - Increase funding for duty services in the NCAT Tenancy Division to ensure that all international students are able to access legal representation, and ensure a duty solicitor is on staff at NCAT.
 - Give NCAT expanded powers to recommend that NSW Fair Trading conduct an investigation where NCAT has identified systemic issues with specific landlords.

We welcome the opportunity to discuss these recommendations with the Committee.

Sincerely,

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